

Chapter 3: Focus on Public Safety: Immigrants' Access to Drivers' Licenses¹

There are an estimated seven to eight million undocumented immigrants in the United States; most have to drive, whether or not they can get a drivers' license.² Like everyone else, immigrant workers often depend on state-issued drivers' licenses to get to work, bring their children to school, shop, and go to the doctor. They may work at night or early in the morning, when public transportation is unavailable, or in areas that are poorly served. Or they may work in occupational sectors, such as construction or agriculture, where driving is an essential part of the job. Like their U.S. citizen and permanent resident counterparts, they use their drivers' licenses to cash their paychecks when the day is done.

The states are free to establish their own procedures for verifying identity in order to issue drivers' licenses, and the requirements have historically varied from extremely flexible (allowing use of notations in a family bible to prove identity in Utah) to extremely strict (social security numbers, verification of the SSN, and proof of lawful residency in the United States formerly required in California).

Drivers' License Proposals: Background

Prior to September 11, 2001, many states were considering legislation to make drivers' licenses more accessible to their residents. At least thirteen states were considering changes to their drivers' license laws to allow applicants who lacked social security numbers to use other identity documents to get a driver's license.

- Four states – Utah, Tennessee, North Carolina, and Virginia – had liberalized their rules to be clear that either the IRS-issued Individual Taxpayer Identification Number (ITIN) or foreign documents would be acceptable documentation.
- At least 13 states – Alaska, Delaware, Idaho, Kansas, Maine, Maryland, Michigan, Montana, Oklahoma, Oregon, Rhode Island, Vermont, and Washington – both did not require a social security number for those who did not have one, and allowed a person to use proof of identity that is available to undocumented people, like rent receipts, school transcripts, marriage licenses, or certain accepted foreign documents to prove identity.
- About half of the states had no formal requirement that an applicant prove she was lawfully present in the United States in order to obtain a license. About 20 states issued drivers' licenses only to those who could show that they had a social security number.

¹NELP would like to acknowledge the valuable contributions made to this report by the work of Tyler Moran at the National Immigration Law Center and Michele Waslin at the National Council of La Raza on immigrant drivers' license issues. Much of the research presented in this section of the paper is a result of their work.

²Passel, Jeffrey, *New Estimates of the Undocumented Population in the United States* 2, MIGRATION POLICY INSTITUTE (2002), available at <<http://www.migrationinformation.org/feature/display.cfm?ID=19>>

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Only five states, plus the District of Columbia, required both a social security number and that an applicant proves she was lawfully present in the United States in order to issue a drivers' license.

September 11, Drivers' Licenses and National Security

September 11, 2001 began a reversal of efforts to broaden access to drivers' licenses. Early reports of the tragedy stated that several of the terrorists had U.S. state-issued drivers' licenses that allowed them to rent cars, board airplanes, and blend into society more easily. These reports spawned an avalanche of drivers' licensing proposals, many of them regressive.

Many states initially responded to the illogical argument that we are somehow safer as a nation when we deny drivers' licenses to large segments of our population. The 2002 state legislatures saw 24 states considering 61 separate pieces of legislation affecting drivers' licenses.³ In 2003, the National Immigration Law Center reports that approximately 117 bills were considered that affect immigrants' ability to obtain drivers' licenses. There is mounting pressure on state drivers' licensing agencies to institute stringent documentation requirements and costly verification procedures with two federal agencies, the Social Security Administration and the Department of Homeland Security. Thus far, many states have considered that national security is best served when the drivers on our roads are licensed and have motor vehicle insurance. At least six states, California, Georgia, Hawaii, Kansas, Louisiana and New Mexico, passed legislation in 2003 that expands immigrants' access to drivers' licenses (though California's law was later repealed. – see box).

Review of State Activities 2002-2003

Restrictive Proposals passed in 2002-2003.

In 2002 and 2003, ten states passed restrictive drivers' license proposals. These are Colorado, Florida, Kentucky, Iowa, Louisiana, Nevada, New Jersey, Ohio, Virginia, and West Virginia. Maryland created a task force in 2003 to study drivers' license documentation and other related fraud, terrorism, and technology data. In addition, some states enacted restrictive policies by administrative rule. These are Connecticut, Indiana, Minnesota, Pennsylvania, South Carolina and Tennessee.

These new policies generally require that an immigrant show "lawful presence" in the United States in order to procure a driver's license. Most provide that immigrants' drivers' licenses must expire when a visa expires. Florida now requires that immigrants must renew their drivers' licenses in person, unlike U.S. citizens. Florida also requires that biometric identifiers be used to establish identification.⁴

Many of the new restrictive measures face legal, fiscal, practical, and political obstacles. Connecticut's Attorney General issued an opinion that its provision eliminating employment authorization documents as a form of ID violated the U.S. Constitution. The Kentucky provision was submitted to U.S. Attorney General John Ashcroft for his review, and the Indiana and Minnesota proposals were challenged in court.

³ National Immigration Law Center, *2001-2002 Drivers' License Proposals*, available at <<http://www.nilc.org/immspbs>> and <<http://www.nelp.org/docUploads/pub173%2Epdf?CFID=190522&CFTOKEN=90696137>>

⁴ *Id.*, *2001-2002 Drivers' License Proposals*.

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In Minnesota, after a legislative proposal failed, the Commissioner of Public Safety attempted to pass restrictive policies through emergency rulemaking procedures. The new rules required lawful presence in order for an immigrant to obtain a drivers' license, and required full frontal pictures with a person's head uncovered, even if a person opposed photographing on religious grounds. The Minnesota Court of Appeals recently declared the rules invalid because they were adopted in violation of normal rule-making procedures.⁵

In Iowa, the Department of Transportation issued a policy requiring that non-citizens' licenses be stamped with the legend, "Nonrenewable – Documentation Required." The policy was withdrawn after pressure from advocates and threat of litigation in September 2002.

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Restrictive rules in the states have also started to give rise to media reports of immigrant drivers unlawfully harassed and even arrested when state agency workers mistakenly believe they have presented forged documents.⁶ In addition, the Director of the California Department of Motor Vehicles has complained that the system for verifying Social Security numbers is outdated, causing 800,000 people to be told that their names do not match the SSN they provided.⁷

Expansive Proposals in 2002-2003.

Of the fifteen expansive proposals before legislatures in 2002, two became law, (in New Mexico and South Carolina). In 2003, fourteen states considered broadening access to drivers' licenses, and California, New Mexico and Kansas passed laws that formally recognize the ITIN as an acceptable identifier for drivers' licenses. At least six states, Kansas, Kentucky, North Carolina, New Mexico, Rhode Island and Utah, now expressly recognize the ITIN as an identifier for drivers' licensing purposes. Other states that both allow alternatives to SSNs and do not have a lawful presence requirement may also accept the ITIN or the Mexican consular identification. Charts of current state laws and the proposals in the 2003 legislatures are available on both the NILC and NELP websites.⁸

⁵ *Jewish Community Action v. Commissioner of Public Safety*, 657 N.W.2d 604 (Minn. App. 2003).

⁶ Lourdes Medrano Leslie, *Immigrant's Treatment at License Office Prompts Complaint, Questions*, MINNEAPOLIS STAR TRIBUNE (Aug. 16, 2002); Bob Braun, *Treated Like a Criminal, and No One's Sorry* (NEWARK NJ) STAR LEDGER (Aug. 14, 2002); Yilu Zhao, *A nervous State Looks to Limit Licenses*, NY TIMES (Apr. 6, 2003).

⁷ Sharon Bernstein, *Tried to renew your driver's license lately?*, TIMES (Aug. 21, 2003)

⁸ See, *Summary of State Drivers' License Requirements for Immigrants*, <<http://www.nelp.org/docUploads/pub179%2Epdf?CFID=190522&CFTOKEN=90696137>>

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The Tale of California 2002-2003

In California, a state with one of the most restrictive drivers' licensing laws, an expansive proposal was vetoed by Governor Davis in 2002. The bill, AB 60, would have allowed persons who have applications for lawful immigration status pending to get a driver's license. Immigrants' rights groups waged a hard-fought campaign for access. Latino activists and other community leaders pressured the governor for his signature by engaging in letter-writing campaigns, days-long vigils, and demonstrations in Southern California and Sacramento.⁹

Senator Gil Cedillo, the author of the vetoed bill, reintroduced the bill in the 2003 legislature. The 2003 bill was broader than the 2002 bill, specifically allowing use of an ITIN as an identifier for drivers' licenses.¹⁰ The bill was signed in the waning days of the Gray Davis administration and was closely identified with the recall campaign. Although the bill was nearly identical to expansive bills passed in other states in recent years, it created an immediate firestorm of protest from immigration restrictionists. Incoming Governor Schwarzenegger made repeal of the law a top priority for his administration, and discussion of an initiative campaign to reverse the law made compromise on licensing an immediate issue. In late November 2003, the California Legislature repealed the law. Governor Schwarzenegger has indicated that he is willing to compromise on a bill that would allow greater access to driver's licenses for immigrants, but that would include some security measures.¹¹

Federal Drivers' License Legislation 2003

U.S. Senator Richard J. Durbin (D-IL) advocates the use of national standards for state-issued drivers' licenses. His measure would set federal rules for granting licenses, build in high-tech anti-counterfeiting measures, and provide funding for states to make changes within three to five years. The idea is that such standardization would permit rapid data sharing among government agencies.

While Congressman Durbin has announced that he has no intention of harming immigrant workers, the measure he supports could set standards that the undocumented would be unable to meet, and deny licenses to millions of undocumented drivers. It was introduced on October 10, 2002 as the Driver's License Fraud Prevention Act, but was not re-introduced this session of Congress.

At the same time, Congressman Jeff Flake of Arizona re-introduced a bill that would require special rules for persons with temporary "nonimmigrant" visas such as student visas and tourist visas and would require that a driver's license issued to a nonimmigrant expire no later than the nonimmigrant visa.¹² While the bill is not an absolute mandate to the states, it offers strong support because drivers' licenses from states that do not comply would not be accepted by federal

The *matricula consular*, issued by the Mexican government, is now accepted as identification by 66 banks and 801 police agencies nationwide.

⁹ Minerva Canto and Hanh Kim Quach, *Migrant drivers' licenses urged*, ORANGE COUNTY REGISTER (Aug. 10, 2002).

¹⁰ Available at < http://www.leginfo.ca.gov/pub/bill/sen/sb_0051-0100/sb_60_bill_20030306_amended_sen.pdf.>

¹¹ Jack Chang, *Gov.-elect divided on immigrants*, CONTRA COSTA TIMES (Oct. 13, 2003)

¹² H.R. 655, available at <<http://thomas.loc.gov>>

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accept drivers' licenses from those states punishes all residents of those states who would not be able to use their licenses as proof of identity.

An additional restrictive proposal was put forth in the 2003 session of Congress, by Representative Cantor (R-VA), HR 1121. The Cantor bill would provide that drivers' licenses expire with the expiration of a non-immigrant visa.

Which forms of ID are most reliable?

It is useful in many campaigns to educate legislators on the reliability and integrity of various forms of identification that immigrants may have. Many legislators may feel, wrongly, that the social security number is the only reliable form of identification. The source documents for a social security number are remarkably similar to those used for ITINs and consular identification:

In order to obtain a social security number, a person needs to show the Social Security Administration two forms of identification that show age, identity, and U.S. citizen, or lawful alien status. These include:

- **to show age**, a birth certificate or hospital record of birth or passport;
- **to show identity**, a photo identification including drivers' license, marriage or divorce records, military records, employer identification cards, adoption records, life insurance policies, school identification; and
- **to show citizenship**, documents that show birth in the United States, plus various INS cards and certificates of citizenship.¹³

In order to obtain an ITIN, a person must show the Internal Revenue Service:

- **documents that prove both identity and foreign status, including:** a passport, drivers' license, INS document, foreign military identification card, foreign voter registration card, birth, marriage or baptismal certificate, or school records.¹⁴

In order to obtain a consular ID, a person must show the consulate:

- **her original birth certificate,**
- **an official Mexican ID**, such as a foreign military identification card, school certificates, voter registration card, or Mexican driver's license.¹⁵

Mexican consulates are now offering a new theft-proof version of its *matricula consular* identification cards. The holographic cards are now available at consulates across the country.

¹³ Social Security Administration, *How to Apply for a Social Security Card*, available at <http://www.ssa.gov/replace_sscard.html>

¹⁴ Internal Revenue Service, *Application for an IRS Individual Taxpayer Identification Number*, available at <<http://www.irs.gov/pub/irs-pdf/fw7.pdf>>

¹⁵ Consulate of Mexico at Seattle, *Consular Identification*, available at <http://www.sre.gob.mx/seattle/ing_ser_maticulas.htm>

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Talking Points on Immigrant Access to Drivers' Licenses

These talking points are offered to support the ongoing campaigns, either in response to restrictive proposals or as affirmative proposals. These points have been adapted from talking points developed by NELP, and by the National Council of La Raza (NCLR). NCLR's talking points are available on NCLR's website.¹⁶

Restricting drivers' licenses does nothing to increase community safety; in fact, it may encourage unlicensed driving. It also results in a proliferation of false documents, erodes public safety, and leads to higher insurance premiums for all licensed drivers. If states enact restrictive measures, unlicensed drivers will constitute a true underground, completely unknown to law enforcement authorities. Instead, states should consider expanding access to drivers' licenses for immigrants who can prove their identity via reliable forms of identification, such as the IRS Individual Taxpayer Identification Number (ITIN), or the Mexican government-issued *matricula consular*.

In the 2003 legislative sessions, the cost and lost revenue to states of restricting drivers' licenses has become an issue. Two-thirds of the states were compelled to reduce their budgets by nearly \$26 billion before June 30, 2003 to account for budget gaps. States already had addressed a \$49.1 billion shortfall as they crafted their fiscal year 2003 budgets.¹⁷ States use license fees to supplement the state general fund, help pay for emergency medical services, for driver training and motorcycle safety programs, and for construction and maintenance of public roads.¹⁸ Apart from the discriminatory effect of restrictive licensing laws on immigrants and their communities, states can simply not afford to pay the price of restricting access to drivers' licenses.

Safety on the Road

- **Licensed drivers have been tested; unlicensed drivers have not.**

People who need to drive to earn a living will do so illegally if they have to. By denying individuals who lack social security numbers (SSNs) legal access to licenses, we forgo the opportunity to ensure compliance with safety standards. Allowing individuals without SSNs access to drivers' licenses would ensure that many more drivers know and are trained in the proper driving techniques and laws of the state, making our roads safer.

Restricting Access to Licenses has an Unfair Impact on Legal Immigrants

- **Requiring a Social Security number or proof of "lawful presence" penalizes legal immigrants.**

Certain categories of legal immigrants, such as political asylum applicants and beneficiaries of certain family-based petitions, are not eligible for SSNs. In addition, many immigrants in the legalization process do not yet have documentation from the BCIS.

¹⁶ Michele Waslin, *Safe Roads, Safe Communities: Immigrants and State Drivers' License Requirements*, National Council of La Raza (2002), available at <http://www.nclr.org/policy/briefs/drivers_license_issue_brief_6.pdf>.

¹⁷ *State Budget Gaps Growing at an Alarming Rate*, National Conference of State Legislatures (Feb. 4, 2003), available at: <<http://www.ncsl.org/programs/press/2003/pr030204.htm>>

¹⁸ *Provisions Governing the Disposition of State Motor-vehicle and Motor-carrier receipts*, National Conference of State Legislatures (January 1, 2001).

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Difficult to Determine Immigration Status

- **Licensing agencies cannot reliably determine immigration status.**

BCIS (INS) documentation and immigration law are extremely complex and subject to frequent changes. State drivers' licensing agencies do not have the expertise to navigate through the variety of immigration status documents. States often do not understand that verifying legal presence can also be very costly. California taxpayers pay \$1.8 million a year to have Department of Motor Vehicle (DMV) staff persons check the legal status of applicants. The state of Virginia estimated that it would cost \$47,000 per year to verify immigrant status.

INS' (now BCIS') database has frequently been criticized for being slow, inaccurate and out of date. A pilot project in Virginia found that in about 11 percent of cases, Department of Motor Vehicle personnel could not determine status, and that in some cases, verification took several days to several weeks to complete.

The extent to which this money is ill-spent is highlighted by the recent revelation that a manager of INS' immigration processing center in Laguna Niguel, Calif., was charged with illegally shredding as many as 90,000 immigration documents.¹⁹

Costs to States' Budgets of Restrictive Drivers' Licensing Proposals

A Virginia study calculated that the cost of imposing a "lawful presence" requirement would be 5.5 million dollars, on a recurring basis. Virginia found that 148 additional staff would have to be hired, for a total of 5.2 million dollars annually, and that training costs would be \$200,000.00.²⁰

- **Negative economic impact where licenses expire with visas.**

A state budget estimate for a restrictive drivers' license bill in Washington State concluded that it would cost almost a million dollars over the next five years to make immigrants' drivers' licenses expire with their visas. The state estimated it would need two new full-time employees to process applications, and that it would cost \$ 200,000 to reprogram computers to handle licenses that expire at various times. The state of Texas calculated that the two year net impact of reprogramming computers and of producing a new drivers' license card would be nearly \$350,000.00.²¹ In North Carolina, the calculation was that the state would spend \$94,000 per year to renew immigrant visas more frequently.²²

- **An increase in drivers' license applicants would increase state revenue.**

In order to obtain a driver's license, applicants must pay a fee. In Tennessee, enactment of the statute enabling individuals of legal age who do not possess a social security number to obtain a driver's license if

¹⁹ John Broder, *I.N.S. Shredder Ended Work Backlog, U.S. Says*, NEW YORK TIMES, (Jan. 31, 2003).

²⁰ *A Report by the Commissioner of the Department of Motor Vehicles to: The Chairman of the Transportation Committee of the Virginia Senate, et.al.*, Virginia DMV (Dec. 2002).

²¹ See, Legislative Budget Board, Fiscal Note, 78th Legislative Regular Session, available at <<http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=78&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=01845&VERSION=1&TYPE=F.>>

²² North Carolina General Assembly Legislative Fiscal Note (Mar. 2003), available at <<http://www.ncleg.net/html2003/bills/FiscallInfo/Senate/SFN0263.pdf.>>

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they can prove their identity and residency in the state and pass required tests resulted in additional state revenues totaling more than \$716,800.00 in the period June 2001 through January 2003. North Carolina estimated a net LOSS in revenues to the state of \$350,000 to \$475,000 annually, if restrictive measures were adopted.²³ Tennessee estimated a loss in revenue of over \$150,000 per year if licenses are restricted.²⁴

- **Unlicensed drivers raise insurance rates and losses because they often cannot obtain auto insurance**

Individuals who are ineligible for a drivers' license may not legally insure their cars in most states. Denying licenses to immigrants and others increases insurance premiums for licensed drivers. Nationally, uninsured motorists cause over \$4.1 billion in insurance losses per year.²⁵ An average of 14% of all accidents are caused by uninsured drivers. One in five drivers in fatal crashes is unlicensed. Nationally, the percentage of motorists driving without a license is 13.5%.²⁶

State Drivers' Agencies are working at cross-purposes with police and banks.

- **800 police Agencies can't be wrong about acceptance of alternative identification.**

At the same time that states are being pushed to make their drivers' license laws more restrictive, smart banks and police agencies are beginning to accept alternative forms of identification such as the matricula and the ITIN. The Mexican Foreign Ministry reports that 800 police departments, including those in some of the largest cities in the country such as Los Angeles, Chicago and Houston, accept the matricula as identification. The Foreign Ministry says that 66 banks, including Wells Fargo, Bank of America, Citibank, and others also accept alternative forms of identification.²⁷ The U.S. Department of Treasury recently adopted regulations pursuant to the USA PATRIOT Act that would allow banks to continue to use identification such as the ITIN and the matricula to identify bank customers.²⁸

Prevention of Terrorism

- **Requiring that drivers' license applicants possess a social security number does not prevent terrorism.**

All of the 9/11 terrorists possessed social security numbers. It is not necessary to possess a U.S. driver's license to board an airplane. Sophisticated terrorists with substantial financial resources are likely to have the ability to obtain drivers' licenses and other documents when they find them necessary.

Federal Child Support Funding

Eliminating the social security number requirement would not affect federal child support funding. Although the federal Child Support Performance and Incentive Act of 1998 requires states to have a database available to the federal government which contains SSNs, the Department of Health and Human Services

²³ See Fiscal Note, *supra*, n. 12.

²⁴ Fiscal Note, SB 1188 – HB 1790, Tennessee Legislature (Mar. 24, 2003) available at <<http://www.legislature.state.tn.us/bills/currentga/Fiscal/SB1188.pdf>>

²⁵ Insurance Research Council, *Uninsured Motorists 2000 Edition*, Malvern, PA (2001).

²⁶ AAA, *Unlicensed to Kill, The Sequel*, (Jan. 2003), available at <<http://www.aaafoundation.org/pdf/UnlicensedToKill2.pdf>>

²⁷ Secretaria de Relaciones Extranjeras, *La SRE ha emitido 740 mil matriculas consulares a Mexicanos en el extranjero*, Oct. 13, 2002, (on file with authors) Mary Beth Sheridan, *An Entry Card for Immigrants*, WASHINGTON POST (Jul. 26, 2002).

²⁸ Proposed regulation: Customer Identification Programs for Banks, Savings Associations, and Credit Unions, 67 Fed. Reg. 48290 (proposed Jul. 23, 2002). Press Release available at <<http://www.treas.gov/press/releases/js743.htm>>; final regulations 68 Fed. Reg. 55335 (Sep. 25, 2003), 31 CFR Part 103.

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has interpreted this requirement to apply only to individuals who actually possess a SSN. The Commissioner of the DHHS's Office of Child Support Enforcement has stated that the law "does not require that an individual have a social security number as a condition of receiving a license."²⁹ Therefore, states need not require all individuals to have a social security number in order to get a license.

What Can Advocates Do?

- √ Use the chart of Drivers' License Requirements to locate the current policy in your state, and look up the 2001-2002 proposals. These are available on both the NILC and NELP on the websites, at <<http://www.nilc.org/immspbs/DLs/index.htm>> and <<http://www.nelp.org.pub136.pdf>>
- √ Calculate the costs. Find out what your state budgets for drivers' services and how it spends the money that it receives for license fees. In some states, license fees may be a source of revenue to the state. Advocates can calculate, at least roughly, the raw costs of denying licenses to immigrants in general and/or to undocumented immigrants. The organization Grantmakers Concerned with Immigrants and Refugees has an interactive map on its website that gives data from the 2000 Census on immigrants in each state.³⁰ The BCIS (former INS) has recently issued a report on estimates of the undocumented population in each state.³¹ Most states list the cost of drivers' licenses on their websites. A calculation of the adult population times the cost of drivers' licenses will give a rough idea of income lost to a state from denying licenses to immigrants.
- √ Take a look at the number of unlicensed drivers in your state: The Insurance Research Council estimates the number of unlicensed drivers in each state.³²
- √ Work on passage of a state policy or law that increases access to drivers' licenses, using the model legislation and talking points outlined here.
- √ Make sure your Congressional representatives know how you feel about the federal proposals.
- √ Publicize abuses and hardships for immigrants, both documented and undocumented, from a harsh state policy.

²⁹ David Gray Ross, Commissioner, Office of Child Support Enforcement, *Inclusion of Social Security Numbers on License Applications and Other Documents*, PIQ-99-05 (July 14, 1999). The memo issued by DHHS is available at <<http://www.acf.dhhs.gov/programs/cse/pol/piq-9905.html>>

³⁰ Available at: <http://www.gcir.org/about_immigration/usmap.htm>

³¹ Available at: <http://www.immigration.gov/graphics/aboutus/statistics/III_Report_1211.pdf>

³² These estimates (dated February 2001) are available at <<http://www.ircweb.org/news/newsreleases/2001-02-01.htm>>

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