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POLITICS

Is it a crime to be in the country illegally? We answer your questions

Here are 7 different ways to be out of status in the U.S.

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A Border Patrol agent walks past four men detained after crossing the border illegally in a gap in two walls separating Mexico from the United States before turning themselves in, Thursday, Jan. 23, 2025, in San Diego. | Gregory Bull, Associated Press



By Jacob Hess

Jacob Hess is a staff writer and Latter-day Saint Voices editor for the Deseret News.

When asked the last week of January how many of the 3,500 migrants or immigrants arrested since Trump took office have criminal records, White House press secretary Karoline Leavitt said, “All of them, because they illegally broke our nation’s laws.”

“I know the last administration didn’t see it that way, so it’s a big culture shift in our nation to view someone who breaks our immigration laws as a criminal, but that’s exactly what they are.”

White House on ICE deportations: 'They are criminals'



Prior legislators and White House administrations did make more distinctions. And so does the law.

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If a migrant crosses the border illegally, for instance, it can be a misdemeanor or a felony. Overstaying a visa is a different kind of violation. When the term undocumented is used, what does that mean?

While President Trump and Secretary of State Marco Rubio have each suggested there are 20-30 million migrants in the country, most demographers put the estimate at half as much — ranging from the 11 million people Pew estimated in 2024, to 14 million estimated by the Center for Immigration Studies and 16.8 million estimated by the Federation for American Immigration Reform in 2023 (the last two organizations both advocate for less immigration).



This undated image from the U.S. Citizenship and Immigration Service shows the front of a sample "green card," formally known as a Permanent Resident Card. | U.S. Citizenship and Immigration Service via AP

Nearly 40% of the 11-14 million people do have some current documentation and authorization to live or work legally in the United States, according to demographers working for FWD.us, an immigration advocacy group. And more than half of those in the United States without authorization have been here at least 10 years, according to a New York Times analysis.

Of the seven different categories of people without legal status, two are “criminal” in a legal sense — with the remainder reflecting some kind of a status violation of the immigration code:



A Border Patrol agent pats down one of four men after the group crossed the border illegally through a gap in two walls separating Mexico from the United States before turning themselves in, Thursday, Jan. 23, 2025, in San Diego. | Gregory Bull

1. In the U.S. after crossing the border illegally

“Every time you enter this country illegally, you violated a crime under title 8 United States code 1325 — it’s a crime,” ‘Border Czar’ Tom Homan told ABC News’ Martha Raddatz the last week of January, reflecting the administration’s categorization of the legal code.

The law prohibiting “improper entry” in the U.S. by noncitizens is found in 8 U.S. Code § 1325 and the Immigration and Nationality Act (INA). This legal code stipulates a fine or imprisonment for any migrant who “(1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact.”

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How serious a punishment is applied depends on the number of times a person has illegally entered the U.S. — labeled as “illegal entry” the first time (a misdemeanor), “illegal re-entry” subsequently (a felony) and collectively as “entry-related offenses.”

Since physically crossing the border at a nonsanctioned location without inspection constitutes both a federal crime and a civil offense, these different levels of violation have also been emphasized differently by different leaders and groups.

Jeremy McKinney is the past president of the American Immigration Lawyers Association (AILA) and practices in Greensboro, North Carolina with 28 years of experience. About 45% of people living in the country illegally crossed the border without inspection, McKinney tells the Deseret News. But if we label someone making a single crossing a “criminal” for their misdemeanor, he says, then “the vast majority of the public who ever got behind the wheel of a car and sped, or drove without a license, makes them a criminal too.”

McKinney favors more of what he calls a “common sense definition” of criminal — “one that does not conflate regulatory offenses with violent offenses against people and property.” This way, he says, we are not putting a “bricklayer, a terrorist, and a grandmother” in the same category, and labeling them all as “criminals” equally deserving of removal proceedings.

When more non-criminals were arrested during the first Trump administration, McKinney says, we “doubled the docket of immigration courts — clogging up the courts with a bunch of people with (legitimate) claims for relief.”

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2. In the U.S. after overstaying visa status

For those people who once entered the U.S. legally, remaining in the U.S. after a visa expires is called “unlawful presence,” according to [U.S. Citizenship and Immigration Services](#). This can be true across many varieties of temporary (“non-immigrant”) visas — student, work, visitor, performing arts, diplomat, etc.

“It’s very easy to fall out of status in the U.S.,” says immigration attorney David Wilks, who practices in Buffalo, New York, at Hodgson Russ and serves on the board of the American Immigration Lawyers Association.

“Immigration law is complex,” he says, “even those who are trying very hard to follow the rules can find themselves out of status if they’re getting the wrong advice or if they make a mistake” and “something goes wrong with the paperwork.”



U.S. Border Patrol is seen along the U.S./Mexico border in McAllen, Texas, on Monday, June 17, 2024. | Marielle Scott, Deseret News PURCHASE IMAGE

In addition to letting a visa expire, it’s common for people to accidentally violate their status by working for an employer they’re not supposed to work for, or operating a side business as a student, and not realizing they weren’t supposed to, Wilks says.

Yet visa expiration is not a crime, McKinney clarifies — rather, a violation of immigration law that renders the violators subject to removal.

“Some of the immigration laws are purposively civil in nature,” Wilks said. “We can’t categorize these migrant actions as civil violations and then call them criminals.”

3. In the U.S. with additional violations committed

Ninety percent of the time people with uncertain statuses fall into these first two categories, according to immigration experts — either with expired visas, or crossing the border without inspection. Without additional violations, the most serious violation for a majority of migrants in the country, McKinney says, would be a misdemeanor.

Certain aggravating circumstances would change the calculus. For instance, sometimes false information can be entered on a visa application. There are examples of people getting married for the purpose of evading immigration laws (“marriage fraud”), as well as others establishing a false business to avoid the same laws (“entrepreneurship fraud”).

When false information is used like this, it constitutes another kind of “unlawful entry” in legal terms. Whether that fraud is sharing something false or omitting something meaningful to the justice system, it also constitutes a felony.

Out of the total population of migrants, an estimated 5% (655,000) have some kind of a criminal charge or conviction, many of which are minor offenses like traffic violations. Of this group that has been charged with any violation of the law, only 15,000 are in custody, according to U.S. Immigration and Customs Enforcement. Another 24,000 are in ICE custody for other reasons, such as the 1.4 million with final deportation orders, who remain a continued priority for immigration agents.



Venezuelan Victor Macedo holds his daughter Sonia at their home, in in Davie, Fla., Sept. 27, 2023. The family crossed the border U.S. almost four years ago. Since then, they have been living in South Florida with the support of family and friends. They qualified for temporary protected status. | Marta Lavandier

4. In the U.S. with temporary permissions set to expire

A significant number of people in the U.S. come from countries that would be dangerous to return to. Approximately 1.1 million of them have paid hundreds of dollars in fees, filled out various forms, and waited between two to 12 months to secure a “temporary protected status,” authorizing them to live and work in the United States — humanitarian pathways made more available under the prior administration, according to the American Immigration Council.

Migrants from 17 countries coming to the United States have been allowed this special status — five countries in Africa, five in the Americas, three in Asia, three in the Middle East, and Ukraine — with expiration dates that follow in chronological order, starting with the soonest first:

- **Set to expire in the next six months: South Sudan** (extended until May 3, 2025); **Afghanistan** (extended until May 20, 2025); **Cameroon** (extended until June 7, 2025); **Nepal** (extended until June 24, 2025); **Honduras** (extended until July 5, 2025); **Nicaragua** (extended until July 5, 2025)
- **Set to expire between August and December 2025: Syria** (extended until Sept. 30, 2025); **Venezuela** (extended until Oct. 2, 2025); **Ukraine** (extended until Oct. 19, 2025); **Myanmar** (valid through Nov. 25, 2025); **Ethiopia** (valid through Dec. 12, 2025)
- **Set to expire between January and June 2026: Haiti** (extended until Feb. 3, 2026); **Yemen** (extended until March 3, 2026); **Somalia** (extended until March 17, 2026); **Lebanon** (valid until May 27, 2026)
- **Set to expire between July and December 2026: El Salvador** (Extended until Sept. 9, 2026); **Sudan** (Extended until Oct.19, 2026)

On Jan. 29, Secretary of Homeland Security Kristi Noem announced that 600,000 Venezuelans would be stripped of their temporary protected status and subject to deportation as of this fall. This has sparked debate and confusion, with some Trump-supporting Venezuelans in the country insisting it’s just the “bad guys” who will be forced to leave. Others, like Erick Suarez, who lived off savings for months waiting for his temporary protected status to be able to work, tells Atlantic journalist Gisela Salim-Peyer that everyone losing their status would be hard to understand: “Why would they go after people who did everything the right way?”

An expiration of temporary permission is, again, not a crime, according to immigration attorneys — but a violation of the civil code. No applications for extension are available individually. Instead, these people revert to whatever their status was before they obtained Temporary Protected Status, according to McKinney. If that makes them out of status, it will render them subject to deportation — but not before a hearing before an immigration judge, since most would have been in the country for two years by the time such an expiration happens.

Trump revokes temporary protected status for 600,000 Venezuelans



5. In the U.S. with “humanitarian parole” set to expire

There are 850,000 people in the United States as part of a “humanitarian parole,” which the former administration defined as an “extraordinary measure sparingly used to bring an otherwise inadmissible alien into the United States for a temporary period of time due to a compelling emergency.”

A background check and a U.S.-based sponsor have been required to apply — with migrants allowed to stay in the country for up to two years once approved, getting a work permit and being protected from deportation.

Since 2023, 30,000 migrants have been granted this temporary humanitarian parole, totaling 531,690 people according to DHS. The majority are from Haiti, but also from Cuba, Nicaragua, Venezuela, Afghanistan and Ukraine — with many sponsored in Utah and states throughout the nation.

The Biden administration had already paused this program due to concerns about fraud — announcing in October that it would not renew the legal status of those under the program, requiring these migrants to seek out a different path for permanent residency when their parole status expires.

In an executive order signed mid-January, President Trump further instructed the Department of Homeland Security to “terminate all categorical parole programs that are contrary to the policies of the United States established in my Executive Orders.”

Once this two-year parole expires, NPR reports that it’s uncertain what will happen to these hundreds of thousands of people. What’s clear from legal experts, however, is that an expiration of humanitarian parole is not a criminal act. Although those in this situation are subject to deportation, they will get a hearing before a judge if they have been here at least 2 years.



Venezuelan migrant Yender Romero shows the U.S. Customs and Border Protection (CBP) One app on his cell phone, which he said he used to apply for asylum in the U.S. and is waiting on an answer, at a migrant tent camp outside La Soledad church in Mexico City, Monday, Jan. 20, 2025, the inauguration day of U.S. President Donald Trump. | Fernando Llano

6. In the U.S. after receiving a “One app” appointment

Before getting shut down in January, the CBP (Customs and Border Protection) One app was part of the Department of Homeland Security’s efforts to steer people away from illegal pathways to enter the country. Alongside humanitarian parole, this was the second program the Biden administration called “lawful pathways” in hopes of discouraging illegal border crossings.

But critics like Mark Krikorian, the executive director of the Center for Immigration Studies, have said, “Those mass parole programs dealt with illegal immigration by just legalizing it.”

Although wait times for appointments were often many months, the app was very popular, with demand for appointments far beyond the daily limit of 1,450. As of December 2024, more than 936,500 people had scheduled appointments using the CBP One app.

After coming to an appointment, migrants would undergo national security and public safety checks. If they passed, they were admitted into the U.S. with parole and issued a “notice to appear.”

In practice, explains Jonathan E. Shaw, attorney with Intermountain Immigration in Utah, this placed people directly into removal proceedings, but gave them an opportunity to present their asylum case. “We’re trying to get rid of you,” Shaw says the government was communicating, “but if you can defend your case with an asylum case, we’ll let you stay.”

Since the app was shut down, approximately 30,000 pending appointments were cancelled, leaving those people in limbo outside of the U.S. border, unclear about their own next steps.



Peruvian Julia Paredes, left in white hat, listens to instructions from a Border Patrol agent with others seeking asylum as they wait to be processed after crossing the border with Mexico nearby, Thursday, April 25, 2024, in Boulevard, Calif. Mexico has begun requiring visas for Peruvians in response to a major influx of migrants from the South American country. The move follows identical ones for Venezuelans, Ecuadorians and Brazilians, effectively eliminating the option of flying to a Mexican city near the U.S. border. | Gregory Bull

7. In the U.S. awaiting the processing of asylum claims

Separately, millions of others have applied for asylum — also due to other challenging conditions at home, where they may face persecution, threats or violence. Although experts say relatively few claims are ultimately granted, these 2.6 million people are allowed to remain in the country while they await a hearing or decision as their cases are processed. That entails periodically reporting for many to ICE during what has turned into years of waiting for an immigration court facing a historic backlog.

Many people living in the country illegally fall under overlapping programs extending these different authorizations to live or work, according to a New York Times analysis. That means, for instance, they could have temporary permissions, while also applying for asylum.

Each of these programs is now curtailed or stopped under the new administration — either no longer accepting applications, paused or ended completely. That includes applicants from countries like Afghanistan where many had still hoped for asylum.

Because of this, it's not only the 60% of migrants lacking any legal protections facing deportation. It's also these nearly 5 million people who've had some authorization to stay, who are now in limbo (including 531,690 people who've received humanitarian parole, nearly 1 million who gained entry through the CBP One app, 1.1 million with temporary protected status, and 2.6 million waiting on asylum claims).

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DACA (Deferred Action for Childhood Arrivals) supporters, including Xochitl Cornejo, center, march to the Capitol during the “We Are All DREAMers” rally in Salt Lake City on Saturday, Sept. 16, 2017. | Laura Seitz

People are safer if they have an open case for a green card — also known as a “Permanent Resident Card” — which authorizes someone to live and work in the U.S. permanently.

“People who are in the country for more than two years are also safer, according to Shaw, “in that if placed in deportation proceedings, they have an opportunity to speak in front of a judge.”

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“It used to be that if you’ve been in the country for less than 2 weeks and within a mile of the border,” this attorney explains, “you could be removed quickly without speaking with

a judge.” Now with the new administration’s changes, Shaw adds, “if you’ve been in the country for less than 2 years and found anywhere in the country, the government can remove you expeditiously without a judge.”

Deportation exemptions can be granted for people illegally brought to the U.S. as a child, or who were the victims of abuse or trafficking. Other groups have applied for protection in the past because they were victims of or witnesses to a crime. Yet even there, protections are now more limited. For instance, McKinney notes that the current administration is removing protections for those holding the U Visa, victims of violent crimes — since some Republicans suspect this as another way people may abuse the system.

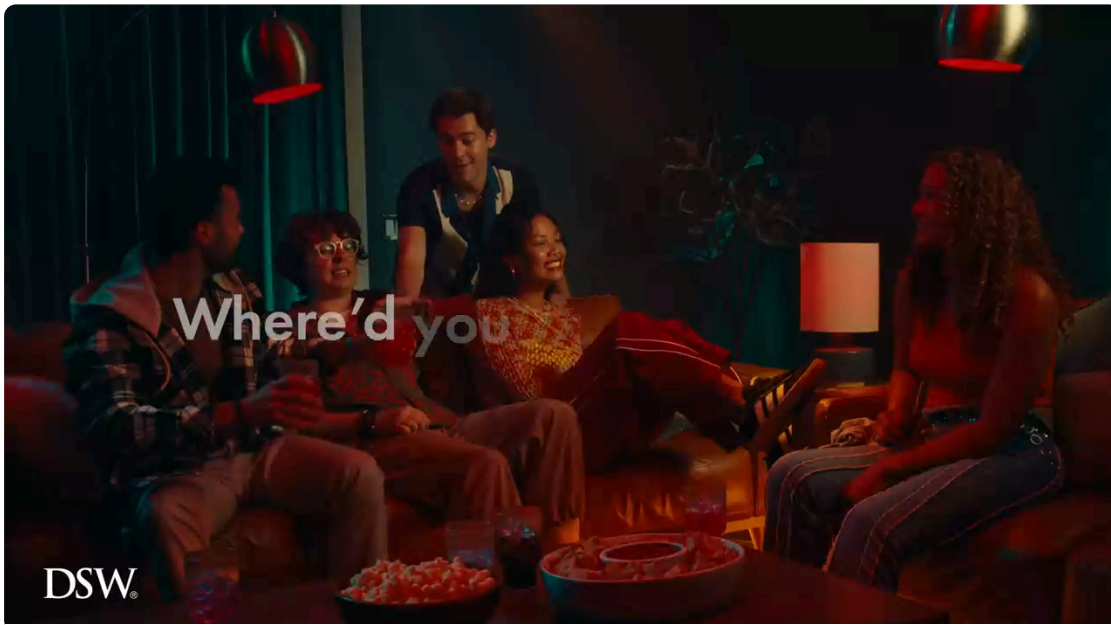
Note: David Wilks is a nephew of Doug Wilks, Executive Editor of the Deseret News.

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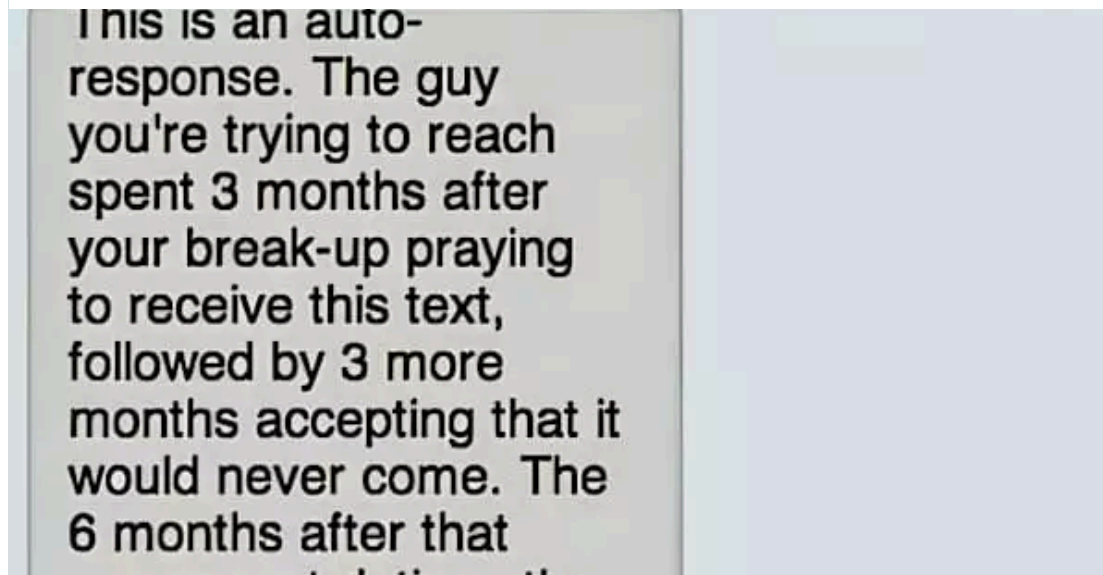


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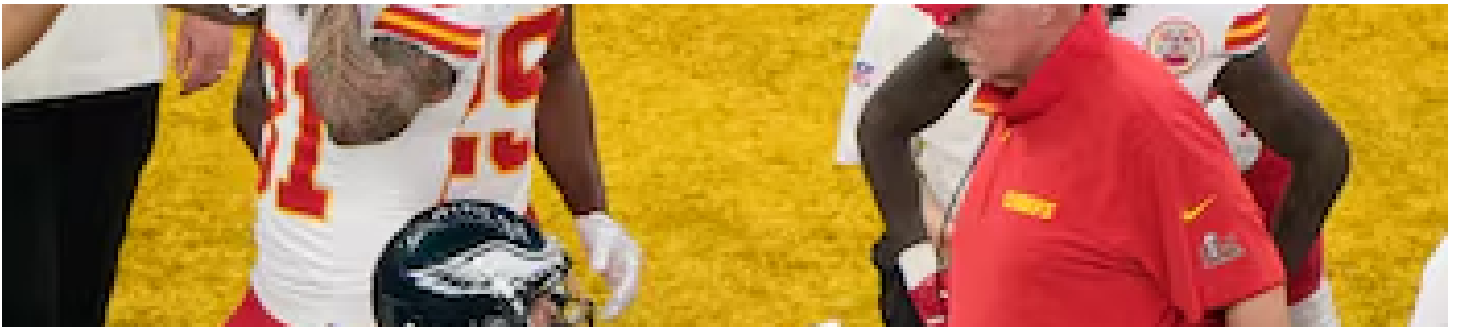
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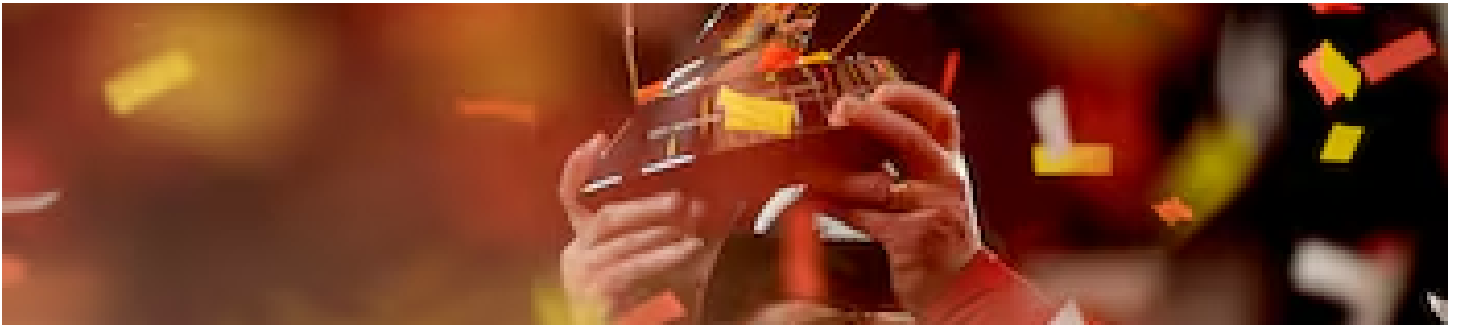
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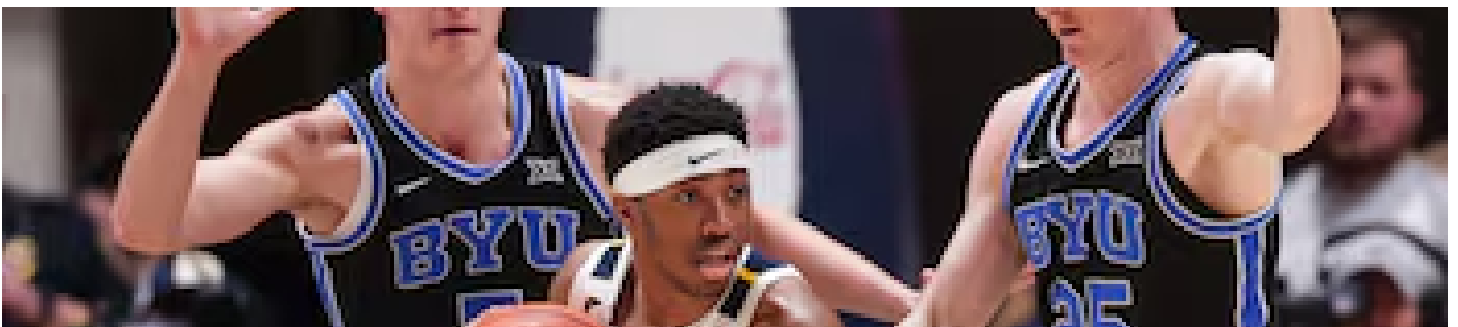
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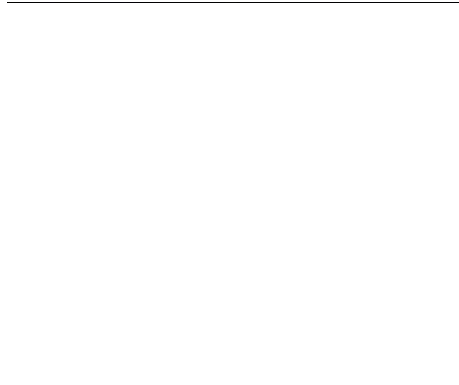
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