

Legal measures regulating the lawful entry of foreigners into Algerian territory

1/ **dr. Nabila Aissaoui**, University of May 8, 1945 Guelma, Laboratory of Environmental Legal Studies, Algeria

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Abstract

The state exercises its sovereignty by regulating the entry of foreigners into its territory, where its authorities retain absolute discretion in accepting or rejecting them, even when all other required conditions are met. This reflects the state's commitment to protecting its security and interests. Refusal of entry is considered a sovereign act that does not require justification and is not subject to judicial review. The state supports this sovereignty with a strict legislative policy that criminalizes illegal entry through various laws, including the Law on the Entry and Residence of Foreigners, the Penal Code, and maritime and aviation legislation. It also punishes all acts that facilitate such entry. Thus, regulating the entry of foreigners is an effective legal means of safeguarding national sovereignty and promoting internal stability, within a framework that respects fundamental rights without compromising the requirements of public order.

Keywords:

Entry of foreigners, national sovereignty, illegal immigration, state territory

Introduction

Some foreigners wishing to enter Algerian territory, who are unable to meet the required legal conditions, often resort to illegal means to achieve this purpose.

This behavior leads to serious consequences, not only depriving them of the rights guaranteed by Algerian law, particularly Law No. 08-11 concerning the conditions for the entry and residence of foreigners in Algeria, but also harming the interests of the state at various levels, whether economic, social, cultural, or even political.

Experience has shown that the phenomenon of illegal immigration has become a real threat to states, prompting them to intensify their efforts to combat it by taking necessary preventive measures that would ensure the regulation of the entry of foreigners through legal and legitimate means. In this regard, the question arises regarding the position of the Algerian legislator on this matter, which leads us to raise the following problem:

To what extent can national legislation guarantee the Algerian state's control over regulating the entry of foreigners into its territory through legal means?

This problem leads us to raise some subsidiary questions, including:

- What legislative measures does the Algerian state adopt to ensure the entry of foreigners into its territory in an organized manner and in accordance with the law?

- What is the extent of the authority of the competent bodies responsible for examining applications for entry into Algerian territory in accepting these applications?

The preventive measures taken by Algeria to ensure legal entry into its territory have necessitated the adoption of a legal strategy aimed at avoiding the negative consequences resulting from violating the required legal conditions.

The features of this strategy are evident in the increasing legislative attention given to this issue, on the one hand, and in the discretionary power granted to the competent authorities responsible for examining applications for entry into Algerian territory, allowing them to accept or reject these applications, on the other. Therefore, we have decided to divide this study into two main sections. The first section addresses the legislative approach to regulating legal entry into national territory, while the second section examines the regulation of cases involving the refusal of entry to foreigners into Algeria under national legislation.

Section One: The Legislative Approach to Regulating Lawful Entry into National Territory

The issue of ensuring the lawful entry of foreigners into Algerian territory has become a matter of widespread legislative attention, as an inevitable consequence of the changes and circumstances experienced by Algeria and neighboring countries in general. Having previously been known as a country of origin for irregular migration, it has now become a destination country, and even a place of settlement for irregular migrants, after having been merely a transit country towards European countries.¹

These changes have prompted the state to act to curb the spread of this dangerous phenomenon in Algerian society, due to its negative effects on various aspects of life. This has been achieved through the enactment of a body of legal texts aimed at limiting it, whether through the provisions of Law 08-11, which defined the conditions for entry into Algerian territory² and emphasized the necessity of respecting and complying with them, or through other separate texts, all of which criminalize unlawful entry into the territory.³

First: Law 08/11 as a Framework Supporting Algeria's Policy in Regulating Lawful Entry

Law 08-11 was enacted in line with the situations that Algeria and the region are now experiencing, which have led to an increase in irregular migration towards the country. This made the regulation of legal texts imperative. Through this law, the legislator sought to strike a balance between the state's efforts to combat the phenomenon of irregular migration, which has come to threaten its interests on

¹ - Ben Sghir Fares, Oumoussa Zahia: "The Reality of Irregular Migration in Algeria: Causes and Countermeasures," Afaq Journal of Sociology, Faculty of Humanities and Social Sciences, University of Blida 02, Volume 05, Number 02, 2015, p. 323.

² - Law No. 08/11 dated 21 Jumada al-Thani 1429, corresponding to June 25, 2008, concerning the conditions for the entry, residence, and movement of foreigners in Algeria, Official Gazette, No. 36, dated July 2, 2008.

³ - Bernaoui Asma, Taibi Mohamed Belhachemi El Amine: "The Repercussions of Irregular Migration on Algerian Societal Security: A Case Study of African Migrants," Journal of Law, Society and Power, University of Oran 02 Mohamed Ben Ahmed, Volume 10, Number 01, 2021, p. 90.

various levels, on the one hand, and its international obligations in this field, on the other.⁴

This is evident in the provisions that require every foreigner wishing to enter Algerian territory to comply with the conditions stipulated in this law and its supplementary texts, under penalty of the sanctions prescribed in this or other laws.⁵

Article 4 of Law 08/11 states that: "Foreigners are subject, with regard to their entry into Algerian territory, their residence therein, and their movement within it, to fulfilling the procedures stipulated in this law and its subsequent provisions..."⁶

Thus, the provisions of Law 08-11 constitute the legal basis upon which the state relies in applying the penalties stipulated therein and in other laws, the simplest of which is the deportation of foreigners who violate the conditions for legal entry into Algerian territory. This is because, in this case, the state exercises its right to protect its economic, social, and political interests, as well as public health and the safety of its citizens, which have become threatened by the large influx of foreigners into its territory—especially from African countries⁷—without adhering to the conditions stipulated by this law.

In light of the spread of infectious diseases among them, particularly tuberculosis, which has spread among these illegal immigrants who refuse to go to hospitals for treatment, as confirmed by the Ministry of Interior and Local Authorities in a telegram sent to the competent authorities, the ministry called upon them to take all necessary measures to contain this situation and protect public health and the safety of citizens.⁸

Despite the clarity of the provisions of this law, the conditions it imposes, and the penalties it stipulates, international human rights organizations insist on the

⁴ - Mejdane Mohamed: "Irregular Migration towards Algeria: Its Causes, Repercussions and Combating It," Annals of the University of Algiers 01, Volume 29, Number 02, 2016, p. 69.

⁵ - Menari Ayacha, The Legal Basis for Foreigners to Enjoy Rights in Light of Law 08/11 Concerning the Conditions for the Entry, Residence, and Movement of Foreigners in Algeria, PhD Thesis in Law, Specialization in Private Law, Faculty of Law and Political Science, Mohamed Lamine Debaghine University, Setif 02, 2022/2023, p. 177.

⁶ - Paragraph 1 of Article 04 of Law 08/11, mentioned above.

⁷ - Tiab Nadia: "Mechanisms for Addressing the Migration of Irregular African Migrants towards Algeria," Al-Mizan Journal, Institute of Law and Political Science, Ahmed Salhi University Center, Naama, No. 03, 2018, p. 301.

⁸ - Menari Ayacha, op. cit, p. 178.

necessity for states to guarantee a minimum level of rights for individuals, regardless of the legality of their entry into their territories.⁹

Not only that, but these organizations also criticize Algeria for its campaigns to deport illegal immigrants to their countries of origin. These measures were taken by Algeria as a legal penalty resulting from these immigrants' violation of the conditions for legal entry into the territory, and they do not infringe upon their human rights at all. Algeria justified its insistence on deporting undocumented migrants, in addition to it being a legal penalty, by stating that it also aims to protect them from criminal organizations, especially those that exploit them in drug trafficking, prostitution, begging, and organ trafficking.¹⁰

The reader might assume that the insistence of international organizations on guaranteeing minimum rights for undocumented migrants is a logical and legitimate position dictated by humanitarian considerations that states generally strive to uphold in order to maintain their standing in the international community. However, what is striking is the double standard evident in the positions of these organizations, as they rarely criticize European countries when they implement deportation orders against foreigners residing illegally in their territories, while they intensify their criticism of Algeria when it resorts to the same measures against irregular migrants, particularly those from African countries, even though deportation is one of the simplest legal procedures established to address violations of the rules of legal entry and residence.

This contradiction becomes even more apparent in light of the increasing African migration towards North African countries, which escalated in March 2023, especially towards Tunisia and Morocco, where African migrants who entered illegally have been demonstrating and demanding their rights from the authorities. They even consider the inhabitants of North Africa to be intruders and outsiders in Africa, and believe they should reclaim their "usurped lands."¹¹

⁹ - Ibid., p. 178

¹⁰ - Kim Sabiha, Sali Murad: "Algeria's Strategy in Addressing the Phenomenon of Irregular Migration to Protect Africans," Al-Riwaq Journal for Social and Human Studies, University of Ghilizan, Volume 07, Number 02, 2021, p. 450.

¹¹ - Menari Ayacha, op. cit, p. 179.

Secondly: Criminalizing Irregular Migration as a Legislative Option to Ensure the Legality of Entry into Algeria

Most of Algeria's neighboring countries suffer from political instability, widespread corruption, mismanagement of resources, and numerous regional conflicts, which has led the Algerian state to consider migration from these countries a burden linked to security aspects. The instability resulting from civil wars is one of the main reasons for displacement movements towards safer areas.¹²

Economic and social factors are also among the most prominent reasons that have contributed to the acceleration of irregular migration, including economic disparities, lack of job opportunities, high unemployment rates, and low standards of living, among others.¹³

Faced with the growing phenomenon of irregular migration towards Algeria, and the increasing international pressure represented by the insistence of international organizations on obligating states to guarantee the rights of irregular migrants and provide for them, the Algerian legislator found himself facing an urgent need to adapt the national legislative framework to keep pace with the rapid developments that have become a threat to the foundations of the state and its institutions at various levels. This resulted in the criminalization of violating the conditions for entry into Algerian territory as an inevitable measure, through the provisions of Law No. 08-11 and other related legal texts.¹⁴

Through Law No. 08-11, the Algerian legislator did not limit himself to regulating the conditions for the entry of foreigners into the national territory, but also sought to surround these regulations with deterrent guarantees to ensure their respect. This was reflected in the enactment of criminal provisions within Chapter Eight, which explicitly stipulate that anyone who violates the regulations governing entry into Algeria, including failure to comply with the legally specified conditions, shall be subject to penal sanctions aimed at protecting public order

¹²- Ghoura Adel, Lectures on Criminal Law, General Section, Crime, Fourth Edition, University Publications Office, Algiers, 1994, p. 154.

¹³ - Al-Shabasi Ibrahim, A Concise Explanation of the Algerian Penal Code, General Section, Dar Al-Kitab Al-Arabi, Beirut, 1981, pp. 240, 241.

¹⁴ - Boutra'a Shamama: "The Legal and Security Strategy to Combat Irregular Migration in Algeria," Al-Baheth Journal in Legal and Political Sciences, Faculty of Law and Political Science, Mohamed Cherif Messaadia University, Souk Ahras, No. 06, 2021, p. 176.

and ensuring the state's sovereignty over its territory¹⁵. Among these provisions is Article 44, which states: "Notwithstanding the provisions of Articles 30 and 36 above, violations of the provisions of Articles 4, 7, 8, and 9 above shall be punishable by imprisonment from six (6) months to two (2) years and a fine of 10,000 to 30,000 Algerian dinars."¹⁶

The Penal Code¹⁷ also criminalizes illegal immigration in general, by considering the violation of the conditions for leaving Algerian territory as a punishable offense. This entails penal sanctions applicable whether the act is committed by the person seeking irregular migration¹⁸, whether a citizen or a foreigner, or by others cooperating with them by providing assistance to leave the national territory outside the legal framework¹⁹. The legislator regulated these acts within the provisions criminalizing migrant smuggling contained in the Penal Code.²⁰

Although the provisions of this law have given greater attention to criminalizing illegal departure from Algerian territory compared to illegal immigration into it, it can be said that these provisions effectively contribute to reducing irregular migration flows towards Algeria, especially for the category of migrants who do not intend to settle within the country, but rather use it as a transit point to European countries.²¹

¹⁵ - Menari Ayacha, op. cit, p. 180.

¹⁶ - Article 44 of Law 08/11, mentioned above.

¹⁷ - Ordinance 66/156 dated June 8, 1966, containing the Penal Code, Official Gazette, No. 49, dated June 11, 1966, amended and supplemented by Law No. 24/06 dated April 28, 2024, Official Gazette, No. 30, dated April 30, 2024.

¹⁸ - Article 175 bis 01 of Ordinance 66/156, mentioned above, which states: "Without prejudice to other applicable legislative provisions, any Algerian or resident foreigner who leaves or attempts to leave the national territory illegally while crossing one of the land, sea, or air border crossings, by impersonating another person or by using forged documents or any other fraudulent means to evade presenting the necessary official documents or carrying out the procedures required by the laws and regulations in force, shall be punished by imprisonment from one (1) to three (3) years and a fine of 100,000 Algerian Dinars to 300,000 Algerian Dinars."

¹⁹ - Ben Ammar Nawal: "Irregular Migration and its Impact on Security in..." Algeria," Journal of Human and Social Sciences, Faculty of Humanities and Social Sciences, Biskra University, Volume 09, Number 01, 2020, p. 192.

²⁰ - Articles 303 bis 30 to 303 bis 41 of Order 66/156, cited above.

²¹ - Menari Ayacha, op. cit, p. 181.

The Algerian legislator also criminalized the act of irregular migration within the legislative framework of maritime law,²² specifically through Article 545, which considers secretly boarding a ship with the intention of undertaking a journey as a criminal act that entails criminal liability for the perpetrator, as it constitutes a form of irregular migration by sea.²³

The Algerian legislator also addressed the issue of irregular migration within the framework of civil aviation law.²⁴ Article 202 of the Algerian Civil Aviation Law stipulates that the aircraft commander or any person in charge of the aircraft shall be punished for assisting in the illegal boarding or disembarking of any person or goods on board the aircraft, considering this a violation subject to the prescribed penalties.²⁵

Therefore, it can be said that the Algerian legislator's legislative approach towards ensuring legal entry into the national territory reflects its commitment to protecting state security and safeguarding its interests and the interests of its citizens in the face of the increasing influx of irregular migrants into Algeria. This is clearly evident in the provisions of Law No. 08-11, which requires every

²² - Law No. 76/80, dated October 23, 1976, containing the Maritime Code, amended and supplemented by Law No. 98/05 dated June 25, 1998, Official Gazette, No. 47, published on June 27, 1998, and then by Law No. 10/04 dated August 15, 2010, Official Gazette, No. 46, dated August 18, 2010.

²³ - Article 545: Any person who secretly boards a ship with the intention of making a voyage shall be punished by imprisonment from six (6) months to five (5) years, and by a fine of 10,000 Algerian dinars to 50,000 Algerian dinars.

The same penalty shall apply to any member of the crew or any employee who, on board the ship or on land, assists in the boarding or disembarking of a stowaway, or hides him or provides him with provisions. The same penalty shall also apply to persons who have organized themselves in any way to facilitate clandestine boarding.

The ship on which the offense occurred shall bear the costs of deportation from the country for foreign passengers who boarded clandestinely."

²⁴ - Law 98/06, dated June 27, 1998, defining the general rules of civil aviation, Official Gazette, No. 48, issued on June 28, 1998, amended and supplemented by Law 24/03, dated February 26, 2024, Official Gazette, No. 15, issued on February 29, 2024.

²⁵ - Article 202 of the aforementioned Law 98/06, which states: "Without prejudice to disciplinary penalties, any aircraft commander who commits any of the following shall be punished by imprisonment for a period ranging from three (3) months to one (1) year and a fine ranging from one hundred thousand Algerian dinars (100,000 DZD) to two hundred thousand Algerian dinars (200,000 DZD), or by only one of these penalties:

...e) Illegally boarding or disembarking passengers or goods."

foreigner wishing to enter the territory to comply with its provisions²⁶, in addition to strengthening this legislative framework through a number of separate legal texts that all agree on criminalizing acts of irregular migration.

Section Two: Regulating Cases of Refusal of Entry for Foreigners into Algeria under National Legislation

Despite a foreigner fulfilling all the legal conditions that entitle him to enter Algerian territory, he may still be prevented from doing so, based on the Algerian state's adherence to its sovereignty in determining who is allowed entry. The legislator has granted the bodies responsible for examining applications for entry into Algerian territory the authority to prevent a foreigner from entering the territory, even if he meets the legal requirements.²⁷

This means that these bodies have broad discretionary power in accepting or rejecting these applications during their review, whether it concerns Algerian consulates or diplomatic missions accredited abroad, to which foreigners apply for a visa, which is an essential condition, along with other conditions, for being able to enter Algeria, or the internal authorities to whom Law 08-11 grants the possibility of refusing entry to a foreigner who has arrived at the designated entry points into Algerian territory²⁸, even if he possesses the conditions and documents stipulated in the same law.²⁹

First: The Role of Algerian Consular and Diplomatic Missions in Restricting the Entry of Foreigners

These bodies contribute to limiting the entry of foreigners into Algerian territory through illegal means, indirectly, by refraining from granting the required legal visa, especially in cases where the visa is mandatory and is not covered by any legal exception or exemption,³⁰ which automatically leads to the refusal of permission to enter Algerian territory, even if he meets the other conditions. Diplomatic and consular bodies enjoy broad discretionary power when considering visa applications, as acceptance is contingent on verifying several matters, foremost among them the applicant's financial solvency, which must be sufficient to cover their living expenses for the duration of their stay in Algeria,

²⁶ - Article 04 of the aforementioned Law 08/11.

²⁷ - This is based on the provisions of Articles 5 and 6 of the aforementioned Law No. 08/11.

²⁸ - Article 05 of the aforementioned Law 08/11.

²⁹ - Articles 04 and 07 of the aforementioned Law 08/11.

³⁰ - Manari Ayacha, op. cit, p. 182.

in addition to ensuring that the foreigner's name is not included on any lists of individuals prohibited from entering Algerian territory for any reason whatsoever.³¹

If it is determined otherwise, the diplomatic or consular body has the right to refuse to grant the visa, thus negating one of the legally imposed entry requirements, and thereby contributing to ensuring that only desirable foreigners are allowed entry, thus simplifying the process and alleviating the burden on internal authorities.³²

Secondly: The Discretionary Power of Internal Administrations in Preventing Foreigners from Entering National Territory

The first approach in classical international law is led by the jurist Vitoria, who advocated for the recognition of the right of foreigners to enter the territories of other states, based on the principle of the general right of peoples to meet and communicate with one another³³. According to this approach, the state does not have absolute power to prevent foreigners from entering its territory, but rather the host state is obligated to accept the nationals of other states who wish to reside in its territory, considering that the territorial sovereignty of states is not absolute power, but rather is restricted by the principles of public law that enshrine the freedom of contact and interaction between peoples.³⁴

Another school of thought in international law, led by the jurist Vattel, argues that the state, based on its absolute sovereignty over its territory and its citizens, has complete authority to decide on the entry of foreigners into its territory and to determine their legal status, whether their entry is temporary or for the purpose of permanent residence. This approach also acknowledges the state's right to prevent foreigners from entering its territory for reasons it deems justified, or to expel

³¹ - Salami Dalila, Expulsion of Foreigners in Algerian Law, Doctoral Thesis, Private Law, University of Algiers, 01, 2018, p. 102.

³² - Manari Ayacha, same reference, p. 182.

³³ - Ezz El-Din Abdullah, A Concise Guide to Nationality and the Status of Foreigners in Egyptian and Comparative Law, 11th edition, Egyptian General Book Organization, Cairo, 1986, p. 212.

³⁴ - Al-Rashidi, Ahmed Hassan, Human Rights: A Comparative Study in Theory and Practice, 2nd edition, Al-Shorouk International Library, Egypt, 2005, p. 348.

them at any time when there is a legal basis for doing so, provided there is no discrimination.³⁵

Accordingly, this legal approach denies foreigners any legal right to enter the state's territory, considering that the principle of sovereignty requires the state's absolute freedom to accept or refuse their entry, depending on what its supreme interest dictates, without incurring any legal obligation towards them in this regard.

The state may prevent foreigners from entering its territory according to its sole discretion, in accordance with the principle of sovereignty, unless it is bound by bilateral or multilateral agreements that oblige it to accept the nationals of a particular state within its territory.³⁶

The prevailing opinion in legal doctrine considers that the state's exercise of its discretionary powers regarding the expulsion of foreigners present in its territory should not be carried out in isolation from considerations related to human rights, which constitute a fundamental aspect emphasized by relevant international conventions and agreements, even if it concerns persons in an irregular situation. Professor I. Brownlie (1979) expressed this idea, emphasizing that expulsion that does not take into account humanitarian and political considerations may result in serious harm, which may open the door to claims for compensation as a legal consequence of this violation.³⁷

As for the Algerian legislator, it stipulated that the competent internal authorities enjoy broad discretionary power in preventing some foreigners from entering Algerian territory, even if they possess the legally required documents, whenever these authorities deem that their entry may harm the interests of the Algerian state.
³⁸

These authorities are the Minister of the Interior or the governor with territorial jurisdiction, both of whom have the right to prevent any foreigner from entering

³⁵ - Safou, Narjes: "The Authority of the Host State in Determining the Legal Status of Foreigners: Exclusive or Restrictive Jurisdiction?", Journal of World Politics, Volume 7, Issue 2, 2023, p. 400.

³⁶ - Fouad Abdel Moneim Riyad, A Concise Guide to Nationality and the Status of Foreigners in Egyptian and Comparative Law, Dar Al-Nahda Al-Arabiya, Cairo, 1987, p. 260.

³⁷ - Safou, Narjes, Ibid., p. 401.

³⁸ - Menari, Ayacha, Ibid., p. 183.

Algerian territory if it is determined that this would prejudice the interests of the state, based on Article 5 of Law 11-08.³⁹

The researcher's reading of the text of this article reveals that, although the cases in which the Minister of the Interior or the governor may intervene to prevent the entry of foreigners are specified exhaustively, the text grants them broad discretionary power. This is because what falls under these cases cannot be precisely defined but is subject to the discretion of each of them, depending on the circumstances and the specific situation of the foreigner under examination. The assessment of what constitutes a threat to public order, state security, its fundamental interests, or its diplomatic relations may vary from person to person and from time to time.⁴⁰

In the final analysis, it can be said that a foreigner's right to enter the territory of a state other than their own remains largely contingent on the will of the sovereign state over that territory. This will represents the primary reference in deciding whether to permit or deny entry. However, this right is not exercised in a legal vacuum. Rather, it is significantly influenced by bilateral agreements and the principle of reciprocity, which play a crucial role in regulating and resolving disputes related to this issue, balancing national sovereignty with the state's international obligations.⁴¹

³⁹ - It stated the following: "The Minister of the Interior may prohibit any foreigner from entering Algerian territory for reasons related to public order and/or state security, or that affect the fundamental and diplomatic interests of the Algerian state.

For the same reasons, the regionally competent governor may immediately decide to prohibit the foreigner from entering Algerian territory."

⁴⁰ - Safou, Narjes, Ibid., pp. 402/403.

⁴¹ - Al-Rashidi, Ahmed Hassan, Ibid., p. 357.

Conclusion

This presentation demonstrates that regulating the entry of foreigners into the national territory is not merely a technical administrative procedure, but a direct manifestation of the state's exercise of its sovereignty and a response to growing security, social, and economic challenges in a world characterized by increased mobility and complex international relations.

Between the requirements of respecting human rights and the demands of protecting public order, the state strives to achieve a balance, while establishing a strict legislative policy against illegal entry and ensuring effective control of its territorial borders.

Results

- The state's authority to regulate the entry of foreigners is an integral part of its national sovereignty.
- Refusal of entry to foreigners does not require justification and is not subject to judicial review, as it is a purely sovereign act.
- Algerian legislation adopts a firm criminal policy in confronting illegal entry.
- The multiplicity of legal texts governing this area (law on the entry of foreigners, penal code, maritime and air law, etc.) demonstrates the comprehensiveness of the approach.
- The state criminalizes all acts that facilitate illegal entry, including facilitating transit or providing shelter.
- There is a continuous effort to reconcile sovereignty with the principles of human rights, particularly with regard to the legal protection of certain categories (refugees, victims of human trafficking, etc.).

Recommendations

- The need to draft a unified law that comprehensively and clearly regulates the entry and residence of foreigners.
- Strengthening coordination between security and judicial agencies to combat illegal immigration networks.
- Expanding international cooperation programs in the field of border control and information exchange.

- Intensifying awareness campaigns about the dangers of illegal immigration, especially in border areas.
- Ensuring respect for international standards in the treatment of foreigners, particularly vulnerable groups.
 - Developing more transparent and equitable legal and administrative mechanisms for granting visas and residence permits.
 - Integrating digital and technological data into border control and migration management.
 - Establishing a sustainable balance between national security requirements and the state's human rights obligations.

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