No.

IN THE SUPREME COURT OF THE UNITED STATES

MAXO CASSEUS, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Petitioner was derived of his right, under the Sixth and Fourteenth Amendments, to a trial by a 12-person jury when the defendant is charged with a serious felony?

There are two other petitions raising the same question presented. See *Parada v. United States*, No. 25-166; *Minor v. Florida*, No. 24-7489. This case should at least be held pending resolution of those petitions.

RELATED PROCEEDINGS

Nineteenth Judicial Circuit of Florida:

State v. Casseus, 2022CF002867 A (May 14, 2024)

Fourth District Court of Appeal of Florida:

Casseus v. State, 4D2024–1600 (Aug. 7, 2025)

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Maxo Casseus respectfully petitions for a writ of certiorari to review the judgment in this case of the Fourth District Court of Appeal of Florida.

OPINION BELOW

The decision of Florida's Fourth District Court of Appeal has not yet been published in the Southern Reporter, but it is reported as *Casseus v. State*, No. 4D2024-1600, 2025 WL 2249652 (Fla. 4th DCA Aug. 7, 2025). A copy is provided in the appendix. See 1a.

JURISDICTION

This Court has jurisdiction to review final judgments or decrees "rendered by the highest court of a state in which a decision could be had." 28 U. S. C. § 1257(a).

Florida's Fourth District Court of Appeal affirmed Petitioner's convictions and sentences without written opinion on August 7, 2025. 1a. The court then denied Petitioner's motion for rehearing and to certify a question of great public importance on October 9, 2025. 2a.

Petitioner now seeks review at this Court. Although the Florida Supreme Court is the highest court in Florida in which a decision could be had, the Florida Supreme Court has held that it does not have jurisdiction to review district court of appeal decisions entered without a written opinion. See *Jackson v. State*, 926 So. 2d 1262, 1266 (Fla. 2006); *Mallet v. State*, 280 So. 3d 1091, 1092 (Fla. 2019) (holding that the Florida Supreme Court is "a court of limited jurisdiction"). Petitioner could thus not seek higher review at the Florida Supreme Court, meaning the Fourth District was the highest court in the State of Florida where Petitioner could seek a decision. This Court has jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment

The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."

Section 913.10, Florida Statutes

> Twelve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases.

Fla. Stat. § 913.10.

STATEMENT OF THE CASE

Respondent (the State of Florida) charged Petitioner with Possession Of Fentanyl (Count 1), Possession Of Cocaine (Count 2), Possession Of More Than 20 Grams Of Cannabis (Count 3), Trafficking In Fentanyl—14 Grams Or More But Less Than 28 Grams (Count 4), and Driving Without Valid Driver's License (Count 5). At trial, a six-person jury was sworn in.

At the close of all the testimony, Respondent announced it was going to *nolle pros* Counts 1 and 3. The six-person jury convicted Petitioner of Possession Of Cocaine (Count 2), Trafficking In Fentanyl (Count 4), and Driving Without Valid License (Count 5). The trial court entered a judgment of conviction and sentenced Appellant to sixty months on Count 2, twenty years on Count 4, and sixty days on Count 5. The trial court ordered that the sentences imposed on Counts 2 and 5 were to run concurrent with the sentence imposed on Count 4. The trial court then gave Petitioner 545 days' credit for Counts 2 and 4, and 60 days' credit for Count 5.

Florida's Fourth District Court of Appeal affirmed without a written opinion. 1a. Subsequently, it denied Petitioner's motion for rehearing and written opinion. 2a.

REASONS FOR GRANTING THE PETITION

THIS COURT SHOULD GRANT CERTIORARI BECAUSE *WILLIAMS* IS "FUNDAMENTALLY MISGUIDED."

For most of this nation's history, and for centuries before that, a criminal defendant charged with a felony was entitled to a twelve-person jury. That was the common understanding when the Sixth Amendment was ratified. Nevertheless, this Court held in *Williams v. Florida*, *supra*, that a criminal defendant charged with a felony is not entitled to a twelve-person jury. In addition to ignoring decades of its own precedent and the plain and ordinary meaning of the Sixth Amendment, this Court relied on a functionalist model of constitutional interpretation—a mode of constitutional interpretation that this Court has since abandoned.

a. *Williams* was the first time this Court held that a criminal defendant charged with a felony is not constitutionally entitled to a twelve-person jury.

In *Williams*, this Court held for the first time that a criminal defendant charged with a felony is not constitutionally entitled to a twelve-person jury. By doing so, this Court ignored the plain and ordinary meaning of the Sixth Amendment.

When the words and phrases in the Constitution were adopted, they "were used in their normal and ordinary as distinguished from

technical meaning." *United States v. Sprague*, 282 U. S. 716, 731 (1931). "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them." *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U. S. 1, 34 (2022) (quoting *District of Columbia v. Heller*, 554 U. S. 570, 634–35 (2008))).

History shows that the common understanding in the 1790s, when the Sixth Amendment was ratified, was that a criminal defendant charged with a felony was entitled to a twelve-person jury. In fact, that had been the understanding for hundreds of years. *Khorrami v. Arizona*, 143 S. Ct. 22, 27 (2022) (GORSUCH, J., dissenting from the denial of certiorari); *accord Gibson v. State*, 16 Fla. 291, 300 (1877) (holding that historically, the right to a jury trial meant "a jury, according to the common law, to be composed of twelve persons"); Robert H. Miller, *Comment, Six of One Is Not a Dozen of the Other: A Reexamination of* Williams v. Florida *and the Size of State Criminal Juries*, 146 U. Pa. L. Rev. 621, 633 (1998) (discussing twelve-member juries in ancient Greek and Roman trials (myth and real)); 4 W. Blackstone, *Commentaries on the Laws of England* 343 (1769) (stating that juries consisting of twelve people was commonplace in the English common law). Since the time of the Magna Carta, the word "jury" had been

understood to mean a body of twelve. *Thompson v. Utah*, 170 U. S. 343, 349–50 (1898).

For the most part, this Court's precedent adhered to the Sixth Amendment's plain and ordinary meaning, holding in several cases that the Sixth Amendment guaranteed a criminal defendant charged with a felony a twelve-person jury. In *Thompson*, this Court noted that since the time of Magna Carta, the word "jury" had been understood to mean a body of twelve. *Id.*, at 349–50. Because that understanding had been accepted since 1215, the Court reasoned, "[i]t must" have been "that the word 'jury'" in the Sixth Amendment was "placed in the constitution of the United States with reference to [that] meaning affixed to [it]." *Id.*, at 350.

After *Thompson*, this Court continued to cite the basic principle that the Sixth Amendment requires a twelve-person jury in criminal cases for another seventy years. In 1900, for example, this Court explained that "there [could] be no doubt" "[t]hat a jury composed, as at common law, of twelve jurors was intended by the Sixth Amendment to the Federal Constitution." *Maxwell v. Dow*, 176 U. S. 581, 586 (1900). Thirty years later, this Court reiterated that it was "not open to question" that "the phrase 'trial by jury'" in the Constitution

incorporated juries' "essential elements" as "they were recognized in this country and England," including the requirement that they "consist of twelve men, neither more nor less." *Patton v. United States*, 281 U. S. 276, 288 (1930). And as recently as 1968, this Court remarked that "by the time our Constitution was written, jury trial in criminal cases had been in existence for several centuries and carried impressive credentials traced by many to Magna Carta," such as the necessary inclusion of twelve members. *Duncan v. Louisiana*, 391 U. S. 145, 151–52 (1968).

It was not until 1970, in *Williams v. Florida*, 399 U. S. 78 (1970), that this Court changed its course and permitted juries with less than twelve people in felony trials. In *Williams*, a case concerning Florida's six-person-jury law, this Court held for the first time that a trial by a jury of six does not violate the Sixth Amendment.

> b. *Williams* was the first time this Court interpreted a provision of the Constitution using the functionalist approach, an approach that this Court later threw out in *Ramos*.

In addition to turning centuries of precedent on its head, this Court in *Williams* abandoned the plain and ordinary meaning of the Sixth Amendment to reach its decision. Instead, this Court relied on

the functionalist approach. This Court reasoned that it could find "no indication in 'the intent of the Framers' of an explicit decision to equate the constitutional and common-law characteristics of the jury." *Id.*, at 99. According to this Court, "[t]he relevant inquiry . . . must be the function that the particular feature performs and its relation to the purposes of the jury trial." *Id.*, at 99–100. "Measured by th[at] standard," this Court held, "the [twelve-person jury] requirement [for felony trials] cannot be regarded as an indispensable component of the Sixth Amendment," because "neither currently available evidence nor theory suggests that the [twelve-person] jury is necessarily more advantageous to the defendant than a jury composed of fewer members." *Id.*, at 100–02 (footnotes omitted). Such a mode of interpretation ignored the plain and ordinary meaning of the Sixth Amendment.

Even if one were to accept the functionalist logic of *Williams* — that the Sixth Amendment is subject to reinterpretation on the basis of social science — it invites, nay demands, that it be periodically revisted to determine whether the social science holds up. And here we encounter a serious problem: it was based on research that was out of date shortly after the opinion issued.

Williams "f[ou]nd little reason to think" that the goals of the jury guarantee, which included providing "a fair possibility for obtaining a representative[] cross-section of the community," were "in any meaningful sense less likely to be achieved when the jury numbers six, than when it numbers 12." *Id.*, at 100. It theorized that "in practice the difference between the 12-man and the six-man jury in terms of the cross-section of the community represented seems likely to be negligible." *Id.*, at 102.

Since *Williams*, that determination has proven incorrect. In *Ballew v. Georgia*, 435 U. S. 223 (1978), this Court held that the core "function" of the Sixth Amendment was disturbed by a five-person jury. *Id.*, at 245. Although *Ballew* did not overturn *Williams*, it observed that empirical studies conducted in the intervening years highlighted several problems with its assumptions. For example, *Ballew* noted that more recent research showed that (1) "smaller juries are less likely to foster effective group deliberation," *id.*, at 233, (2) smaller juries may be less accurate and cause "increasing inconsistency" in verdict results, *id.*, at 234, (3) the chance for hung juries decreases with smaller juries, disproportionally harming the defendant, *id.*, at 236; and (4) decreasing jury sizes "foretell[]

problems … for the representation of minority groups in the community," undermining a jury's likelihood of being "truly representative of the community," *id.*, at 236–37. Moreover, the *Ballew* Court "admit[ted]" that it "d[id] not pretend to discern a clear line between six members and five," effectively acknowledging that the studies it relied on also cast doubt on the effectiveness of the six-member jury. *Id.*, at 239*; see also id.*, at 245–46 (Powell, J.) (agreeing that five-member juries are unconstitutional, while acknowledging that "the line between five- and six-member juries is difficult to justify").

Post-*Ballew* research has further undermined *Williams*. As already noted, *Williams* itself identified the "function" of the Sixth Amendment as leaving justice to the "commonsense judgment of a group of laymen" and thus allowing "guilt or innocence" to be determined via "community participation and [with] shared responsibility." 399 U. S., at 100–01. That function is thwarted by reducing the number of jurors to six. Smaller juries are perforce less representative of the community, and they are less consistent than larger juries. See, *e.g.,* Shamena Anwar, et al., *The Impact of Jury Race In Criminal Trials*, 127 Q.J. Of Econ. 1017, 1049 (2012) (finding

that "increasing the number of jurors on the seated jury would substantially reduce the variability of the trial outcomes, increase black representation in the jury pool and on seated juries, and make trial outcomes more equal for white and black defendants"); Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. of Empirical Legal Stud. 425, 427 (Sept. 2009) ("reducing jury size inevitably has a drastic effect on the representation of minority group members on the jury"); Higginbotham et al., *Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 Judicature 47, 52 (Summer 2020) ("Larger juries are also more inclusive and more representative of the community. … In reality, cutting the size of the jury dramatically increases the chance of excluding minorities.").

Other important considerations also weigh in favor of the twelve-member jury. Twelve-member juries deliberate longer, recall evidence better, and rely less on irrelevant factors during deliberation. See Smith & Saks, *The Case for Overturning* Williams v. Florida *and the Six-Person Jury*, 60 Fla. L. Rev. 441, 465 (2008).

Minority views are also more likely to be thoroughly expressed in a larger jury, as "having a large minority helps make the minority

subgroup more influential," and, unsurprisingly, "the chance of minority members having allies is greater on a twelve-person jury." *Id.*, at 466. Finally, larger juries deliver more predictable results. In the civil context, for example, "[s]ix-person juries are four times more likely to return extremely high or low damage awards compared to the average." Higginbotham et al., *supra*, at 52.

Importantly, the history of Florida's rule can be traced to the Jim Crow-era. Justice Gorsuch has observed that "[d]uring the Jim Crow[-]era, some States restricted the size of juries and abandoned the demand for a unanimous verdict as part of a deliberate and systematic effort to suppress minority voices in public affairs." *Khorrami v. Arizona*, 143 S. Ct. 22, 27 (2022) (Gorsuch, J., dissenting from denial of certiorari) (citations omitted). He noted, however, that Arizona's law was likely motivated by costs not race. *Ibid.* But Florida's jury of six did arise in that Jim Crow era of a "deliberate and systematic effort to suppress minority voices in public affairs." *Ibid.* The historical background is as follows:

In 1875, the Jury Clause of the 1868 constitution was amended to provide that the number of jurors "for the trial of causes in any court may be fixed by law." See *Florida Fertilizer & Mfg. Co. v. Boswell*,

34 So. 241, 241 (Fla. 1903). The common law rule of a jury of twelve was still kept in Florida while federal troops remained in the state. There was no provision for a jury of less than twelve until the Legislature enacted a provision specifying a jury of six in chapter 3010, section 6, Laws of Florida (1877). See *Gibson v. State*, 16 Fla. 291, 297–98 (1877); *Florida Fertilizer*, 34 So., at 241.

The Florida Legislature enacted chapter 3010 with the jury-of-six provision on February 17, 1877. *Gibson*, 16 Fla., at 294. This was less than a month after the last federal troops were withdrawn from Florida in January 1877. *See* Jerrell H. Shofner, *Reconstruction and Renewal, 1865–1877*, in *The History of Florida* 273 (Michael Gannon, ed., first paperback edition 2018) ("there were [no federal troops] in Florida after 23 January 1877").

The jury-of-six thus first saw light at the birth of the Jim Crow era as former Confederates regained power in southern states and state prosecutors made a concerted effort to prevent blacks from serving on jurors.

On its face the 1868 constitution extended the franchise to black men. But the historical context shows that that it was part of the overall resistance to Reconstruction efforts to protect the rights

of black citizens. The constitution was the product of a remarkable series of events including a coup in which leaders of the white southern (or native) faction took possession of the assembly hall in the middle of the night, excluding Radical Republican delegates from the proceedings. See Richard L. Hume, *Membership of the Florida Constitutional Convention of 1868: A Case Study of Republican Factionalism in the Reconstruction South*, 51 Fla. Hist. Q. 1, 5–6 (1972); Shofner, *supra*, at 266. A reconciliation was effected as the "outside" whites "united with the majority of the body's native whites to frame a constitution designed to continue white dominance." Hume, *supra*, at 15.

The purpose of the resulting constitution was spelled out by Harrison Reed, a leader of the prevailing faction and the first governor elected under the 1868 constitution, who wrote to Senator Yulee that the new constitution was constructed to bar blacks from legislative office: "Under our Constitution the Judiciary & State officers will be appointed & the apportionment will prevent a negro legislature." *Id.*, at 15–16.

Smaller juries and non-unanimous verdicts were part of a Jim Crow-era effort "to suppress minority voices in public affairs."

Khorrami, 143 S. Ct., at 27 (2022) (Gorsuch, J., dissenting from denial of certiorari); *see also Ramos*, 590 U.S., at 126–27 (Kavanaugh, J., concurring) (non-unanimity was enacted "as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African-Americans, especially in voting and jury service"). The history of Florida's six-person jury arises from the same historical context.

And when the Florida Legislature reduced the size of juries from twelve to six in 1877, it also re-established the "integrity, fair character, sound judgment and intelligence" test for jury service. Ch. 3010, Laws of Fla. (1877). This discretionary standard was "used to eliminate almost every black citizen from the southern trial venire." Douglas L. Colbert, *Challenging the Challenge: Thirteenth Amendment as a Prohibition against the Racial Use of Peremptory Challenges*, 76 Corn. L. Rev. 1, 89-90 (1990). So rare was it for an African American to serve on a jury that it was worthy of a news article, and this was so well into the twentieth century:

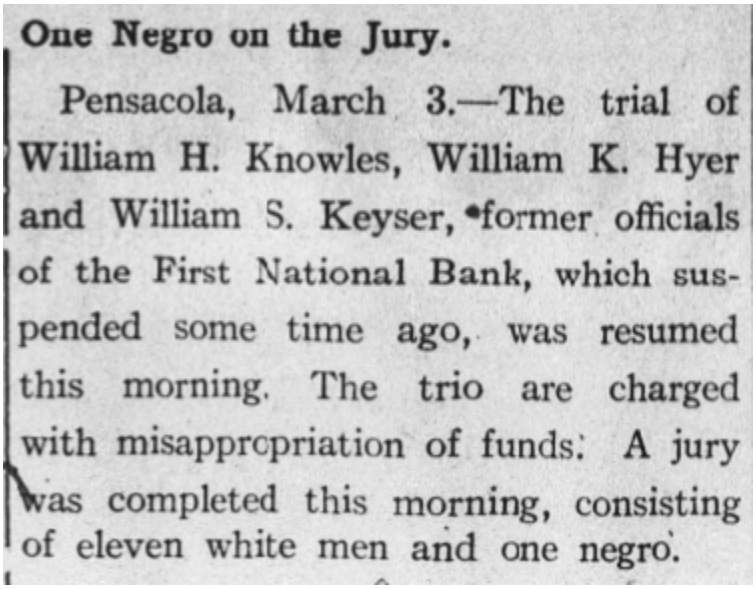
"It is strange that the presence of a negro on the jury should not have attracted sufficient attention to have caused an inquiry into his

eligibility as a jury man." *That Federal Jury*, Panama City Pilot, Nov. 27, 1924, at 1.

"At one point it looked as though the first negro juror in Monroe County was to be selected." *Child Molesting Trial Jury Chosen*, Key West Citizen, Dec. 11, 1952, at 1, 3.

"A negro juror was picked today to try Felix Combs, a negro roustabout, for raping a Clearwater woman. Selection of Henry Davis of Tarpon Springs marked one of the few times a negro has been selected for jury duty." *Negro Juror*, Sanford Herald, Oct. 4, 1948, at 1.

"The names of several Negroes were included in the 1950 jury list. Last fall, the county's first Negro juror served when Calvin Smith was named on the venire which heard a cattle rustling case in Circuit Court." *First Two Women are Picked for Possible Jury Duty in County*, Citrus Cnty. Chron., Feb. 16, 1950, at 1.



One Negro on the Jury.

Pensacola, March 3.—The trial of William H. Knowles, William K. Hyer and William S. Keyser, former officials of the First National Bank, which suspended some time ago, was resumed this morning. The trio are charged with misappropriation of funds. A jury was completed this morning, consisting of eleven white men and one negro.

One Negro on the Jury, DeLand Daily News, March 3, 1915, at 3.

To top it off, the Legislature in that same session established convict leasing. Ch. 3034, Laws of Fla. (1877) (state prisoners); ch. 2090, Laws of Fla. (1877) (county prisoners). "By 1900, the South's judicial system had been wholly reconfigured to make one of its primary purposes the coercion of African Americans to comply with the social customs and labor demands of whites." Douglas A. Blackmon, *Slavery by Another Name: The Re-enslavement of Black People in America From the Civil War to World War II* 7–8 (2008)); Matthew J. Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866-1928* (1996) (noting the steady growth of Southern prison populations after the establishment of convict leasing: "Florida, with 125 prisoner in 1881, had 1,071 by 1904").

This sad history casts into relief another negative consequence of smaller juries: it denies a great number of citizens the "duty, honor, and privilege of jury service." *Powers v. Ohio*, 499 U.S. 400, 415 (1991). Many consider jury service an "amazing and powerful opportunity and experience—one that will strengthen your sense of humanity and your own responsibility." United States Courts, *Juror Experiences*, https://www.uscourts.gov/services-forms/jury-service/learn-about-jury-service/juror-experiences (last visited Jan. 6, 2026). Jury service, like civic deliberation in general, "not only resolves conflicts in a way that yields improved policy outcomes, it also transforms the participants in the deliberation in important ways—altering how they think of themselves and their fellow citizens." John Gastil & Phillip J. Weiser, *Jury Service as an Invitation to Citizenship: Assessing the Civic Values of Institutionalized Deliberation*, 34 Pol'y Stud. J. 605, 606 (2006). Jury service is a "means of affording every citizen the chance to step into the state's shoes, to see the inner workings of the justice system, and to feel first-hand the power of self-government." *Id.* at 619. "In other words, the jury is a sacred, institutionalized opportunity for citizens to experience the transformative power of public deliberation." *Ibid.*

In view of the foregoing, this Court should grant the petition, recede from *Williams*, restore the ancient right to a jury of twelve and reverse Petitioner's conviction. In the alternative, the petition should be held pending the disposition of *Parada v. United States*, No. 25-166, and *Minor v. Florida*, No. 24-7489.

c. *Williams* is bad precedent.

Bad precedent cannot stand, even if it has been on the books for decades. Because *Williams* was wrong when it was decided and it is wrong now, it is bad precedent and must be overturned.

In *Dobbs v. Jackson Women's Health Organization*, 597 U. S. 215 (2022), this Court noted that "stare decisis is not an inexorable command" and "is at its weakest when [the Court] interpret[s] the Constitution." *Id.*, at 264. The case reporters are filled with cases where a party challenged a long-settled law and succeeded in overturning it. See, *e.g.*, *ibid.*; *Brown v. Board of Educ.*, 347 U. S. 483 (1954).

"[W]hen it comes to the interpretation of the Constitution—the 'great charter of our liberties,' which was meant to endure through the long lapse of the ages—we place a high value on having the matter settled right." *Dobbs*, *supra*, at 264 (cleaned up). And, "when one of

our constitutional decisions goes astray, the country is usually stuck with the bad decision unless we correct our own mistake." *Ibid.* "Therefore, in appropriate circumstances [the Court] must be willing to reconsider, and if necessary, overrule constitutional decisions." *Ibid.*

"Beyond workability, the relevant factors in deciding whether to adhere to the principle of stare decisis include the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned." *Montejo v. Louisiana*, 556 U. S. 778, 792–93 (2009). This Court has also examined whether "experience has pointed up the precedent's shortcomings." *Pearson v. Callahan*, 555 U. S. 223, 233 (2009).

Williams has proved to be "fundamentally misguided." See *Loper Bright Enters. v. Raimondo*, 603 U. S. 369, 407 (2024). Primarily, *Williams* does not comport with an originalist interpretation of the Constitution. Up until *Williams* was decided, this Court had long recognized that a criminal defendant charged with a felony had a Sixth Amendment right to a twelve-person jury. *Williams*, for the first time in American jurisprudence, held otherwise. Even more egregious,

was the fact that this Court based its decision on a functionalist approach.

Now that *Ramos* has called into question this Court's earlier reliance on the functionalist approach, *Williams* should be revisited. Upon revisiting *Williams*, this Court should overturn it and return to an originalist interpretation of the Constitution.

CONCLUSION

The petition should be granted or held pending the disposition of *Parada v. United States*, No. 25-166, and *Minor v. Florida*, No. 24-7489.

Respectfully submitted,

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