

No. 24-435

In the
Supreme Court of the United States

GHP MANAGEMENT CORPORATION, *et al.*,
Petitioners,

v.

CITY OF LOS ANGELES, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF OF AMICUS CURIAE
MINNESOTA MULTI HOUSING ASSOCIATION
IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT.....	3
REASONS FOR GRANTING THE PETITION.....	4
I. Rental property owners, particularly minority and low-income owners, were hit hard by the pandemic.....	4
II. Eviction moratoriums exacerbated the financial harm landlords were already experiencing from the pandemic.....	7
III. Alternatives to eviction did not adequately compensate landlords for the governmental intrusions on their property rights.....	10
A. Emergency Rental Assistance payments were insufficient for both tenants and landlords	10
B. Lawsuits for money judgments against tenants were insufficient to compensate Minnesota landlords for losses from the eviction moratorium	11
C. The Eighth Circuit correctly held that Minnesota’s eviction moratorium was a <i>per se</i> physical taking	12
D. The Ninth Circuit’s decision in this case conflicts with the Eighth Circuit’s decision in <i>Heights Apartments</i> and is erroneous	14

CONCLUSION.....	15
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TABLE OF AUTHORITIES

Cases

<i>Ala. Ass’n of Realtors v. Dep’t of Health & Human Servs.</i> , 141 S. Ct. 2485 (2021).....	12
<i>Cedar Point Nursery v. Hassid</i> , 141 S. Ct. 2063 (2021).....	4, 12, 13, 14
<i>GHP Mgmt. Corp. v. City of L.A.</i> , No. 23-55013, 2024 WL 2795190, (9th Cir. May 31, 2024).....	14
<i>Heights Apartments, LLC v. Walz</i> , 30 F.4th 720 (8th Cir. 2022).....	3, 12, 13, 14
<i>Loretto v. Teleprompter Manhattan CATV Corp.</i> , 458 U.S. 419 (1982).....	4
<i>Kaiser Aetna v. United States</i> , 444 U.S. 164 (1979).....	4
<i>Yee v. City of Escondido</i> , 503 U.S. 519 (1992).....	12, 13, 14

Rules and Statutes

Minn. E.O. No. 20-79.....	7, 9
Minn. Stat. § 504B.171.....	9
Minn. Stat. § 504B.291.....	12

Other/Miscellaneous

Elijah de la Campa et. al., <i>How Are Landlords Faring During the COVID-19 Pandemic? Evidence from a National Cross-Site Survey</i> 37 (Joint Ctr. For Hous. Stud. of Harvard Univ. 2021), available at https://www.jchs.harvard.edu/sites/default/files	
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landlords_survey_de_la_campa_2021_2.pdf..... 5

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Nathaniel Decker, *The Uneven Impact of the Pandemic on the Tenants and Owners of Small Rental Properties 5–6* (Turner Ctr. For Hous. Innovation 2021), available at <https://turnercenter>

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<https://www.policylink.org/node/63161>11

INTEREST OF AMICUS CURIAE¹

The Minnesota Multi Housing Association (MHA) is a nonprofit corporation founded in 1967 to promote the highest standards in the development, management, and maintenance of rental multi housing and to advocate for Minnesota multi-family property owners and landlords. MHA has nearly 2,300 members, most of whom own or manage fewer than 50 units.

MHA's members rely on their tenants to pay rent and comply with reasonable lease provisions. The most effective tool that MHA members have to enforce these obligations is the right to replace tenants who fail to pay rent or otherwise break their leases. MHA has a strong interest in protecting its members' constitutional right to determine who can and cannot be on their properties.

In 2020, Minnesota Governor Tim Walz ordered a statewide eviction moratorium similar to the one at issue in this case, causing serious harm to MHA's members. One MHA member, Heights Apartments, LLC, raised a constitutional challenge to Minnesota's eviction moratorium. In that case, the Eighth Circuit Court of Appeals correctly applied this Court's precedent and held that Heights Apartments pleaded a valid claim that Minnesota's eviction moratorium, although temporary, was a *per se*

¹ No party or counsel for a party authored this brief in whole or in part, and no person or entity other than MHA made any monetary contribution to its preparation or submission. MHA has given timely 10-day notice to all counsel of record of its intent to file this *amicus curiae* brief, as required by Supreme Court Rule 37.2.

physical taking under the Fifth Amendment to the United States Constitution. *Heights Apartments, LLC v. Walz*, 30 F.4th 720, 733 (8th Cir. 2022). MHA filed an amicus brief in opposition to Governor Walz’s unsuccessful petition for an *en banc* rehearing of that decision.

MHA now appears as amicus in this case because Petitioners present the same argument that Heights Apartments won at the Eighth Circuit and that is crucial to MHA’s interests. MHA agrees with Petitioners that Los Angeles’s eviction moratorium, like Minnesota’s, was a *per se* taking of rental properties. Granting the petition for certiorari is critical to mend the circuit split, correct the Ninth Circuit’s error, and to maintain constitutional protections for property in Minnesota and across the nation.

SUMMARY OF ARGUMENT

Pandemic-era eviction moratoriums advanced the public policy of providing housing during a public health crisis, but they did so by compelling landlords to bear the cost of that policy. Renters were effectively relieved of the need to pay their rent while property owners received no relief from their mortgage payments, property taxes, or maintenance costs. By prohibiting evictions except in extreme circumstances, state and local governments essentially commandeered private properties to house tenants who did not pay rent, broke their leases, and disturbed their neighbors. The government made no payment to owners for this use of their property.

The eviction moratoriums were *per se* physical takings of property because the government compelled landlords to let defaulting tenants remain on their property indefinitely. In *Heights Apartments, LLC v. Walz*, 30 F.4th 720, 733 (8th Cir. 2022), the Eighth Circuit Court of Appeals correctly applied this Court's precedents to hold that Minnesota's eviction moratorium was a *per se* taking. But in this case, the Ninth Circuit reached the opposite conclusion, deciding Los Angeles's eviction moratorium was not a *per se* taking.

The two decisions cannot be reconciled. This case presents the Court with an opportunity to reaffirm its precedents on the Takings Clause and to resolve a conflict among the courts of appeal. The Court should grant the petition for certiorari, reverse the Ninth Circuit's decision and the judgment below, and uphold the takings principles that supported the Eighth Circuit's decision in *Heights Apartments*.

REASONS FOR GRANTING THE PETITION

The right to exclude is “one of the most treasured rights of property ownership” and “one of the most essential sticks in the bundle of rights that are commonly characterized as property.” *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 150 (2021) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982) & *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)). “Given the central importance to property ownership of the right to exclude . . . the Court has long treated government-authorized physical invasions as takings requiring just compensation.” *Id.*

The Los Angeles eviction moratorium at issue here, like Minnesota’s, violated these foundational principles. The Court should grant certiorari to correct the Ninth Circuit’s error, repair the circuit split, and to reaffirm protections for property owners across the country.

I. Rental property owners, particularly minority and low-income owners, were hit hard by the pandemic.

The harm Petitioners suffered from the Los Angeles eviction moratorium is not unique. Landlords in other states and municipalities that imposed eviction moratoriums, including Minnesota, suffered the same losses, which remain unremedied.

Landlords were not immune to the economic impacts of the pandemic. In Minneapolis, for example, the number of landlords who received less than 90% of rent due more than *tripled* in 2020

compared to 2019, and the number who received less than 50% of rent due *doubled*.²

Small “mom-and-pop” landlords were hit especially hard.³ Landlords renting 1–5 units were the most likely to have tenants deeply behind on rent payments during the pandemic.⁴ These small landlords—which make up as much as 73.3% of landlords in Minneapolis—suffered the most substantial losses.⁵

Smaller rental properties have the highest share of owners who are racial minorities.⁶ Smaller

² Elijah de la Campa et. al., How Are Landlords Faring During the COVID-19 Pandemic? Evidence from a National Cross-Site Survey 37–38 (Joint Ctr. For Hous. Stud. of Harvard Univ. 2021), available at https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_covid_impact_landlords_survey_de_la_campa_2021_2.pdf.

³ See Abby Vesoulis, How Eviction Moratoriums Are Hurting Small Landlords—and Why That’s Bad for the Future of Affordable Housing, *TIME* (June 11, 2020), <https://time.com/5846383/coronavirus-small-landlords/>; see also Jung Hyun Choi et. al., Owners and Renters of 6.2 Million Units in Small Buildings are Particularly Vulnerable during the Pandemic, *Urban Inst.: Urban Wire* (Aug. 10, 2020), <https://www.urban.org/urban-wire/owners-and-renters-62-million-units-small-buildings-are-particularly-vulnerable-during-pandemic>.

⁴ de la Campa et. al., *supra* note 2, at 2.

⁵ *Id.* at 46; see also Elizabeth Kneebone et. al., The Impact of the Pandemic on Landlords: Evidence from Two National Surveys 6 (Joint Ctr. For Hous. Stud. of Harvard Univ. 2021), available at https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_impact_on_landlords_two_national_surveys_kneebone_et_al_2021.pdf.

⁶ Choi et. al., *supra* note 3; see also Nathaniel Decker, The Uneven Impact of the Pandemic on the Tenants and Owners of Small Rental Properties 5–6 (Turner Ctr. For Hous. Innovation

landlords are also more likely to be retirees or otherwise have limited outside income.⁷ While some groups have rightly argued about the disproportionate impact of the pandemic on minority and low-income *tenants*, the same is true of minority and low-income *landlords*.

Lost rental revenue during the pandemic made it more difficult for landlords to pay their mortgages, property taxes, employee wages, and maintenance costs.⁸ Many small landlords cannot afford to go months without rent.⁹ The financial stress from the pandemic pressured landlords, particularly small ones, to sell properties to stop the bleeding.¹⁰

2021), available at <https://turnercenter.berkeley.edu/wp-content/uploads/2021/07/Small-Rental-Properties-Decker-July-2021.pdf>.

⁷ Elijah de la Campa, *The Impact of COVID-19 on Small Landlords: Survey Evidence from Albany and Rochester, New York 3* (Joint Ctr. For Hous. Stud. of Harvard Univ. 2021), available at https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_small_landlord_survey_de_la_campa_2021_0.pdf.

⁸ The Hous. Initiative at Penn, *COVID-19 and Rent Relief: Understanding the Landlord Side* (The Hous. Initiative at Penn 2020), available at https://www.housinginitiative.org/uploads/1/3/2/9/132946414/phl_ownerbrief_final.pdf; *see also* Kneebone et. al., *supra* note 5, at 18.

⁹ *See* The Hous. Initiative at Penn, *supra* note 8; *see also* Vesoulis, *supra* note 3; Decker, *supra* note 6, at 2, 15–16.

¹⁰ Laurie S. Goodman et. al., *Housing Policy: Part II. Lessons Learned from Rental Policies and Outcomes, in* *Recession Remedies: Lessons Learned from the U.S. Economic Policy Response to COVID-19* 192, 203 (Edelberg et. al. eds. 2022), available at <https://www.brookings.edu/wp-content/uploads/2022/04/RR-Complete-Volume.pdf>; Kneebone et. al., *supra* note 5, at 11.

II. Eviction moratoriums exacerbated the financial harm landlords were already experiencing from the pandemic.

Eviction moratoriums exacerbated landlords' losses from the pandemic. Minnesota's moratorium prohibited *all* landlords from evicting *all* residential tenants for nonpayment of rent and other material lease violations for over 15 months except under extreme circumstances. Unlike the CDC eviction moratorium,¹¹ Minnesota's moratorium did not require tenants to certify they needed rent relief due to pandemic-related hardship.¹² Minnesota's moratorium therefore allowed tenants to remain in their landlords' properties without paying rent regardless of whether the tenants were suffering financial difficulties.¹³

Eviction moratoriums eliminate landlords' best tool to mitigate their losses. "Mom-and-pop" landlords with limited means have little other recourse against nonpaying tenants.¹⁴ During the pandemic, landlords' expenses were generally unabated (e.g., mortgage payments, property taxes, repair expenses, etc.), but the government required landlords to suffer the losses of nonpaying tenants and forbade them from replacing those tenants with paying tenants.¹⁵ Some

¹¹ See Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55, 292 (Sept. 4, 2020).

¹² See Minn. Exec. Order No. 20-79, § 2.

¹³ See *id.*

¹⁴ Goodman et. al., *supra* note 10, at 203.

¹⁵ Cf. *id.* ("An eviction moratorium imposes costs on landlords who have little recourse to collect overdue rent.").

landlords decided to cut their losses by reducing rent.¹⁶

The eviction moratoriums effectively permitted rent-free housing for an indefinite period with the full cost borne by landlords. Historically, Minnesota has had one of the lowest eviction rates in the country,¹⁷ with landlords filing between 1,200 and 1,600 eviction actions per month before the pandemic.¹⁸ Minnesota’s eviction moratorium drastically reduced Minnesota’s already-low eviction rates. While the moratorium was in place, eviction filings fell 86.5% from their averages.¹⁹ Filings remained well below their historical averages until February 2022.²⁰ Most of these forgone evictions would have been for nonpayment of rent.²¹ Landlords absorbed that lost

¹⁶ Kneebone et. al., *supra* note 5, at 12–13.

¹⁷ Ellen Dewitt, Eviction Rates In Every State, STACKER (June 17, 2020), <https://stacker.com/stories/4233/eviction-rates-every-state>.

¹⁸ Minnesota Monthly Eviction Filings Compared to Historical Averages, Eviction Lab, <https://evictionlab.org/eviction-tracking/minnesota/> (under “Trends in eviction filings” section, click “Get the data” to download chart) and compare actual filings for April 2020 to June 2021 (the full months the moratorium was in place before a phaseout began in July 2021) to average filings for those months) (last visited November 14, 2024).

¹⁹ *Id.* (compare actual filings for April 2020 to June 2021 (the full months the moratorium was in place before a phaseout began in July 2021) to average filings for those months).

²⁰ *Id.*

²¹ See Hennepin County Data Dashboard on Evictions, <https://app.powerbigov.us/view?r=eyJrIjoieYzQ1NDQyYzUtZDY2Zi00OTIxLThtZDgtZGQ3MwYwZjM5NmQ0IiwidCI6IjhhZWZkZjlmLTg3ODAtNDZiZi04ZmI3LTRjOTI0NjUzYThtZS99> (under “Year,” select 2019, and view “Eviction Judgments by Type,” which shows that 88.07–95.83% of evictions in Hennepin County

rent to the extent it was not covered by federal funding (discussed below).

Landlords' inability to replace nonpaying tenants was only part of the problem. The moratoriums also prevented landlords from removing tenants for material lease violations unrelated to paying rent or the pandemic. Under Minnesota's moratorium, landlords could remove tenants only if they seriously endangered the safety of other residents, significantly damaged property, or used the premises for certain criminal activities. *See* Minn. Exec. Order No. 20-79, § 2 (citing Minn. Stat. § 504B.171, subd. 1).

Few cases could meet such a high standard.²² Landlords could not remove tenants who, for example, sexually or racially harassed other residents, threatened other residents, smoked in nonsmoking buildings, left trash and personal property in hallways or stairwells, or held loud parties that disturbed other residents (and increased the spread of COVID-19). MHA members reported that they lost staff and paying tenants due to abusive tenants who could not be removed because of the eviction moratorium. Prohibiting evictions in these cases punished rule-followers and enabled rule-breakers.

that year were for nonpayment of rent) (last visited November 14, 2024).

²² *See id.*

III. Alternatives to eviction did not adequately compensate landlords for the governmental intrusions on their property rights.

A. Emergency Rental Assistance payments were insufficient for both tenants and landlords.

In Minnesota, the Emergency Rental Assistance (“ERA”) distributed through RentHelpMN was grossly insufficient. For starters, tenants were eligible for assistance only if they experienced financial hardship due to the pandemic, demonstrated a risk of homelessness or housing instability, and their household income was at or below 80% of the median income in their area.²³ By contrast, the eviction moratorium applied far more broadly, creating a gap for nonpaying tenants who were not eligible for ERA payments but could still not be evicted.

Even for eligible tenants, ERA money was slow to come and did not provide complete relief to landlords.²⁴ RentHelpMN did not make any ERA payments until May 20, 2021—over 14 months into the eviction moratorium.²⁵ By October 2022, Minnesota renters had applied for over \$111 million more in rent assistance than RentHelpMN had paid

²³ Goodman et. al., *supra* note 10, at 205.

²⁴ *Id.* at 205–206.

²⁵ Comm’r Jennifer L. Ho, Minn. Hous. & Fin. Agency, Update on RentHelpMN at 7 (Feb. 8, 2022), available at [https://www.senate.mn/committees/2021-2022/3108_Committee_on_Housing_Finance_and_Policy/RentHelpMN%20Overview%20\(2.8.22\)_CommissionerHo.pdf](https://www.senate.mn/committees/2021-2022/3108_Committee_on_Housing_Finance_and_Policy/RentHelpMN%20Overview%20(2.8.22)_CommissionerHo.pdf)

out.²⁶ This does not account for tenants and landlords who never applied for assistance in the first place. Small landlords were the least likely to participate in or be aware of the ERA program.²⁷ As of November 14, 2024, an estimated *\$124.8 million* in rent debt remained outstanding in Minnesota.²⁸

In the end, ERA payments did not compensate landlords for nonpaying tenants who were ineligible for assistance, tenants who never applied for assistance, rent discounts that landlords granted to mitigate their losses, the lost time value of money, or the harm caused by abusive tenants who violated nonmonetary terms of their leases but could not be evicted. Minnesota did not pay landlords for these losses.

B. Lawsuits for money judgments against tenants were insufficient to compensate Minnesota landlords for losses from the eviction moratorium.

Although landlords in Minnesota and elsewhere retained the right to sue nonpaying tenants for money judgments, there was little chance that such lawsuits would provide meaningful relief. Going to court costs time and money. And tenants that struggled to pay rent during the pandemic were

²⁶ RentHelpMN Submitted Applications, Minn. Hous. & Fin. Agency, <https://www.mnhousing.gov/renthelpmn/renthelpmn-dashboard.html> (last visited November 14, 2024).

²⁷ Kneebone et. al., *supra* note 5, at 12.

²⁸ Rent Debt in America: Stabilizing Renters is Key to Equitable Recovery, PolicyLink, <https://www.policylink.org/node/63161> (under “Select a Geography” menu, select “Minnesota” to view applicable data) (last visited November 14, 2024).

unlikely to have the lump sums necessary to cover a judgment for past rent. Landlords will never recoup their losses from these tenants. *See Heights Apartments*, 30 F.4th at 729 n.7 (noting that “monetary relief obtained against a judgment-proof individual is an illusory remedy” (citing *Ala. Ass’n of Realtors v. Dep’t of Health & Human Servs.*, 141 S. Ct. 2485, 2489 (2021))). Replacing a nonpaying tenant with a paying tenant is a far more effective remedy.

An eviction action also has unique power to cause a nonpaying tenant to catch up on past due rent. In Minnesota, when a landlord files for eviction, the tenant has a statutory right to restore its tenancy by paying back rent before the landlord regains possession. Minn. Stat. § 504B.291, subd. 1. The “pay and stay” statute gives tenants a strong incentive to get caught up. The eviction moratorium eliminated that incentive because tenants could stay regardless of whether they paid. The threat of a potentially pointless collection lawsuit, which would not affect the tenant’s right to live on the premises, was no substitute for an eviction action.

C. The Eighth Circuit correctly held that Minnesota’s eviction moratorium was a *per se* physical taking.

The Eighth Circuit correctly decided the Minnesota eviction moratorium was a *per se* physical taking in *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022). The Eighth Circuit followed this Court’s recent decision in *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021) and distinguished the prior decision in *Yee v. City of Escondido*, 503 U.S. 519 (1992).

Quoting *Cedar Point Nursery*, the Eighth Circuit wrote that “[w]henever a regulation results in a physical appropriation of property, a *per se* taking has occurred.” *Heights Apartments*, 30 F.4th at 733 (quoting *Cedar Point Nursery*, 594 U.S. at 149). The court continued: “It is immaterial whether physical invasion is ‘permanent or temporary,’ ‘intermittent as opposed to continuous,’ or whether the government is directly invading the land or allowing a third party to do so.” *Id.* (quoting *Cedar Point Nursery*, 594 U.S. at 153).

The Eighth Circuit determined that “*Cedar Point Nursery* controls here” and “*Yee* . . . is distinguishable.” *Id.* The court explained: “The rent controls in *Yee* limited the amount of rent that could be charged and neither deprived landlords of their right to evict nor compelled landlords to continue leasing the property past the leases’ termination.” *Id.* By contrast, the Minnesota eviction moratorium “forbade the nonrenewal and termination of ongoing leases, even after they had been materially violated, unless the tenants seriously endangered the safety of others or damaged property significantly.” *Id.* Thus, *Heights Apartments* sufficiently alleged that the eviction moratorium deprived it “of its right to exclude existing tenants without compensation.” *Id.* Such allegations, the Eighth Circuit held, gave rise to “a plausible *per se* physical takings claim under *Cedar Point Nursery*.” *Id.*

The Eighth Circuit denied Governor Walz’s request for rehearing *en banc*. See *Heights Apartments, LLC v. Walz*, 39 F.4th 479 (Mem.) (8th Cir. 2022). The Eighth Circuit’s decision in *Heights*

Apartments remains good law in Minnesota and every other state in the Eighth Circuit.

D. The Ninth Circuit’s decision in this case conflicts with the Eighth Circuit’s decision in *Heights Apartments* and is erroneous.

The Ninth Circuit’s decision in this case directly conflicts with the Eighth Circuit’s decision in *Heights Apartments*. Both courts reviewed the same basic action (a COVID-19 eviction moratorium) under the same constitutional provision (the Takings Clause), but they reached opposite conclusions. While the Eighth Circuit followed *Cedar Point Nursery* and distinguished *Yee*, the Ninth Circuit did the reverse. *GHP Mgmt. Corp. v. City of L.A.*, No. 23-55013, 2024 WL 2795190, at *1 & n.2 (9th Cir. May 31, 2024).

The Eighth Circuit’s decision in *Heights Apartments* is correct and the Ninth Circuit’s contrary decision here is erroneous. This Court’s decision in *Cedar Point Nursery* sets the proper framework for an eviction moratorium that, although temporary, requires landowners to tolerate occupation by tenants who are in violation of their lease agreements. The eviction moratoriums are also distinguishable from the law at issue in *Yee* for the reason explained by the Eighth Circuit: the rent control law in *Yee* “neither deprived landlords of their right to evict nor compelled landlords to continue leasing the property past the leases’ termination.” *Heights Apartments*, 30 F.4th at 733.

This Court should resolve the conflict between the Ninth and Eighth Circuits by reversing the

judgment below and deciding the Los Angeles eviction moratorium was a *per se* physical taking of landlords' properties.

CONCLUSION

The dispute over the constitutionality of the Los Angeles eviction moratorium and similar eviction moratoriums is a live controversy, and resolving it is important to landlords across the country. Landlords still have not been fully compensated for the damage that the eviction moratoriums caused. Absent a decision from this Court reaffirming and clarifying its holdings on the Takings Clause, this dispute is likely to arise again—in the event of another pandemic or any other situation where a state or local government declares an eviction moratorium. For these reasons, the petition for a writ of certiorari should be granted.

Dated: November 15, 2024 Respectfully submitted

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