No. 24A1007

IN THE
Supreme Court of the United States

A.A.R.P. AND W.M.M,

Applicants,

—— V.——

DONALD J. TRUMP, ET AL.,

Respondents.

REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR AN EMERGENCY INJUNCTION OR WRIT OF MANDAMUS, STAY OF REMOVAL, AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE INJUNCTION

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TABLE OF CONTENTS

INTRODUCTION

The sole focus of Applicants' application to this Court was the government's failure to provide sufficient notice before seeking to remove individuals under the Alien Enemies Act ("AEA"), as required by this Court's ruling less than three weeks ago. The government opposition sidesteps the sufficiency of its notices entirely. In its April 7 ruling, the Court unanimously held that "AEA detainees must receive notice after the date of this order that they are subject to removal under the Act . . . within a reasonable time and in such a manner as will allow them to *actually* seek habeas relief in the proper venue before such removal occurs." *Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *2 (U.S. Apr. 7, 2025) (emphasis added).

Yet, on April 17, within hours of the district court's order denying the initial Temporary Restraining Order ("TRO") application and reserving ruling on class certification based on the government's representation that it would not remove the two named Applicants while the litigation is pending, the government took actions contrary to this Court's specific ruling in *J.G.G.* Instead of providing timely notice that would allow putative class members to seek habeas relief prior to removal, the government gave detainees an English-only form, not provided to any attorney, which nowhere mentions the right to contest the designation or removal, much less explain how detainees could do so. App. 64–65. And officers told detainees they would be removed within 24 hours—in many cases, even less than 24 hours. App. 56–60. Under no plausible understanding of this Court's ruling is that notice protocol satisfactory. Not surprisingly, in all the habeas AEA litigation throughout the country in response to this Court's April 7 ruling, the government has never submitted the form for a district court's inspection nor specified the amount of time one

would have to contest their removal under the AEA. Instead, the government has only offered the bare assertion that, in light of this Court's decision, it would provide "reasonable" notice. App. 47.

Rather than defend its notice procedures, the government argues that Applicants jumped the gun, but that claim cannot be squared with the facts on the ground. Based on information received from lawyers, Applicants filed an emergency renewed TRO motion about thirty minutes after midnight on April 18 informing the district court that individuals were being told they would be removed later that same day, Friday, April 18. The district court nonetheless gave the government 24 hours to respond, did not shorten the time, and planned to rule by midday Saturday, April 19—which would have been after the government carried out its threats to remove putative class members. The government, meanwhile, refused to provide *any* information about the impending removals of putative class members or even state when they intended to respond to the emergency motion in the district court. By the afternoon, having received no response from the district court, Applicants felt compelled to seek relief from the Fifth Circuit and this Court—more than 14 hours after moving for a TRO—especially as counsel continued to receive information of impending removals.

The information was not a false alarm. As it turned out, individuals were loaded onto buses that left the Texas facility around 5:35 p.m. CDT, only later to be turned around, presumably because of Applicants' filing in this Court. *See* Vaughn Hillyard et al., *As Legal Fight Raged, ICE Buses Filled with Venezuelans Heading Toward Airport Turned Around,*

Video Shows, NBC News (Apr. 20, 2025) (showing pictures of the buses departing)[1]; Suppl. App. 1a–5a. The government does not deny that dozens of class members were set to be removed Friday evening. Nor does the government deny that if it had delivered class members to the notorious Salvadoran CECOT prison, it would have taken the position that they cannot be returned, even if unlawfully removed. Under these circumstances, Applicants' counsel, who have an ongoing duty toward the putative class members, *see* Fed. R. Civ. P. 23(g)(4), would have been derelict in not seeking emergency appellate relief.

The government also suggests that Applicants cannot satisfy Rule 23's requirements. But, as set forth in Applicants' original motion for class certification filed April 16, 2025, and amended motion filed April 18, 2025, a class should be certified. *See* Mot. to Certify Class, *A.A.R.P. et al. v. Trump et al.*, No. 25-cv-59 (N.D. Tex. Apr. 16, 2025), ECF No. 3 (hereinafter, district court docket cites referred to by ECF No.); ECF No. 39. As noted, there are plainly common issues, the answers to which will resolve determinative or essential issues for all putative class members, including the fundamental question of whether the AEA can be used during peacetime against a non-state criminal organization. Only when these threshold issues are resolved will there be a need for individual habeas actions focused on whether an individual is a member of the gang and therefore properly designated as "enemy alien" under the Proclamation. The government's position that every individual should file a separate habeas petition is not only inefficient but likely to mean that many such individuals—many or most of whom are not represented—will have to address these complex issues *pro se* or, worse and more likely, never get into court at all.

[1] *Available at* https://www.nbcnews.com/politics/immigration/legal-fight-raged-ice-buses-filled-venezuelans-heading-airport-turned-rcna202007.

Fully aware of this reality, the government nonetheless opposes district-wide class certification and, in the absence of this Court's temporary stay of removal, would have carried out AEA removals before any of these threshold AEA issues were decided (and regardless of whether any of the individuals were actually members of Tren de Aragua ("TdA")).

In light of the government's actions since this Court's April 7 ruling in *Trump v. J.G.G.*—both transferring individuals between different detention centers and providing insufficient notices only hours in advance—individuals threatened with removal under the AEA may be forced to seek emergency relief just as Applicants had to here, again and again. To prevent this, Applicants respectfully request that this Court provide guidance to lower courts and the government on what measures are sufficient to provide adequate notice. Additionally, because there is a substantial likelihood that the Court would grant *certiorari* to review the weighty question whether the AEA can be invoked outside of wartime against a criminal organization and for only the fourth time in U.S. history, Applicants respectfully request that this Court retain jurisdiction, maintain the injunction, and also consider treating this application as a petition for *certiorari* before judgment. Applicants recognize that this is an extraordinary request given that the district court has not yet ruled on the merits, but believe it is appropriate in light of the government's actions on April 18, its position that there is no remedy for wrongfully removed individuals, and the fact that the government is moving Venezuelans whom they have labeled as gang members all around the country, making it likely that habeas actions will be required in multiple districts (in addition to the six class habeas petitions already filed by counsel in this case).

ARGUMENT

I. The Notice Provided Is Inadequate Under This Court's Decision in *J.G.G.*

Despite its bare assertion that it gave putative class members "adequate" notice, Opp. 13, the government does not contest the startling list of deficiencies Applicants identified. It does not deny that it gave notices written in English even though putative class members largely speak only Spanish. App. 56–60; Suppl. App. 2a ¶ 7. The notice also did not inform individuals that they could contest their designation and removal under the AEA, or seek judicial review, much less provide a timeline for doing so or explain how they could do so. App. 64–65; *see also* Suppl. App. 2a ¶ 7. The government also did not give the notices to counsel for the putative class or even, for those individual detainees fortunate enough to have retained counsel, to immigration attorneys who had an appearance on file. Nor does the government deny that it provided this deficient notice a mere 24 hours (or less) before loading class members onto buses headed to the airport. App. 56–60; Suppl. App. 2a ¶¶ 11–13.

That process comes nowhere near satisfying the Court's directive that AEA detainees receive "notice after the date of this order that they are subject to removal under the Act . . . within a reasonable time and in such a manner as will allow them to *actually* seek habeas relief in the proper venue before such removal occurs." *J.G.G.*, 2025 WL 1024097, at *2 (emphasis added). Whatever due process may require in this context, it does not allow removing a person to a possible life sentence without trial, in a prison known for torture and other abuse, a mere 24 hours after providing an English-only notice form (not provided to any attorney) that gives no information about the person's right to seek judicial review, much less the process or timeline for doing so. Nor, critically, did the notice tell

individuals that although they are Venezuelan, they may be removed to El Salvador. *See Mullane v. Centr. Hanover Bank & Tr. Co.*, 339 U.S. 306, 315 (1950) ("[A] mere gesture is not due process.").

The government points to isolated examples of individuals who have managed to file habeas petitions. Opp. 6–7. Several of its examples are simply the plaintiffs from the original *J.G.G.* litigation in the District of Columbia, who have now filed habeas petitions as the representatives for district-wide class habeas actions. *See, e.g.*, *G.F.F. v. Trump*, No. 25-cv-2886 (S.D.N.Y. Apr. 8, 2025) (*J.G.G.* plaintiffs who have now filed in S.D.N.Y.); *J.A.V. v. Trump*, No. 25-cv-72 (S.D. Tex. Apr. 8, 2025) (*J.G.G.* plaintiffs who have now filed in S.D. Tex.). And in any event, the fact that just a tiny handful of individuals have managed to seek judicial review only underscores that the vast majority have not. Of the dozens of detainees at Bluebonnet who were given notices, the government identifies *none* who were previously unrepresented and managed to bring their own case—either pro se or after finding an attorney—in the brief window before they were set to be removed. That is especially striking given that many of them contest TdA membership, *see, e.g.*, App. 32 (A.A.R.P.), 35 (W.M.M.), 59 (Y.S.M.), all of them have substantive claims against the AEA's invocation, *see, e.g.*, *J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at *8–10 (D.C. Cir. Mar. 26, 2025) (Henderson, J., concurring), and all are facing indefinite, perhaps permanent, detention and abuse at CECOT.

To ensure that people are not removed without due process, the Court should order the government to provide the same pre-removal notice it has provided under past AEA invocations—30 days in advance, *see* 10 Fed. Reg. 12,189 (Sept. 28, 1945)—to give individuals time to understand that they may contest their removal, find a lawyer, prepare

a habeas petition, and litigate a motion to stay removal pending the resolution of their case. And the Court should require the government to satisfy the bare minimum standards of clear notice: a written notice in English and Spanish, provided to the individual's immigration attorney and class counsel, informing them of their right to challenge their designation and removal in court, the process and timeline for doing so, as well as the country to which they will be removed.

II. This Application Was Not Premature.

The government maintains Applicants' request was "premature." Opp. 10. But under the circumstances on April 18, Applicants had no choice but to seek emergency relief from the Fifth Circuit and this Court—and, without this Court's intervention, putative class members would almost certainly have been removed. Suppl. App. 5a ¶¶ 2–11. The government's opposition does not accurately state the sequence of events in the lower courts on April 18. Applicants did not give the district court a mere "42 minutes" to rule on their TRO motion. Opp. 2, 8, 9. They sought relief in the Fifth Circuit and this Court *more than fourteen hours* after seeking relief in district court, and only after the district court made clear it would not act before *April 19*—after Applicants submitted evidence that the government was threatening to remove putative class members on the evening of *April 18*. If Applicants had waited for the district court to rule, most class members' claims would never have been heard.

In fact, Applicants took every step available to them in the district court before seeking emergency appellate relief. In the early morning hours of Wednesday, April 16, upon learning that the government had transferred large numbers of Venezuelan nationals to the Bluebonnet detention center, Applicants filed their habeas action and sought a

district-wide class TRO. App. 2 (ECF No. 1, 1:53 a.m. CDT). The government responded later that afternoon representing that it would not remove the two named Applicants while their cases were pending and would notify the court if that were to change—but the government made no such promise as to the putative class. ECF No. 19 at 12. The government stated only that in light of this Court's April 7 ruling, the government would provide "reasonable" notice—but offered no specifics, and did not provide the actual form or state how long in advance of removal individuals would receive notice. ECF No. 19 at 25. The following day, on the afternoon of Thursday, April 17, the district court denied Applicants' TRO motion, concluding that given the government's representations about the named class members, they were not in danger of imminent removal without judicial review. App. 40, 46 (ECF No. 27, 2:41 p.m. CDT). The district court also concluded, based on this Court's "opinion in *J.G.G.*, along with the government's representations about the procedures necessary in these cases," that the putative class was also not in any imminent danger. App. 48.

Within hours of that ruling, however, at approximately 7:09 p.m. CDT on Thursday, April 17, Applicants learned from immigration lawyers that the government had begun giving out notices of AEA removals at Bluebonnet and telling detainees they would be removed that night or the next day. App. 56–60. The government did not inform the district court of this development. Applicants' counsel thus emailed government counsel at 7:23 p.m. CDT, asking whether it was accurate that the government had begun distributing AEA notices to Venezuelan men at the facility. App. 50–51 n.1.[2] At 8:11 p.m. CDT, the

[2] Applicants had stated that they emailed counsel for the government at 6:23pm CST in their emergency applications to the district court and Fifth Circuit. App. 50. This was an inadvertent error in adjusting for a different time zone.

government responded that the two named Applicants had not been given notices; Applicants' counsel immediately clarified that they were inquiring about putative class members. *Id.* At 8:41 p.m. CDT, government counsel wrote: "We are not in a position at this time to share information about unknown detainees who are not currently parties to the pending litigation." App. 51 n.1.

Applicants then left a voice message at the district court's chambers explaining these alarming new developments and that class members could be removed that night or the following day. The district court later that evening posted a docket entry stating that any emergency relief would need to be sought by motion and that the government would have 24 hours to respond. ECF No. 29, 9:13 p.m. CDT. Accordingly, Applicants filed a renewed TRO at 12:34 a.m. CDT on Friday, April 18, explaining that individuals were being designated under the AEA and told their removal would occur that day. App. 50–61. In addition to renewing their request for a classwide TRO, Applicants requested that the district court shorten the deadline for the government to respond because, under the existing schedule, putative class members would be removed before the government's brief was even due. App. 50.

As morning arrived and then hours passed, the district court did not alter the briefing schedule, set a hearing, or rule on the renewed motion, which explained that the existing briefing schedule would be too late in light of the government's ongoing actions. App. 50. Meanwhile, Applicants' counsel continued to receive reports of individuals at Bluebonnet being given AEA notices and told to prepare for removal. ECF No. 34 at 1–2. More than twelve hours after filing their renewed TRO motion, Applicants asked the government if it would join in a motion for an immediate status hearing, to which the

government responded that the named Applicants were not at risk of removal and reiterated its position "that class certification is inappropriate," and that the government was thus opposed to a status conference "as unnecessary at this time." ECF No. 34 at 2. At this point, more than twelve hours after filing the renewed application in the district court and while hearing reports that putative class members were imminently to be removed, Applicants tried one last time to seek relief from the district court; at 12:48 p.m. CDT on Friday, April 18, filed a motion for an emergency status conference, providing copies of newly obtained notices and adding that with clients set to be removed at any time, if the district court did not resolve their motion by 1:30 p.m. CDT, they would have to seek relief on appeal. ECF No. 34 at 1–2. The district court did not schedule a status conference. It was only then that Applicants filed their notice of appeal at 3:02 p.m. CDT—more than fourteen hours after filing their emergency TRO, and more than two hours after asking the district court for a status conference—and then sought relief both in the Fifth Circuit and this Court. Opposed Mot., *A.A.R.P. et al. v. Trump et al.*, 25-10534 (5th Cir. Apr. 18, 2025, 4:58 p.m. CDT), ECF No. 4; Application, *A.A.R.P. et al. v. Trump et al.*, 24A1007 (Sup. Ct. Apr. 18, 2025, 5:06 p.m. CDT).

After the Fifth Circuit appeal was filed, the district court denied the TRO on the ground that the appeals had divested it of jurisdiction, and stated that it would have kept the original briefing deadline and would have ruled by noon on Saturday, April 19. ECF No. 41 at 4. But that decision would thus have come *after* putative class members were scheduled to be removed, as Plaintiffs had explained in their TRO motion, App. 50, and request for status conference, ECF No. 34 at 1–2. And then it would have been too late for Applicants to seek relief in the Fifth Circuit or this Court. Indeed, buses of putative class

members left the Bluebonnet detention facility at approximately 5:35 p.m. CDT. Suppl. App. 3a ¶17.

Under these circumstances, the government's chastisements about a "premature" application are wrong, to say the least. Notably, the government's opposition never mentions nor denies that individuals were loaded onto buses that left the facility.

III. Class Relief Is Not Only Proper, But Necessary to Prevent Irreparable Harm.

The relief Applicants seek should and must be granted on a classwide basis and, as demonstrated in their original and amended motions for class certification in the district court, they meet the standards for class certification under Rule 23.[3] The putative class members raise identical legal questions that could resolve their habeas cases at once. And without classwide relief, countless individuals—especially those unrepresented—are likely to be removed without judicial review. Moreover, absent class treatment, the lower courts would be flooded with petitions, as the government seeks to remove hundreds, or even thousands under the AEA. There is no need for such a chaotic approach, which would make prompt relief less likely and increase the chance of more erroneous removals to CECOT.[4]

The government asserts that Applicants cannot seek class relief because the class has not been certified yet. Opp. 12. But courts routinely grant interim class relief on a

[3] The district court reserved a ruling on the motion for class certification for the same reason it denied Applicants' initial motion for a TRO—based on the government's representation that it would not seek to remove the named Applicants while their habeas petition was pending. App. 49.

[4] The government does not contend that habeas classes are inappropriate as a general matter. Indeed, every circuit that has addressed the issue has found that a class habeas action may be maintained. *See* Application at 19–20 (citing cases). And, the All Writs Act empowers courts to fashion appropriate remedies in habeas actions where circumstances provide a "compelling justification for allowing a multi-party proceeding similar to the class action authorized by the Rules of Civil Procedure." *U.S. ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125 (2d Cir. 1974); *see also Bijeol v. Benson*, 513 F.2d 965, 968 (7th Cir. 1975) (class habeas appropriate where prisoners raised an "identical" issue of law and the number of prisoners was "to great for joinder of all to be practical").

provisional basis, to preserve the status quo and prevent irreparable harm. *See Brown v. Chote*, 411 U.S. 452, 457 (1973) (affirming classwide preliminary injunction where claims "would have been foreclosed, absent some relief"); *see also Saenz v. Roe*, 526 U.S. 489, 497–98 (1999); *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44 (1991). Provisional class relief is especially critical here, because the whole class could be removed before a court can resolve the class certification motion and request for classwide relief, after which the government would claim that the courts have permanently lost jurisdiction. *See* Order, *A.A.R.P. v. Trump*, No. 24A1007 (Sup. Ct. Apr. 19, 2025) (citing 28 U. S. C. §1651(a)).

The government highlights possible *eventual* factual differences that may arise over TdA membership, Opp. 12, but ignores the many prior "questions of interpretation and constitutionality of the [AEA]" that are common to the putative class. *J.G.G.*, 2025 WL 1024097, at *2 (cleaned up). Those include: whether the AEA can be used without military hostilities, *see J.G.G.*, 2025 WL 914682, at *8–10 (Henderson, J., concurring); whether it can be used against a non-state criminal gang; whether individuals are entitled to more than 24 hours' notice; whether individuals can be removed under the AEA without screening for torture under the Convention Against Torture; and what procedural protections are required by due process and the AEA. Any one of these common issues, standing alone, is enough to satisfy Rule 23(a)(2)'s permissive standard. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) ("Even a single common question will do.") (cleaned up). Regardless of each class member's individual facts and defenses to an accusation of TdA membership, Applicants need only show that the resolution of common claims may significantly advance the litigation. *See Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013).

Any claims that are individualized in nature would not merge into a class judgment and would not be barred thereafter. *Cooper v. Fed. Rsrv. Bank of Richmond*, 467 U.S. 867, 880 (1984); *see generally*, William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 18:17 (6th ed. 2022). Accordingly, the putative class can litigate the common legal questions; any remaining individualized questions about TdA membership can be litigated subsequently in individual habeas actions. *See, e.g.*, *County of Riverside v. McLoughlin*, 500 U.S. 44 (1991) (resolving classwide legal claims even though individuals may have additional claims based on their facts); *Parham v. J. R.*, 442 U.S. 584, 616–17 (1979) (remanding class case for district court to "consider any individual claims" that remained).[5]

The government suggests that the adequacy of notice may depend on individualized factors. Opp. 13. But in the context of AEA removals, baseline notice requirements do not vary across individuals—for example, there is no reason to expect that the procedural information in the notice documents or the amount of time provided should vary from person to person. The government mentions language differences, *id.*, but the basic question is whether information should be provided in a language that people understand, and in any event, the Venezuelans who are potentially subject to the Proclamation overwhelmingly speak Spanish. And while not everyone has a lawyer in their removal proceedings, *id.*, the requirement to notify a person's lawyer, if they have one, is hardly enough to defeat class certification. Moreover, this Court regularly considers due process

[5] In light of these common questions, courts in AEA cases across the country after this Court's *J.G.G.* order have provisionally certified district-wide habeas classes and granted classwide TROs. *See G.F.F. v. Trump*, No. 25-cv-2886 (S.D.N.Y. Apr. 9, 2025), ECF No. 31, *as amended*, ECF No. 35 (S.D.N.Y. Apr. 11, 2025); *J.A.V. v. Trump*, No. 1:25-cv-72, 2025 WL 1064009, at *2 (S.D. Tex. Apr. 9, 2025); *D.B.U. v. Trump*, No. 1:25-cv-1163-CNS, 2025 WL 1106600 (D. Colo. Apr. 14, 2025); *A.S.R. v. Trump*, No. 3:25-cv-113, 2025 WL 1122485, at *1 (W.D. Pa. Apr. 15, 2025).

challenges and announces rules for the generality of cases, including in class actions. *See, e.g.*, *Wilkinson v. Austin*, 545 U.S. 209, 228–30 (2005); *Wolff v. McDonnell*, 418 U.S. 539, 563–72 (1974); *Procunier v. Martinez*, 416 U.S. 396, 419 (1974), *overruled on other grounds by Thornburgh v. Abbott*, 490 U.S. 401 (1989).[6]

The government additionally claims the class is not ascertainable and Applicants are not adequate representatives. Opp. 12–13. But the proposed class is specifically defined as persons identifiable by criteria that the government is aware of. Indeed, the government cannot credibly argue that it does not know who *the government* itself has identified as "subject to" the Proclamation, including those who have received notices of TdA membership. And, the named Applicants adequately represent the class because the class is defined as those who are "subject to" the Proclamation, regardless of whether they choose to contest TdA membership. *See* Merriam Webster Dictionary, *Subject To* (2025) (defining "subject to" as, *inter alia*, "affected by or possibly affected by," "likely to do, have, or suffer from").

If individuals designated under the AEA are forced to litigate their claims on an individual basis under the government's instituted notice regime, the practical effect will be that many, if not most, designees will be deported to a notorious prison in El Salvador with no opportunity to seek judicial review. This too weighs in favor of permitting a class to litigate the threshold legal questions, *see* William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 4:35 (6th ed.) (discussing "critical safeguards for class members that

[6] Respondents grossly overstate the takeaway from *Jennings v. Rodriguez*, 583 U.S. 281 (2018), which addressed a habeas class's claim that the immigration laws, as a matter of statutory interpretation, required bond hearings every six months. *Id.* at 292. Because the Court rejected that common claim, the *only* remaining issue was whether a bond hearing for any given individual was required based on due process balancing of case-specific facts for people detained under different authorities. *Id.* at 312.

certification alone can provide"), and for leaving a stay of removal in place while Applicants litigate those claims.

IV. The Court Should Retain the Stay on Removals Pending the Filing and Resolution of a Petition for *Certiorari*.

The government's actions since the April 7 *J.G.G.* ruling—transferring large numbers of individuals it intends to remove under the AEA between judicial districts and providing English-only AEA notices less than 24 hours before removal and without any explanation as to how the individual may seek judicial review—cannot by any stretch be said to comply with this Court's order that notice must be sufficient to permit individuals actually to seek habeas review. Applicants therefore respectfully request that the Court rule that the government's notice does not comport with its April 7 Order, and provide guidance in this case and to other courts around the country as well as to the government regarding what measures are required to provide adequate notice.

Additionally, given the substantial likelihood that the Court would grant *certiorari* to review, among other things, whether the AEA can be invoked outside of wartime against a criminal organization, Applicants also respectfully request that this Court retain the injunction and consider treating this application as a petition for *certiorari*.[7]

[7] The government seeks clarification that this Court's order does not preclude removal pursuant to non-AEA authorities. Opp. 14–15. Applicants do not contest (and have never in any of the AEA cases contested) the government's authority under Title 8 to remove individuals properly removable under the immigration laws.

Respectfully submitted,

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