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Legalizing the flow of temporary migrant workers from Mexico: a policy proposal

LEGALIZING THE FLOW OF TEMPORARY MIGRANT WORKERS FROM MEXICO: A POLICY PROPOSAL

by Wayne A. Cornelius

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"The U.S. is experiencing the world's largest temporary worker program, larger even that the guest worker programs of Switzerland, France, Holland and Germany. Only ours is unregulated...[resulting] in the Immigration Service having to arrest over a million persons annually...whose crime is that they want to work in this country."

- Leonel J. Castillo, former Commissioner, U.S. Immigration and Naturalization Service*

INTRODUCTION

This paper sets forth the rationale for a system of temporary worker migration visas, as <u>one component</u> of a new U.S. policy concerning undocumented immigration, primarily from Mexico. It describes how such a system might work, the value premises and assumptions about political feasibility on which it rests, and its relationship to other immigration policy options.

The proposed system is not modeled on any previous "temporary worker," "guest worker," or alien contract—labor ("bracero") program, either in the United States or other countries. It is designed explicitly to avoid the negative consequences of some of these alien worker programs, and constitutes an entirely new approach to the problem of legalizing and regulating international flows of temporary migrant labor. The desireability and feasibility of the proposed system therefore should not be assessed according to "standards" set by previous alien worker programs.

The proposed system does not preclude the adoption of other kinds of measures for reform of U.S. immigration law and practices (e.g., "amnesty" for long-term undocumented immigrants living in the U.S. on a permanent basis). Optimally, the proposed system should be implemented in combination with other immigration reforms, including a broad "amnesty" for permanent

^{*}Quoted in David Meissner, ed., <u>Mexico-United States Relations: Report of a Wingspread Symposium</u> (Racine, Wisconsin: Johnson Foundation, 1979), p. 10.

settlers, expansion of quotas for permanent legal immigration from Mexico and other key sending countries (or abolition of per-country quotas and substitution of a worldwide quota), and revision of the preference system for permanent legal immigration. The proposed system is not designed to substitute for such measures, but to complement them. It is aimed at one particular segment of the Mexican migrant population now working in the United States whose condition would be unaffected by the aforementioned kinds of immigration reform, i.e., undocumented workers still based primarily in Mexico, who do not want to, or cannot, relocate themselves and their dependents permanently in the United States, and who seek only occasional, short-term access to employment in the U.S. to supplement their family incomes. All available evidence from studies that have attempted to deal comprehensively with the Mexican immigrant population in the U.S. (not just with a particular segment of it, such as garment workers, agricultural laborers, clients of immigration counseling agencies, apprehended illegals, etc.) indicates that these Mexico-based, short-term undocumented migrants constitute the majority of Mexicans who are employed in the United States in any given year.* Any reform of U.S. immigration laws and practices

^{*}See the studies reviewed in Wayne A. Cornelius, Mexican and Caribbean Migration to the United States: The State of Current Knowledge and Recommendations for Future Research, Monographs in U.S.-Mexican Studies, No. 1 (La Jolla, Calif.: Program in U.S.-Mexican Studies, University of California, San Diego, 1981); W. A. Cornelius, The Future of Mexican Immigrants in California: A New Perspective for Public Policy, Working Papers in U.S.-Mexican Studies, No. 6 (La Jolla, Calif.: Program in U.S.-Mexican Studies, UCSD, 1981); Richard Mines, "'Las Animas, California': A Case Study of International Village Network Migration" (unpublished monograph, Dept. of Agricultural and Resource Economics, University of California, Berkeley, April, 1980); and Reynaldo Baca and Dexter Bryan, "Citizenship Aspirations and Residency Rights Preferences: The Mexican Undocumented Worker in the Binational Community" (copyrighted research report, SEPA-Option, Inc., 600 N. Alameda, Compton, Calif., July, 1980).

which fails to provide an adequate number of legal-entry opportunities for this large group of Mexico-based migrant workers is doomed to failure, at least in terms of reducing significantly the number of undocumented Mexicans working in the United States.

The main premise of my approach to the problem of undocumented immigration from Mexico is that "the problem" is not the migrant worker himself (taking jobs, depressing wages, using social services, etc.), but his <u>illegal status</u>, and the consequences that may flow from that status (vulnerability to exploitation, fear of participating in union organizing activities, fear of seeking needed medical care, etc.). The policy prescription, given this definition of "the problem," is not to eliminate the migrant himself, or to attempt to exclude him from the outset by "barring the door," but to get rid of his illegal status.

The main objective of U.S. policy concerning undocumented immigration should thus be to reduce the size of the illegal component within the total migratory flow: To transform as many as (politically) possible of today's — and tomorrow's — undocumented aliens into legal immigrants, whether they are here as permanent settlers or just temporary workers. For the latter group, this objective is accomplished most expeditiously by reducing the necessity for illegal entry through provision of temporary work visas.

At present, the whole system of U.S. immigration laws and policies is geared to <u>permanent</u> legal immigration. (The only exception is the "H-2" visa for temporary workers, which in recent years has been used to admit only about 1,000 Mexicans per year, on the average, and which in any case is an undesirable vehicle for temporary labor migration because it

makes the migrant dependent on a single U.S. employer.) An immigration policy reform which fails to increase, very substantially, the number of opportunities for Mexico-based workers to migrate legally to the United States for short periods of employment — not permanent residence — will perpetuate this bias and guarantee a heavier flow of undocumented Mexican migrants into the United States in future years. As explained below, even if the U.S. were to double, triple, or quadruple its ceiling on permanent legal immigration, most Mexico-based workers who migrate to the U.S. for economic reasons could not take advantage of this change in U.S. policy, because they cannot afford the delays and financial burden involved in obtaining admission to the U.S. as a permanent resident alien, and/or because they fail to qualify for such status by virtue of having close relatives in the U.S. or specialized occupational skills.

ELEMENTS OF THE PROPOSED TEMPORARY VISA SYSTEM

- 1. The proposed system would involve issuing, through U.S. consular offices in Mexico, a predetermined number of temporary worker visas permitting up to six months (not necessarily consecutive) of employment in the U.S. per year, for a total of five years.
- 2. To maintain a valid visa, the worker would be required to leave the U.S. for at least six months per year. The date of each entry and return to Mexico would be stamped on the visa by U.S. immigration authorities at the border, and the entry/exit data for each visa holder would be recorded in computerized files for monitoring compliance.
- 3. Persons acquiring a temporary worker visa would be told at the time

of visa issuance that if they ever violate the time restrictions on annual employment in the U.S., their visa will be cancelled, and they will never be able to obtain another visa of this type. Those who do overstay their visas would be placed on a list of visa abusers, to be compiled at the end of each calendar year through computerized matching of entry and exit data. This list would be maintained at all U.S. consular offices in Mexico, and would be consulted prior to issuance of any new visa during the second and subsequent years after initiation of the system.

- 4. Visas would be issued by U.S. Consulates on a first-come, first-served basis, up to the predetermined monthly quota. No pre-arranged contract between a specific worker and a specific U.S. employer would be required in order to obtain a visa.
- 5. No geographical constraint would be imposed on the movements of the visa holder within the U.S.; nor would there by any restrictions on the type of business in which he can seek employment, or the type of job for which he could apply. The visa holder would be free to switch employers at will, without having to return to Mexico and re-enter the United States. In other words, the Mexican worker holding such a visa would be a free agent in the U.S. labor market, subject only to the time limitation on his visa. U.S. employers would have to compete for this legalized, temporary labor, on a free-market basis, paying competitive wages and offering competitive working conditions, fringe benefits, etc.

- 6. The temporary worker visa holder could re-enter the U.S. each year, and remain for up to six months per year, for up to five consecutive years (assuming that the annual, six-month limit on length of stay in the U.S. were honored by the visa holder for each of those years). At the end of the five-year period, the visa holder could apply for a renewal of the visa for an additional five-year period.
- 7. At <u>any</u> time, the holder of a temporary worker visa could apply for permanent resident alien status in the U.S., subject to the existing quotas and preference system. If he applied for such status at the <u>end</u> of his initial five-year period as a temporary worker, his "sweat equity" the time spent working in the U.S., abiding by the terms of his temporary visa would place the worker and his dependents in a special (newly-created) preference category for permanent legal immigration, to accelerate the adjustment-of-status process. However, the mere fact of having held a temporary worker visa would not <u>guarantee</u> permanent resident alien status for the worker and his dependents. Thus, those who apply for permanent resident alien status without a prior history of temporary employment in the U.S. would not be disadvantaged (relative to holders of temporary worker visas) in the competition for permanent legal immigrant visas.
- 8. While working in the U.S. as a temporary visa holder, the migrant would be permitted to have his dependents with him. (If the last four decades of Mexican migration to the U.S. are any guide, this option would be exercised by only a small minority of the temporary visa holders, either because they are single and have no dependents, or

because they wish to minimize their living costs in the U.S. in order to accumulate savings more rapidly.) While in the U.S., the migrant's school-age children, if any, would have access to tuition-free public education. The migrant and his dependents would have access to emergency and non-emergency health care at public facilities, the cost of which would be covered by the migrant himself, his employer, his labor union, or some combination thereof. Visa-holders would be encouraged to join workplace-based group health insurance plans.

- 9. While in the U.S., the visa holder and his dependents would not be eligible to receive welfare assistance (AFDC, SSI payments), food stamps, or unemployment compensation. The available evidence indicates that the average temporary (Mexico-based) migrant worker makes negligible use of such social welfare services. Legal exclusion from such benefits is therefore not really necessary, and would not adversely affect the vast majority of the proposed visa holders; however, this feature would increase the political acceptability of the proposed system, especially to those members of the general public who (incorrectly) associate the presence of immigrants of all types with heavy social welfare service utilization and resultant burdens on U.S.—citizen taxpayers.
- 10. The visa holder would be entitled to join a labor union if one is present in his place of employment, and would be strongly encouraged to do so. If no union is present, the visa holder would be able to participate as a full voting member in union organization and representation elections at his workplace. The visa holder would be eligible

for the full range of benefits offered by the labor union, including union health insurance.

- 11. The visa holder would be explicitly prohibited from going to work for an employer currently involved in a strike action. If found to be employed under such circumstances, the visa holder would lose his visa and be subject to deportation. Employers would also be prohibited, by law, from hiring the holders of temporary work visas immediately prior to, during, and immediately after a union representation election or strike action. Temporary visa-holders could therefore not be used legally as "strikebreakers" by threatened employers, nor to obstruct the unionization of the work force in presently non-union firms.
- 12. The number of visas issued by U.S. Consulates in Mexico should be adjusted, on an annual basis, to reflect fluctuations in the U.S. demand for foreign labor. The U.S. Department of Labor should institute a new system for monitoring employer needs for such labor, through a quarterly, national sampling of employers who typically hire alien workers (particularly small businesses in the agricultural, restaurant, hotel/motel, health care, construction, retail commerce, and light-industrial sectors). The number of visas issued per month should reflect the well-established, cyclical nature of Mexican migration to the United States (the majority of Mexico-based migrants choose to depart for the U.S. in the February-to-April period each year, and return to their home communities in the September-to-December period).* An appropriate month-by-month distribu-

^{*}This cycle coincides with the non-productive, "dry season" in small-scale, non-irrigated Mexican agriculture -- a sector in which large numbers of temporary Mexican migrants to the U.S. are still employed while they are in Mexico. However, urban-based, non-agriculturally employed Mexican migrants also tend to follow this schedule, or at least would not be inconvenienced or adversely affected by it.

tion of visas issued during the first year of the system would be as follows:

Month	Maximum no. of visas to be issued:
January	50,000
February	200,000
March	200,000
April	100,000
May	50,000
June	50,000
July	50,000
August	25,000
September	25,000
October	0
November	0
December	0
TOTAL:	750,000

- 13. The total ceiling on temporary worker visas to be issued in any given year must be set high enough to provide a viable legal-entry option for a significant proportion of those Mexicans who now migrate illegally to the United States. Otherwise, would-be migrants will assume (correctly) that their chances of obtaining a visa would be too slim to justify the additional time and effort involved in seeking one. They will continue to migrate illegally. It is therefore proposed that the ceiling for the first year of the system be set at a minimum of 750,000. Nothing under 500,000 visas is likely to have an appreciable impact on the flow of undocumented migrants from Mexico, and a fair test of the system could best be achieved at the 750,000 level or above.
- 14. At least initially, the proposed system of temporary worker visas should be limited to Mexican nationals. The desirability of this restriction stems from the following considerations:

- (a) The predominance of Mexicans in the flow of undocumented aliens entering the United States.
- (b) The fact that Mexican workers are more accustomed to periods of short-term employment in the United States (usually less than one year for a given sojourn), than are migrants from other sending countries.* Mexicans are therefore more likely than migrants of other nationalities to abide by the six-month limitation on annual stay in the United States.
- (c) Our common land border with Mexico, with several well-established points of entry for temporary migrant workers, which facilitates visa validation upon entry and exit and monitoring of compliance with the system.
- (d) Our historic, "special relationship" with Mexico, including the role of the U.S. government and private sector in initiating and institutionalizing the flow of temporary migrant labor from Mexico to the U.S., during most of the period since 1880.
- (e) The U.S. national economic and security interest in maintaining close and cordial relations with Mexico in a period when Mexico's importance to the U.S. as an export market and supplier of energy and labor is rapidly increasing.

The system may be extended to other key source countries for undocumented migrants to the U.S., depending on U.S. labor needs, developments in the source countries, and the initial results of the system as it has operated with Mexican migrants over a trial period of 3-5 years.

15. To meet the anticipated high demand for temporary worker visas, the number of U.S. consular offices in Mexico and their staffs would have to be increased. New consular offices should be established in principal source regions for migration to the U.S., particularly in the

^{*}The comparative data on this point are reviewed in Wayne A Cornelius,

Mexican and Caribbean Migration to the United States: The State of

Current Knowledge and Recommendations for Future Research, Monographs
in U.S.-Mexican Studies, No. 1 (La Jolla, Calif.: Program in U.S.
Mexican Studies, University of California, San Diego, 1981).

states of Jalisco, Guanajuato, Michoacán, Zacatecas, Aguascalientes, Chihuahua, Durango, and San Luis Potosí. (Siting of these new offices could be guided, in part, by the results of the nationwide survey study of migration to the U.S. conducted in December, 1978 - January, 1979 by CENIET, a component of the Mexican Ministry of Labor.) None of the proposed visas should be issued along the U.S.-Mexican border, to avoid a pile-up of visa seekers in close proximity to the U.S., who might be tempted to emigrate illegally or to remain for long periods in Mexican border cities if they are unable to obtain visas quickly.

Implementation of the proposed system would require new legislation 16. by the U.S. Congress (specifically, an amendment to the Immigration and Nationality Act creating a new category of visas for temporary workers from Mexico and setting conditions upon the employment of such visa holders while in the U.S., e.g., prohibiting their use as strikebreakers). It would not require a formal treaty or agreement between the governments of Mexico and the United States. There should, of course, be full consultation between the two governments prior to instituting the proposed system, but the Mexican government would not be involved in its implementation, and would bear no responsibility for the operation of the system. The local-level implementing agencies within Mexico would be U.S. Consulates; validation of temporary workers' visas upon entry and exit from the U.S. would be done by an expanded staff of U.S. Immigration and Naturalization Service officers stationed along the U.S.-Mexico border.

BASIC PREMISES

The proposed system is intended to satisfy the following normative criteria, with respect to migrants who would hold the visas:

- 1. To protect the right of the individual to seek a better life.
- 2. To provide the individual with a legal avenue for doing so.
- 3. To protect the individual's human rights and reduce his vulnerability to exploitation and abusive treatment.
- 4. To meet the individual's needs for basic human services, especially health care and education.
- 5. To maximize the individual's freedom of choice concerning where he will make his permanent home, raise his children, and spend his years in retirement.

The last of these criteria is usually overlooked in discussions of U.S. immigration policy, particularly those centered on the issues of granting "amnesty" to permanent undocumented settlers or raising quotas for new permanent resident aliens. The present proposal holds that Mexican workers who wish or need to work in the United States, but who need or want to maintain their permanent homes in Mexico, should be able to do so legally, whether or not they can qualify for admission to the U.S. as permanent resident aliens (either by virtue of having very close relatives who already reside in the U.S. as citizens or legal permanent resident aliens, or because they possess some scarce occupational skill). Probably an absolute majority of those Mexicans now migrating illegally on a temporary basis to the U.S., or aspiring to do so, cannot qualify for permanent resident alien status under the existing system of preference categories, regardless of the overall worldwide ceiling for permanent legal immigration

or the single-country quota for Mexico.* A U.S. immigration policy geared to permanent legal immigration (via a sweeping amnesty, stronger emphasis on family reunification as a criterion of admission, and larger quotas for permanent resident aliens) will actively discriminate against those who, even under a revised preference system, do not have access to permanent resident alien status. Such reforms would hardly "make a guestworker program unnecessary," as an official of the Select Commission on Immigration and Refugee Policy recently asserted.**

Such a policy also discriminates against the very large group of temporary Mexican migrants who do not want to relocate themselves and their families permanently in the U.S., or who lack the financial means to do so. Under the present system — as well as under a reformed system emphasizing larger quotas for permanent legal immigration and amnesty for permanent settler "illegals" — these people have no legal—entry option. Their supplemental income in the United States, but preferable as legal workers rather than undocumented aliens.***

^{*}I have found this to be true among the approximately 600 temporary Mexican migrants to the U.S. whom I have interviewed since 1975, both in sending communities in Mexico and in selected U.S. points of destination. Most of those who could qualify (by whatever means) for permanent legal resident status have already done so. They continue to migrate to the U.S. for short-term employment, but retain their main economic and family base in Mexico.

^{**}Quoted in Benjamin Shore, "Board Opposes Guest-Worker Plan for Aliens." San Diego Union, April 20, 1980, p. A-6.

^{***}When I asked 230 recently returned undocumented Mexican migrants (interviewed in their home communities in Mexico), "If you could get legal entry papers of some sort, would you want to live permanently in the U.S., or would you prefer to continue living in Mexico and working in the U.S. from time to time?", more than 80% stated a preference for temporary work in the U.S. and continued permanent residence in Mexico. For corroborating data, from a major field study conducted among unapprehended Mexican illegals in Los Angeles, see the report by Baca and Bryan cited on page 3.

My interviewees backed up their stated preference for this kind of arrangement with some very convincing explanations: Many said that they could not afford the cost of relocating their families in the United States. In Mexico, they at least owned their own house -- however humble -and perhaps some income-producing property like farmland, livestock, or a small business. They viewed these assets as being non-transferrable to the United States. Others, especially ejidatarios (recipients of small plots of land from the Mexican government's agrarian reform program), were afraid that they would lose their property in Mexico if they moved permanently to the United States. Among ejidatarios, such fears are well justified. They do lose their land rights if they are away from their plot for more than two years, and even a shorter absence can sometimes prompt a challenge by some covetous neighbor. Still others view the U.S. as a culturally inhospitable environment, with lots of racism, inadequate opportunities for informal socializing with relatives and friends, a strange and formidably difficult language, a morally loose environment in which to bring up children, and so forth. The catalogue of reasons is large and varied, but there is one general conclusion to be drawn: The needs and preferences of a substantial proportion of the migrating Mexican population would not be met by a liberalized U.S. permanent immigration policy, enabling larger numbers of Mexicans to settle in the U.S. as permanent resident aliens.*

If the United States goes the route of larger permanent immigrant quotas, without some sort of arrangement for legalizing entry for short-

^{*}Among the Mexican migrants whom I interviewed in 1976 and 1978, the stated preferences (and the explanations for them) on this point did not differ between (1) self-identified short-term undocumented migrants still working in the U.S. at the time they were interviewed; and (2) undocumented migrants interviewed in their home communities in Mexico after their return from the U.S.

It is foolhardy to induce people who want to be temporary workers in the U.S. to use up permanent resident alien slots, just to be able to gain short-term access to supplemental income-earning opportunities in the United States. It would be far better to provide such people with some sort of temporary legal entry option.

The case for legalization of temporary Mexican workers also rests on the following assumptions about other theoretically possible policy options in the immigration area:

1. That an "open border" policy with respect to Mexico is not politically feasible in the foreseeable future, and in any event could have

^{*}See Cornelius, Mexican and Caribbean Migration to the United States, cited on page 3 of this paper; Mines, "Las Animas, California," cited on page 3; and Josh Reichert and Douglas S. Massey, "History and Trends in U.S.-Bound Migration from a Central Mexican Town," paper presented at the 26th North American Meetings of the Regional Science Association, Los Angeles, Calif., November 9-11, 1979.

negative consequences for both countries if such a policy were implemented. In the short term, a totally open border would probably stimulate a sharp increase in migration to the United States (not just from Mexico, but from other Caribbean-basin and Central American countries), which might provoke a general anti-immigrant backlash in the United States and set the stage for draconian restrictive measures, mass round-ups and deportation campaigns, etc. A totally open border might even be opposed by Mexico, which is increasingly concerned about the "skill drain" and its implications for future economic development in Mexico.

- 2. That <u>unlimited</u> "ammesty" for undocumented immigrants living in the U.S. (adjustment of status from "undocumented" to "permanent resident alien," with no restrictions, or only very lenient restrictions, on eligibility, in such matters as length of previous, continuous residence in the U.S.) is not politically feasible in the U.S. at this point in time.
- 3. That the more limited kind of "amnesty" (e.g., for people who can prove 5-7 years or more of continuous residence in the U.S.) that might pass the U.S. Congress will be too limited to benefit Mexican shuttle migrants who are still based in Mexico -- to say nothing of future generations who may aspire to short-term migration to the U.S.
- 4. That revision of U.S. immigration laws and policies in such a way as to "tilt" the whole system toward Mexico, in order to bring the supply of permanent immigrant visas for Mexican nationals into closer correspondence with the actual demand, is also politically unfeasible and unlikely to pass the Congress. The constituency for a more Mexico-centered permanent immigration policy does not seem broad enough to support such a sweeping policy shift. Already, there is a public outcry about the U.S. being "held hostage" to Mexican oil -- a feeling that the U.S. is already being "too lenient" in its responses to Mexican immigration, out of concern about future access to Mexican oil and gas supplies. While such sentiments might also provoke resistance to the kind of temporary worker visa for Mexicans being proposed here, this approach is likely to be less offensive to anti-Mexico elements of the general population and to Congressional supporters of other nationality groups seeking increases in permanent immigration quotas than a wholesale "tilting" of the permanent immigration system in Mexico's favor.

BENEFITS OF THE PROPOSED SYSTEM

The proposed system of temporary worker visas for Mexican nationals would be beneficial to the migrants themselves and their dependents, their U.S. employers, U.S. labor unions, and to non-immigrant U.S. workers who are employed in those sectors of the U.S. economy where Mexican migrants

tend to cluster. The system would be detrimental mainly to those who currently profit from the existing system of U.S. immigration laws and policies, which forces the vast majority of those Mexicans who need to earn supplemental income in the U.S. on a short-term basis to do so illegally. These profiteers include "coyotes" (professional smugglers of migrant labor), those employers (a minority, concentrated in certain regions and certain industries) who pay below the legal minimum wage, exploitative landlords, merchants, and all others who take advantage of the vulnerability of undocumented migrants.

More specifically, the proposed system would:

- 1. By, regulating the entry of Mexican labor into the U.S., serve to bring within the law a large segment of alien participation in the U.S. labor market, thereby increasing public confidence in our legal system and enabling Mexican workers to seek legal redress of grievances against U.S. employers and others who might abuse them.
- 2. If implemented on a large scale, would markedly reduce the volume of <u>illegal</u> immigration from Mexico, because those who currently emigrate <u>illegally</u> would have strong incentives to seek temporary worker visas.
- 3. Benefit U.S. (non-immigrant) workers in low-wage industries where Mexican migrants cluster, since the use of <u>legal</u> foreign labor in such industries will have a less depressing effect on wage scales and working conditions than the use of undocumented alien labor.
- 4. Benefit U.S. labor unions, by making it easier to organize Mexican workers whose vulnerability to employer reprisals will be reduced by their legal (temporary work visa-holder) status, and by making it more difficult for "threatened" employers to use Mexican migrants as strike-breakers.
- 5. Enable U.S. employers to meet legitimate work force needs, particularly for seasonal or other short-term labor, without going through the highly cumbersome, time-consuming, and unpredictable certification process required to obtain alien workers under the existing "H-2" visa system. (It would also reduce the burden on the U.S. Department of Labor resulting from employer requests for "H-2" workers, and liberate D.O.L. resources for other, more broadly beneficial activities -- e.g., more strenuous enforcement of minimum wage and labor standards laws in industries that make extensive use of foreign labor.)

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