Shackled:
How the US is Tied Up Betwen Policy and Legislation Regarding Physical Restraint of Incarcerated Pregnant Women

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I. Introduction

A quick Google image search of the word "pregnancy" fetches approximately 262,000,000 results in 0.26 seconds. The search engine's algorithm sifts through incomprehensible amounts of data to bring the most relevant and important hits to the surface, selecting four pictures as the winners to be featured on the top line of the first results page. Each of the four pictures shows the nude, white, rounded stomach of a different woman. She cradles her bump lovingly, sometimes holding a red paper heart, an ultrasound picture, or a little black chalkboard that reads "Coming soon!" in pretty white script. These are images of love, anticipation, joy. The faceless women in these pictures aren't scared— they're excited! They know who their OB/GYNs will be because they handpicked them. They are confident in their birth plans and are attending prenatal education classes. They have been over exactly what to expect in the maternity ward and their "birthing bags" are already packed and waiting by the door, just in case. The women in these pictures embody everything pregnancy represents in our culture-- a time to glow, to nest, and to prepare.

But of course, things are not always as they seem. This type of pregnancy—the glowing, showing, happily growing type— really only applies to women who have access to quality healthcare, a disposable income, and free time. For many other women, pregnancy is far less glamorous. And for approximately 9,000 American women in correctional facilities across the United States, pregnancy can be terrifying. They are allowed to exercise little to no autonomy over their obstetric health care decisions, most notably those surrounding their inevitable delivery.

As there is no actual federal legislation prohibiting this practice, many incarcerated women are deemed a "flight risk" and are shackled to the delivery table with heavy metal chains around their wrists, ankles, and waists when they give birth, restricting their movement and thus making it very difficult to escape—but also very difficult to birth a child. This paper will explore several cases that exemplify use of physical restraints on pregnant prisoners during labor, explain the deep concerns associated with such practice, examine existing public policy surrounding the practice, and argue for federal legislation in the United States prohibiting the use of shackles during childbirth.

II. Selected Cases

A. Villegas v. Metropolitan Government of Nashville, 2012
In 2009, a Mexican woman named Juana Villegas sued the Metropolitan Government of Nashville and Davidson County after being shackled at the wrists and legs while in labor and immediately after delivering her child. Villegas claimed that the restraints (as well as her being denied access to a breast-pump) violated her Eighth Amendment

rights.[1]

After being arrested for driving without a valid license and detained for her illegal status, Villegas had been only been in medium-security for three days before she experienced amniorrhexis ("water-breaking") and went into labor. She was then transported to the hospital via ambulance but prison officers mandated that she be shackled to the stretcher the entire ride to prevent her from escaping. Villegas' shackles were not removed until her cervix was dilated to 3cm and after multiple requests from hospital staff and the attending physician, over an hour into labor. Villegas was then re-shackled at the ankle six hours after delivering the baby.[2]

The United States District Court for the Middle District of Tennessee decided in the Plaintiff's favor, ruling that her shackling was conducted deliberately indifferent to her medical condition, thereby being considered an unconstitutional act, as "The Eighth Amendment prohibition on cruel and unusual punishment protects prisoners from the 'unnecessary and wanton infliction of pain.'"[3] Villegas was awarded $200,000 and the Metropolitan Government of Nashville and Davidson County quickly appealed the ruling.[4]

The decision was subsequently reversed by the US Court of Appeals for the Sixth Circuit. The appellate court ruled that the treatment Villegas received by the prison officials and hospital staff could not be considered "deliberately indifferent" to her condition because her shackling supposedly did not interfere with her medical treatment— "for example, the shackles are not removed so that the medical treatment may proceed unimpeded; however, such were not the circumstances in this case."[5] The court's decision also stressed that it cannot be assumed that the Defendant (here referring to the officers who ordered that she remain shackled) possessed "knowledge of a substantial risk of serious harm" by the restraints and therefore it could not be established that the actions of the Defendant were *deliberate* in their interference with her medical treatment.

B. Nelson v. Correctional Medical Services

In September 2003, nonviolent offender Shawanna Nelson was serving time in a Florida correctional facility when she went into labor. She was transported to a nearby hospital and then shackled to a bed at 3:50 PM by Correctional Officer Patricia Turensky. At this point Nelson was already at 7 centimeters cervical dilation, which is considered a final stage of labor. According to the maternity ward nurses, "each time a nurse needed to measure Nelson's dilation, that nurse had to ask [her correctional officer] to unshackle her, although [...] no one on the hospital staff ever requested that she be reshackled." Officer Turensky would apply the restraints again each time. Nelson remained shackled while pushing the child through the birth canal at 9 centimeters cervical dilation without an epidural (even though she had requested anesthesia upon her arrival at the hospital). By the request of the attending obstetrician, Nelson's shackles were finally removed at 6.15PM, only eight minutes before the birth of her child at 6:23PM.[6]

Nelson claimed that her shackling not only restricted necessary movement during labor and caused her extreme emotional trauma but resulted in more permanent musculoskeletal injuries as well. She brought claims against Officer Turensky as well as Turensky's supervisor, the director of the Arkansas Department of Corrections, Larry Norris. Both Defendants moved for summary judgment, requesting not to stand trial and arguing that they should receive

qualified immunity on the grounds that their conduct did not violate "clearly established statutory or constitutional rights of which a reasonable person would have known."[7] Although the district court denied these motions, a later appellate court granted Norris the immunity. Eventually a second appellate court ruled in the Plaintiff's favor, stating that "the majority proclaims Nelson had a clearly established constitutional right to be free from restraints during labor."[8,9]

C. Women Prisoners of District of Columbia Department of Corrections v. District of Columbia

A group of female prisoners serving time in three DC correctional facilities sued the District of Columbia on grounds that the District violated Title IX and the Eighth and Fourteenth Amendments of the US Constitution. The Plaintiffs claimed a myriad of violations, ranging from sexual abuse to general living conditions. Their suit was successful at the district court level and the Defendants quickly appealed the ruling. One part of the original ruling that was never contested in the appeal, however, stated that "the use of physical restraints on women in their third trimester of pregnancy" constituted a condition in violation of " the Eighth Amendment guarantee against cruel and unusual punishment."[10]

III. Arguments for the Use of Physical Restraints During Labor and Reasons for Their Invalidity

A. Inmates Outside of a Correctional Facility Pose Flight Risks

The principal reason for shackling women in the maternity ward is out of concern that the unshackled prisoner/ patient could more easily escape the hospital and pose a threat to community at large.[11] It is not uncommon for prisoners receiving other forms of medical treatment (including surgery) to be placed under physical restraint while in the hospital. Violent and nonviolent offenders alike can be placed in physical restraints, typically at the discretion of the attending correctional officer.[12] In most cases, this precaution is reasonable A prisoner in relatively good health who arrives a hospital for a non-life threatening condition would most certainly pose a flight risk if allowed to venture outside the prison walls unrestrained. The same hypothetical prisoner would not be in any extreme discomfort while handcuffed. Thus, this practice of restraining prisoners who are legitimately capable of escape is justifiable and even advisable.

Pregnant and laboring inmates, however, present a completely different situation—if a woman is in active labor, she is under immense physical stress and is extremely unlikely to be able to run from a situation. In the completely improbable case that she were, in fact, able to run from the delivery room, she would soon be stopped by the *inevitable* delivery of the infant. The prisoner in labor is different from any other prisoner receiving treatment because her debilitating condition has an end that cannot be postponed. Once labor has started, her body will push the infant out. Hindered by not only physical stress but also the rapidly progressing timeline of her condition, she cannot be subjected to the same concerns a prisoner coming to receive a splint for a broken arm or for chemotherapy would have, namely those who could actually make it out of the hospital and escape. These assumptions are further corroborated by both medical logic and the fact that "there have been no reported escape attempts among female inmates who were not restrained while giving birth" ever in the United States.[13] In light of these facts, it is apparent that the pregnant woman does not pose a legitimate flight risk to correctional officers.

B. Shackling During Labor Prevents Prisoners from Using Physical Violence to Harm the Public

A second claim commonly used to advocate for the continued use of physical restraints during childbirth is that said restraints prevent the prisoner from physically attacking the people around her.[14] This reasoning stems from a pervasive cultural belief that prison inmates are dangerous, violent people who pose a serious safety risk anytime they leave the walls of the correctional facility. It is not fundamentally wrong; naturally there are a number of violent offenders in US prisons.

However, the statistics of incarceration weaken this claim considerably in its application to laboring mothers. Violent offenders in US prisons are overwhelmingly male—by more than a 75% margin in 2012.[15] Women are far more likely to be imprisoned for nonviolent crimes like drug abuse or fraud than they are to be for violent offenses.[16] Combined with the physical toll a woman in active labor is already experiencing, the odds of her becoming violent and hurting a member of the hospital staff, correctional officers, or general public during labor are incredibly slim, rendering such argument for restrain use as nonsensical. In fact, not a single incident of harm to medical staff by an inmate in labor has been reported in New York City since the city restricted the use of physical restraints during delivery in 1990.[17]

IV. Arguments Against the Use of Physical Restraints During Labor

A. Physical Restraint During Labor Places Medical Judgment in the Hands of Correctional Officers When It Should Be Left to Physicians

To better visualize the additional unnecessary strain that such physical restraints put on a woman while in active labor, it helps to understand what these restraints imply. Heavy metal clamps, or irons, can be placed around the legs. Wrists are typically restrained by metal handcuffs. The movement of the entire woman may be inhibited via the use of a waist shackle, a weighted belt of sorts that chains the woman to her delivery bed.[18] The use of one or more of these restraints are left to the sole discretion of the prisoner's correctional officers. Because only the correctional officer has the ability to remove the shackles, the woman's medical team must request them to be removed when medically necessary, as seen in cases like *Nelson v. Correctional Medical Services* and *Villegas v. Metropolitan Government of Nashville*. In both cases, the attending hospital staff had to seek out the correctional officer for removal of the restraints, a nurse even testifying in *Nelson* that Officer "Turensky 'hooked [her] right back up' to the bed rails after each cervical measurement was taken."[19] It is important to note that the hospital staff in *Nelson* requested the *removal* of the shackles multiple times, but not once did they ask for Nelson to be reshackled. This uncomfortable shifting power dynamic between hospital staff and correctional officers is not only frustrating for the attending medical providers but is also dangerous for the patient—if the patient or the baby's condition rapidly deteriorates during labor and the key-holding correctional officer cannot be reached quickly enough or refuses to cooperate in a timely manner, the two lives at stake may be lost.[20] Physical restraints during labor are dangerous because they effectively place medical decision-making in the hands of correctional officers when such judgments should be left to the physician. These restraints therefore interfere with the treatment of the patient during a time when such treatment is crucial to the health and survival of the patient and child.

B. Physical Restraint During Labor Poses Extreme Discomfort and Legitimate Medical Threat to the Patient/Prisoner

The protocol shackles present not only an indirect impediment to the patient's health but a direct one, as they can cause actual physical harm to the patient in active labor. The shackles restrict the movement of the woman as she delivers the child. Such movement is necessary to aid in the movement of the child down the birth canal. If the woman is restrained during the process, she will experience even greater pain with delivery; her restrictions will prolong the birth process and prevent her from making movements that can reduce the inevitable pain.

A medical expert consulted in the *Villegas v. Metropolitan Government of Nashville* testified that shackling during labor actually "increases her risk of developing a potentially life-threatening blood clot."[21] Pregnant women are already prone to developing blood clots, but their risk peaks immediately postpartum. Dr. Torrente, the testifying expert, maintained that the patient should be "ambulatory… as often as possible" right after she delivers. It follows that the woman should not be reshackled immediately after delivery as she is at high risk for developing medical complications (such as blood clots) that would need emergency treatment.

The expert in *Villegas* was not an outlier in her concerns. The American College of Obstetricians and Gynecologists issued a statement in 2011 regarding the matter, stating:

> [P]hysical restraints have interfered with the ability of physicians to safely practice medicine by reducing their ability to assess and evaluate the physical condition of the mother and the fetus, and have similarly made the labor and delivery process more difficult than it needs to be; thus, overall putting the health and lives of the women and unborn children at risk.[22]

Finally, multiple reputable associations of medical practitioners and ethicists, including the American Medical Association and the American College of Obstetricians and Gynecologists, have condemned the use of physical restraints during delivery because of the psychological distress and risk of lasting emotional trauma this practice poses for the patient. They collectively reiterate that the lack of mobility during birth can be particularly traumatizing for the mother, as it increases her pain and risk of complication and prevents her from properly and safely handling her newborn.[23]

C. Shackling During Labor is a Form of "Cruel and Unnecessary Punishment" and Is Therefore Unconstitutional

The Eighth Amendment to the United States Constitution guarantees any person who has been convicted of a crime freedom from "cruel and unusual punishments."[24] Such criteria condemns the shackling of a prisoner during active labor, as it intensifies the pain of an already extremely painful process by inhibiting her natural movement and prolonging the birth.[25] The prisoner has been sentenced to serve time at a correctional facility, but not to submit to the pain associated with physically restrained childbirth. Correctional officers should not be empowered to worsen a prisoner's punishment for her crime by inflicting unnecessary pain on her by administering leg, wrist, or waist shackles when she poses no flight risk or safety risk to those around her. By this logic, the use of physical restraint of prisoners during childbirth is indeed "cruel and unnecessary punishment" and therefore a violation of the Eighth Amendment to the United States Constitution.

The rulings of several courts have supported this conclusion, including those issued in *Villegas v. Metropolitan Government of Nashville* and *Women Prisoners of District of Columbia Department of Corrections v. District of Columbia*. The court opinion in *Villegas* stated that "the shackling of pregnant detainees while in labor offends contemporary standards of human decency" in its violation of the Eighth Amendment.[26]

D. The Use of Physical Restraint During Labor Is Considered a Violation of Human Rights

The practice of shackling pregnant women to delivery tables has sparked global conversation surrounding the concept that the offense of the procedure transcends mere state and national law and can be considered a violation of universal human rights. The United Nations, the world's leading organization devoted to the idea of universal human rights and their protection, has issued two declarations regarding the matter: *U.N. Standard Minimum Rules for the Treatment of Prisoners (1957)* and *U.N. Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (2010)*. The latter elaborates on the basic tenet of the former: that sentencing to prison should never infringe on the prisoner's U.N.-declared fundamental human rights, such as the right to be free from "cruel, inhumane, or degrading treatment."[27] The 2010 publication explicitly states that "instruments of restraint shall never be used on women during labour, during birth and immediately after birth," yet the United States is still yet to fully comply with this policy.[28]

The protection of prisoner/ patient rights during childbirth is of special concern when one considers how the patient, by delivering a child while in correctional custody, has already forfeited a great deal of patient autonomy. She is granted medical care but allowed to make very few decisions regarding her delivery and treatment. Her labor will be inherently more traumatic than that of a free woman because she can exercise only a fraction of control over the circumstances of the child's birth— she did not get to pick the doctor or the hospital; it is unlikely that she will be accompanied by friends and family; in most cases she will not allowed to keep the child for more than 24 hours.[29] To place this woman in shackles during birth is to allow her helpless condition to come to physical manifestation. It violates her last shred of dignity in childbirth—the physical control over the movements of her body.

V. Existing Policy Addressing this Problem and Why It has Failed

Publicity surrounding lawsuits such as *Villegas* and *Nelson* has brought public awareness to the practice of shackling during delivery and instigated sweeping policy changes across the country. Physical restraint during childbirth has been condemned (as noted, previously) by human rights protection groups like the United Nations, medical practice and ethics associations like the American Medical Association, and civil rights advocacy groups like the American Civil Liberties Union Foundation. Even correctional institutions and groups have begun to examine the practice and suggest policy reformation.

In 2010, the National Commission on Correctional Health Care issued a position statement regarding "Restraint of Pregnant Inmates" in which it listed conditions where restraints are not always necessary and outlined ways to minimize their use during pregnancy and delivery.[30] The statement acknowledged ways shackling harms the mother as well as the fetus and safety precautions that can

be taken when using physical restraints on the patient. A similarly-minded publication called *Best Practices in the Use of Restraints with Pregnant Women and Girls Under Correctional Custody* was released in 2012 by the U.S. Department of Justice. The document addresses the fact that "the use of restraints can interfere with maternal and fetal health care during pregnancy, labor, delivery, and maternal and newborn health care during the postpartum period" and seeks to establish guidelines for new protocol that will minimize the health risks associated with restrained delivery.[31] Although it does not call for complete abolition of the practice, the publication states that restraints should be used only when absolutely necessary "when there is an imminent risk of escape or harm [...] and these risks cannot be managed by other reasonable means."[32]

If the policies and official positions of so many relevant entities have changed in the last ten years to condemn the use of traditional shackling of pregnant prisoners during labor, why is it still a matter of concern? Why are incarcerated women still being forcibly restrained during childbirth across the US? Why was the decision in *Villegas* overturned to rule in favor of the correctional officers who refused to take off Villegas' restraints until the last minute? The answer lies in another frustrating reality of US law —policy and advocacy alone are insufficient to ensure that pregnant inmates will not have to deliver their children while shackled to a hospital bed. Instead, shackling of pregnant, nonviolent offenders during delivery needs to be made illegal by federal legislation.

VI. Reasons for the Need for Federal Prohibition of the Use of Physical Restraint on Pregnant Women in Labor

A. Existing Policy Does Not Sufficiently Protect Pregnant Inmates in a Court of Law

In 2013, after considerable pressure from various human rights advocacy groups, the United States issued a report emphasizing the importance of policy (not law) in "regulating the shackling of pregnant women" and several US Departments updated their policies to include a section about avoiding the use of physical restraint on pregnant women.[33] Unfortunately, however well-intentioned and progressive these new policies may be, they are not enforceable. They are only recommendations, in actuality holding very little weight. Physical restraint during birth is still legal under federal law even if the US Department of Justice strongly advises against it. These policies do little more than wag a pedantic finger at the correctional officers still shackling women across the country.

The case of Juana Villegas is an excellent example of why the United States needs definitive, enforceable legislation rather than policy statements. Her case is very recent (2013). By the time it was filed, several similar cases had already proceeded through different district courts.[34] The district court ruled in her favor, citing violation of the Eighth Amendment to the US Constitution and awarding Villegas $200,000. The defendant, however, successfully appealed the case and the ruling was reversed.[35] An examination of the opinion of the appellate court reveals why current policies can be subverted by flawed interpretations of the situation, exposing the legal gray area of policy without law.

The opinion, written by Justices Clay and Gibbons, acknowledges that shackling Villegas during labor "offends the contemporary standards of human decency" in violation of the Eighth Amendment and that "a reasonable person could nonetheless conclude that the Plaintiff was not a flight risk."[36] Now the court has acknowledged that the actions of the Defendant were both unconstitutional and unreasonable. But here is where Villegas loses her case-- the court continues on to say that it cannot be concluded that the Defendant truly understood the effects of the use the shackles during labor nor the necessity of removing them, and therefore it cannot be established that the Defendant was *deliberately* indifferent to the Plaintiff's condition.[37]

The court clearly agrees with current US policy that shackles should not be used to restrain a nonviolent offender during labor. But without an actual law criminalizing the use of physical restraint in this scenario, the court appears to be stuck in minutia, allowing officers who have forced women to deliver in shackles to slip through legal loopholes (like the vague wording of deliberate indifference) and get off scot-free. If there were federal legislation prohibiting the use of physical restraints during childbirth and delivery, offenders could be prosecuted on the grounds of their actions, not gaps in legal jargon, and there would be a significantly smaller discrepancy between policy and law.

B. State Laws Prohibiting the Use of Physical Restraint on Pregnant Inmates Represent Progress but Not Perfection in the Protection of Human Rights

As of now, only eighteen states in the U.S. have adopted anti-shackling laws for pregnant inmates. 24 U.S. states have written policy on the subject, but this policy still carries little weight in way of actually preventing the continued practice of shackling or prosecuting correctional officers who use it when unnecessary.[38] These policies generally "only apply to prisons and correctional departments that adopt them," essentially rendering them optional guidelines.[39] State law, on the other hand, is enforceable and transparent; it applies equally across the entire state and can only be changed by democratic process.

The primary advantage of adopting federal anti-shackling legislation is to account for incongruences and inadequacies among different state laws. Currently Pennsylvania law mandates that all uses of restraint be reported so that the attending correctional officer can be held accountable for their misuse. California, however, has no requirement to report the use of restraints.[40] Therefore, offending correctional officers in California are much more difficult hold accountable for their violations in inappropriately shackling pregnant women. A federal law could require the same protocol across all 50 states in order to eliminate these inconsistencies.

Finally, the fact that the use of physical restraint on pregnant inmates during labor represents a violation of human rights that should be enough to prompt federal legislation alone. The United States should take a united stand against procedural violations of human rights instead of leaving it up to each state's legislature to decide the value of the dignity of a pregnant inmate. These cases of inappropriate shackling violate core tenets of American law, specifically the Eighth Amendment to the Constitution, and federal legislation needs crack down on penalizing these breaches of the federal constitution. A violation of American constitutional rights should be treated with equal attention in *all* fifty states.

VIII. Proposed Parameters for Federal Anti-Shackling Legislation

In order to prohibit the use of physical restraint on non-violent offenders during labor, delivery, and postpartum recovery, the legislation would need to strictly define "labor" to avoid outcomes like *Nelson v. Correctional Medical Services,* in which Nelson was shackled to the hospital bed during the vast majority of her labor but technically not during the delivery, as the restraints were removed a mere seven minutes before her child emerged from the birth canal.[41]

According to the Mayo Clinic and the American College of Obstetrics and Gynecology, labor can be separated into two phases: early (or latent) labor and active labor.[42] Early labor is characterized by mild regular contractions, slight cervical dilation, and the loss of the cervical mucus plug.[43] Inmates in early labor should be examined by the attending prison physician. Active labor is next, and its beginning is marked by regular contractions, five minutes apart.[44] Inmates should be transported to the hospital as they experience contractions of this timing and enter active labor, as this is the traditional protocol outside the penal system as well. At no point in the labor process (experience of any of the qualifications above) should the inmate be shackled at the wrists, legs, or waist.

To prevent worsening potential postpartum complications (see Section IV.B) and endangering the infant by restricting the movement of the mother, the inmate should remain unrestrained during her entire postpartum stay at the hospital.

To promote accountability and honesty among correctional officers, the law should include a reporting mandate like those already in effect in Pennsylvania, Arizona, and Illinois.[45] Correctional officers will be required to document any use of physical restraint on the pregnant inmate. The International Human Rights Clinic at the University of Chicago Law School has proposed the following requirements for said reports:

> The report should include (1) the reasons the officer determined extraordinary circumstances existed requiring the use of restraints, (2) the kind of restraints used, (3) the reasons those restraints were considered the least restrictive and most reasonable under the circumstances, and (4) the duration of the use of restraints.[46]

The effect of this mandate is twofold: First, correctional officers who are fully aware that their actions are being recorded and subject to scrutiny will be less likely to abuse their power. Knowing that they are ultimately being supervised (and perhaps even fear of punishment for violations) promotes honesty and appropriate judgment on the job. Second, the record will serve as court evidence for any violations that may occur anyway—the claims of both the prisoner and the correctional officer can be checked against the record.

IX. Conclusion

The use of physical restraint on pregnant incarcerated women, although legal in the United States, represents a dangerous overstep of prison officials into territory where their power should not be exercised. The pregnant prisoner has already forfeited much of her medical autonomy by being incarcerated—she has very little ability to make her own decisions during her pregnancy and will only receive

the level of care that is provided to her by her correctional facility. Proponents of the continued use of physical restraint of pregnant and laboring inmates argue that pregnant patients pose a flight and safety risk to the community and hospital. To claim such points is to ignore the reality of the medical condition of the inmate in labor; her pregnancy and the inevitable, unstoppable delivery of her child make it nearly impossible for her to attempt an escape.

Shackling these laboring women to their hospital beds also poses serious medical and ethical consequences. Physical restraint during labor prevents the body from taking its natural course of childbirth, therefore putting the woman in an unnecessary additional amount of pain and violating the United States' Bill of Rights, which states that prisoners must be guaranteed freedom from "cruel and unusual punishment."[47] Correctional officers must be prevented from interfering with appropriate medical care during labor through the use of shackles.

Changes in US policy and new state laws prohibiting the use of physical restraints on pregnant women are certainly signs of movement in the right direction, but this violation of the human rights of a population with very little voice must be taken seriously enough to create a prohibitory federal law. Federal legislation would allow all prisoners, regardless of facility or state, freedom from unnecessary, additional inflicted pain during childbirth and hold correctional officers accountable for their mistakes. The United States must be firmer in its commitment to defending the dignity of these patients and guaranteeing them equal protection under the law and affirm the values expressed in the Bill of Rights.

ENDNOTES

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