

No. 26-5476

IN THE
SUPREME COURT OF THE UNITED STATES

DANIEL O. CONAHAN, JR.,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR SEPTEMBER 10, 2026, AT 6:00 P.M.

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CAPITAL CASE
QUESTION PRESENTED FOR REVIEW

[Capital Case]

I. Whether certiorari review should be granted where the Florida Supreme Court rejected the postconviction motion for DNA testing based on independent and adequate state law grounds of legal insufficiency?

II. Whether this Court should grant review of a decision of the Florida Supreme Court that Florida's scheduling order directing Conahan's execution violated due process because it failed to provide him with adequate time to investigate and raise unidentified, inadequate and baseless claims?

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OPINION BELOW

Conahan v. State, 2026 WL 2603686 (Fla. Sept. 3, 2026).

JURISDICTION

This Court has jurisdiction over Conahan's questions. *See* 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Respondent accepts the constitutional, procedural and statutory provisions identified by Conahan.

STATEMENT OF THE CASE AND FACTS

Daniel O. Conahan, Jr. received a death sentence for the kidnapping and murder of Richard Alan Montgomery. On August 11, 2026, Governor Ron DeSantis signed a warrant for Conahan, and his execution is scheduled for Thursday, September 10, 2026, at 6:00 p.m.

Facts of the Crime and Procedural History

Daniel Conahan, Jr. was charged by indictment with the premeditated murder of Richard Montgomery, felony-murder, kidnapping and sexual battery. He waived jury proceedings in the guilt phase and the Court found Conahan guilty of first-degree premeditated murder and kidnapping. Following a unanimous recommendation by the jury selected for the penalty phase, Conahan was sentenced to death on December 10, 1999.

The Florida Supreme Court affirmed Conahan's convictions and death sentence. *Conahan v. State*, 844 So. 2d 629 (Fla. 2003). It summarized the relevant facts as follows:

On April 16, 1996, Richard Montgomery, who lived with his sister, was with Bobby Whitaker, Gary Mason, and other friends when he mentioned that he was going out to make a few hundred dollars and would be back shortly. When asked whether it was legal, he smiled. Montgomery also told his mother that someone had offered to pay him \$200 to pose for nude pictures, but he did not tell her who made the offer. In the same conversation, Montgomery mentioned that he had recently met the defendant Daniel O. Conahan, Jr., who lived in Punta Gorda Isles and was a nurse at a medical center. The last time friends saw Montgomery alive was on April 16 between 4 p.m. and 7 p.m.

The next day, April 17, Thomas Reese and Michael Tish, who were storm utility engineers for Charlotte County, discovered a human skull in a remote, heavily wooded area off of Highway 41 and immediately notified the police department. While searching the scene, deputies found the nude body of a young, white male that was later identified as Richard Montgomery. He had visible signs of trauma to the neck, waist, and wrists, and the genitalia had been removed. The forensic lab personnel arrived and collected various items from the scene, including a rope found on the top of a nearby trash pile, carpet padding that covered the victim's body, a skull and a torso (neither of which belonged to the victim), a gray coat, and various combings from the victim's arms, hands, chest, pubic area, and thighs. On the following day, Deputy Todd Terrell arrived on the scene with a K-9 dog which showed significant interest in a sabal palm tree, specifically the side of the tree which was somewhat flattened and damaged.

An autopsy revealed that Montgomery died as a result of strangulation. He had two ligature marks on the front of his neck, two horizontal marks on the right side of his chest, and abraded grooves around his wrists. All of the grooves were of similar width, did not extend to Montgomery's back, and were consistent with marks that would be left on an individual who had been tied to a tree.

Due to the unique nature of the homicide (being tied to a tree naked and then strangled), police reviewed a similar assault reported on August 15, 1994. The victim, Stanley Burden, was a high school dropout who, like Montgomery, had difficulty keeping a steady job and had physical features similar to those of Montgomery. The report indicated that Burden met Conahan, who offered to pay him \$100 to \$150 to pose for nude photographs. Burden agreed and Conahan drove him to a rocky dirt road in a secluded area where Conahan pulled out a duffle bag with a tarp and a Polaroid camera. The two men headed into the woods where

Conahan laid the tarp out and asked Burden to take off his shirt and show a little hip. After taking numerous pictures of Burden, Conahan then took out a new package of clothesline so he could get some bondage pictures. He asked Burden to step close to a nearby tree and then clipped the clothesline in several pieces, draping them over Burden to make it look like bondage. Conahan moved behind Burden, snapped the rope tightly around him, pulled his hands behind the tree, placed ropes around his legs and chest, and wrapped the rope twice around Burden's neck. Conahan then performed oral sex on Burden and attempted to sodomize him. Burden fought to position himself in the middle of the tree while Conahan tried to pull him to the side to have anal sex. After many unsuccessful attempts, Conahan snapped the rope around Burden's neck, placed his foot against the tree, and pulled on the rope in an attempt to strangle Burden, who tried to slide around the tree to keep his windpipe open. Conahan hit Burden in the head and unsuccessfully attempted to strangle him for thirty minutes. Conahan asked Burden why he would not die and finally gave up, gathered his possessions, and left. Burden freed himself, went to a local hospital, and received treatment for his injuries. The police located the crime scene and found that one of the melaleuca trees had ligature indentions that corresponded with Burden's injuries.

Based on this information, the police began an undercover investigation of Conahan. On May 24, 1996, Deputy Scott Clemens was approached by Conahan at Kiwanis Park, and Conahan offered Clemens \$7 to show his penis or \$20 if Clemens would allow Conahan to perform fellatio. Clemens refused the offer and the next day returned to the park where he again encountered Conahan, who offered him \$150 to pose for nude photos.

On May 31, 1996, pursuant to a warrant, the police searched Conahan's residence and vehicles and obtained paint samples from his father's Mercury Capri, which Conahan occasionally used. The police then compared paint samples from the Capri with a paint chip from the victim's body and found that they were indistinguishable.

On February 25, 1997, Conahan was indicted for first-degree premeditated murder, first-degree felony murder, kidnapping, and sexual battery of Richard Montgomery. In the guilt phase of his trial, Conahan waived his right to trial by jury. The State presented evidence of the manner in which the victim's body was found and evidence obtained from the autopsy and the searches of Conahan's residence and vehicles. The State also presented evidence that on the day of

Montgomery's disappearance, April 16, 1996, at 6:07 p.m., Conahan's credit card was used to purchase clothesline, Polaroid film, pliers, and a utility knife from a Wal-Mart store in Punta Gorda. Still photos showed that minutes later, at 6:12 p.m., Conahan withdrew funds from an ATM which was located close to the Wal-Mart.

The trial court permitted the State to introduce Williams rule evidence of Burden's attempted murder and sexual battery, ruling that the evidence was sufficiently similar to the evidence leading up to Montgomery's death so as to constitute a unique modus operandi sufficient to establish the identity of Montgomery's murderer. After the guilt phase of the trial was completed, the trial court found and adjudicated Conahan guilty of first-degree premeditated murder and kidnapping.

On November 1, 1999, the penalty phase of Conahan's trial was conducted before a jury at which time photos taken at the crime scene of the victim's body were published, and Deputy Gandy testified relative to the crime scene and how the body was found. Gandy further testified that during an interview Conahan told him that he had a fantasy involving bondage and sex.

The medical examiner, Dr. Carol Huser, testified regarding the autopsy report prepared by Dr. Imami. After examining Dr. Imami's report and viewing the autopsy photographs, Dr. Huser concluded that Montgomery died by ligature strangulation. The autopsy photographs were published to the jury. Dr. Huser also testified that being killed in such a manner required applying pressure for a length of time notwithstanding the fact that the victim loses consciousness after only a few seconds. She further opined that to be killed by strangulation would be terrifying.

Conahan's aunt, Betty Wilson, testified on behalf of the defense that Conahan was a jovial, personable individual who participated in family activities and cared for his ailing mother before she died. Robert Lindy and his daughter Nancy Thomson, the father and sister of Hal Lindy, who was Conahan's roommate and lover when he lived in Chicago, testified that Conahan was like another son and brother to them. Conahan was instrumental in helping Hal and Nancy overcome alcoholism, was considered one of the family, and was included in many family functions. Thereafter, the defense rested its case.

Before the jury deliberated, the trial court gave instructions relative to the following aggravators: (1) the murder was heinous, atrocious, or cruel (HAC); (2) the murder was cold, calculated, and premeditated (CCP); and (3) the murder was committed during the course of a kidnapping. By a vote of twelve to zero, the jury recommended the death penalty. A Spencer hearing was held on November 5, 1999, and on December 10, 1999, Conahan was sentenced to death for the first-degree murder of Richard Montgomery and to fifteen years' imprisonment for kidnapping.

Conahan v. State, 844 So. 2d 629, 632-34 (Fla. 2003) (footnotes omitted).

Postconviction Proceedings

Conahan filed an initial rule 3.851 motion followed by four successive postconviction motions. *Conahan v. State*, 118 So. 3d 718 (Fla. 2013); *Conahan v. State*, 2017 WL 656306 (Fla. Feb. 17, 2017); *Conahan v. State*, 258 So. 3d 1237 (Fla. 2018); *State v. Conahan*, 1997-CF-166 (Fla. 20th Cir. Ct. July 14, 2026); *Conahan v. State*, 2026 WL 2603686 (Fla. Sept. 3, 2026). Summary denial of Conahan's Rule 3.853 Motion for Postconviction DNA testing was affirmed. *Conahan v. State*, 2026 WL 2603686 (Fla. Sept. 3, 2026).

In addition, Conahan has litigated class action claims in two proceedings- *Lightbourne v. McCollum*, 969 So. 2d 326 (Fla. 2007) (denying class petition, which Conahan had joined, challenging the constitutionality of Florida's lethal injection procedures); *Abdool v. Bondi*, 141 So. 3d 529 (Fla. 2014) (denying class petition, which Conahan had joined, challenging the constitutionality of the Timely Justice Act of 2013).

Federal Habeas Proceedings

Conahan's petition seeking federal habeas review was summarily denied by the United States District Court for the Middle District of Florida in 2023. *Conahan v. Sec'y, Department of Corrections*, 2023 WL 2648168 (M.D. Fla. Mar. 27, 2023). Denial of his motion for certificate of Appealability was affirmed by the Eleventh Circuit. *Conahan v. Sec'y, Department of Corrections*, 2024 WL 2950845 (11th Cir. May 31, 2024), and this Court denied certiorari review. *Conahan v. Dixon*, 145 S. Ct. 1195 (2025).

REASONS FOR DENYING THE PETITION

I. Certiorari Review Should Be Denied Because the Florida Supreme Court Rejected the Postconviction Motion for Additional DNA Testing Based on Independent and Adequate State Law Grounds as well as Legal Insufficiency.

Conahan challenges the Florida Supreme Court's decision affirming the trial court's summary denial of his motion seeking postconviction DNA testing. He asserts that the Florida Supreme Court's application of its own precedent and interpretation of Florida's procedural rules governing postconviction DNA testing violates this Court's decision in *Dist. Atty's Office for Third Jud. Dist. v. Osborne*, 557 U.S. 52 (2009) as well as his substantive and procedural due process rights. But the Florida high court's ruling was based solely on state law. This Court does not review matters of state law in the absence of a constitutional question. There is no conflict between the lower appellate courts and the Florida Supreme Court's decision nor is there any conflict between the lower court's decision and this Court's precedent. This Court

should deny review of this claim.

The Florida Supreme Court's Decision

The Florida Supreme Court affirmed the state postconviction court's denial of Conahan's Rule 3.853 motion for DNA testing and found Conahan's motion meritless because his allegations made in support of his motion failed to meet the pleading requirements. The items in question included two cigarette butts found at the scene, a hair recovered from the sheet used to transport Montgomery to the morgue, and fingernail clippings from Montgomery's hands. All of these items, the Florida Supreme Court noted, had been previously tested prior to trial. The cigarette butts and hair contained DNA that was not Conahan's, which the Court found was not surprising given that the area from which those items were recovered was a trash dump. This information was also known at the time of Conahan's trial.

As for the fingernail clippings, the Florida Supreme Court noted that pre-trial testing revealed only Montgomery's DNA. Conahan's Rule 3.853 motion speculated that Montgomery clawed or scratched at his attacker. And because it was Conahan's burden to establish a reasonable probability that DNA testing would exonerate him or result in a lesser sentence, his speculation that "maybe" someone else's DNA would be found if renewed testing were authorized failed to meet the reasonable probability standard imposed by Rule 3.853.

Conahan's continued challenge to evidence adduced at trial fails to undermine the Florida Supreme Court's analysis. Testimony from the State's fiber analyst demonstrated that fibers found at the scene were indistinguishable from fibers found

in Conahan's car or home. An unusual paint chip was recovered through combing of Montgomery's pubic area; that chip was found to have four separate and distinguishable layers of paint, each a different color. The State's expert opined that it was indistinguishable from a paint sample taken from Conahan's car. In short, the chip either came from Conahan's car, or from some other car with the exact same four layers of different colored paint. The Respondent also notes that Conahan testified at trial that he had never met Montgomery (R v.35 p. 1922), which is highly improbable given the presence of fiber and paint chip evidence connecting him with the decedent.

But paint and fiber evidence was not the only thing linking Conahan with Montgomery. Once he was developed as a suspect, Conahan approached two law enforcement officers posing as young homeless men and made the same offer that Stanley Burden testified to—cash in exchange for bondage-themed photographs. In addition, there was testimony (summarized in the Florida Supreme Court's opinion on direct appeal) that Conahan not only knew Montgomery, but told one of his cell-mates that he'd been on beer runs with him, and that "Montgomery was a mistake." Finally, the State presented evidence that Conahan tied up, sexually battered and attempted to murder another victim, Stanley Burden, who survived the ordeal.

Evidence of Conahan's guilt was strong, and as the trier of fact stated in finding him guilty, the presence of the paint chip in what was left of Montgomery's mutilated pubic area demonstrated that the chip was likely deposited there at or near the time of Montgomery's death. The Court expressly found that Conahan's testimony was not

credible. (R v.35 pp. 2015-16).¹ In short, Conahan was found guilty despite the fact that DNA from the crime scene did not match him. Discovery of additional DNA would not exonerate him.

Conahan also makes a weak due process argument by suggesting that the trial court improperly denied his Rule 3.853 motion prematurely without argument (Petition, p. 18). The Rule, however, plainly states that once the State has filed a response, the court may enter summary denial of the motion. There is no requirement that the parties be given an opportunity for a hearing or even further argument; disposition of the matter is plainly left to the court's discretion. This is not a due process violation, or anything like one.²

Solely Matters of State Law

The Florida Supreme Court's application of its own procedural rules fails to

¹ Conahan's guilt phase was tried before the court, as Conahan waived a jury until after he was convicted.

² Conahan's reliance on *Skinner v. Switzer*, 562 U.S. 521 (2011) to support his due process argument fails. *Skinner* addressed only the narrow question of whether a defendant challenging the State's refusal to permit additional DNA testing may do so in federal court under 42 U.S.C. § 1983 as opposed to a federal habeas corpus application. Further, whereas in *Skinner* there were items found at the crime scene (knives and a bloody axe handle) that had never been tested, Conahan does not argue that the State failed to test items found at the crime scene—only that he wants those items to be tested *again*. In *Gutierrez v. Saenz*, 606 U.S.305 (2025), the defendant sought to establish through DNA testing that his co-defendant killed the victim. Whereas *Gutierrez* had a specific perpetrator he sought to implicate, Conahan hopes to establish his non-presence by showing that someone else's DNA is present at the scene. Florida's high court held that Conahan's claim was speculative and insufficiently pled, however. The presence of someone else's DNA at the crime scene (which, after all, was a trash dump site) would neither exonerate nor reduce his present death sentence.

justify certiorari review. This Court has no jurisdiction to review the case if the state court judgment rests on a state law ground that is both an adequate and independent basis for the state court's decision. *See Foster v. Chatman*, 578 U.S. 488, 497 (2016). This “adequate and independent state grounds” rule stems from the fundamental principle that this Court lacks jurisdiction to review matters resolved solely through state law. *See Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945). This Court has stated that its “only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And [that] power is to correct wrong judgments, not to revise opinions” or “render an advisory opinion.” *Id.* Thus, if a state court's decision is separately based on state law, this Court “will not undertake to review the decision.” *Florida v. Powell*, 559 U.S. 50, 57 (2010).

No Conflict with this Court

There is no conflict between this Court's due process jurisprudence and the Florida Supreme Court's decision denying the DNA motion. The core of due process is the right to notice and a meaningful opportunity to be heard. *LaChance v. Erickson*, 522 U.S. 262, 266 (1998). Indeed, there is no federal constitutional right to postconviction proceedings at all. *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987) (“States have no obligation to provide” for postconviction relief). And any procedural due process rights are diminished at the postconviction stage due to the presumption of correctness in the defendant's conviction. *See Osborne*, 557 U.S. at 69 (explaining the right to due process in postconviction proceedings “is not parallel to a trial right”).

There is also no federal substantive due process right to DNA testing. *Osborne*,

557 U.S. at 72-74. When a State chooses to offer help to those seeking relief from convictions, such as enacting DNA testing statutes or adopting rules of court allowing DNA testing, “due process does not dictate the exact form such assistance must assume.” *Id.* at 69. And any procedural due process right at the postconviction stage is only required to meet the fundamental fairness standard of *Medina v. California*, 505 U.S. 437, 446, 448 (1992). Conahan has never shown a reasonable probability of either exoneration or a lesser sentence, a burden the Florida Supreme Court found was a prerequisite under state law.³

The Florida Supreme Court’s application of state procedural law does not create a constitutional claim necessitating this Court’s consideration. The procedural grounds the state courts used to deny relief are independent and adequate state law grounds which do not raise a colorable constitutional claim or a basis for certiorari review. This Court should deny certiorari.

II. Conahan was afforded due process in the lower court.

Neither the Fifth nor Fourteenth Amendments of the United States Constitution require state courts to provide a convicted defendant unlimited time to

³ Conahan’s argument relating to the State’s continued DNA analysis omits important context. As Conahan recognizes, law enforcement has found additional bodies in remote, wooded locations similar to where Montgomery was found, all of whom were likely murdered. The State has a responsibility to investigate criminality, and Conahan for inexplicable reasons takes the position that it is *unfair* for the State to continue testing in cases where Conahan is, admittedly, a suspect while denying him the same opportunity. There is no view of Conahan’s argument that would support a conclusion that he is being denied any constitutional right to DNA testing in cases where he is merely a suspect.

advance postconviction challenges. The State of Florida *does* provide an avenue for raising collateral challenges. Conahan availed himself of all of them and more, as summarized earlier. The fact that Florida's Governor signed a death warrant directing his execution on a date certain (which naturally limits further challenges to his judgment and conviction) is not a violation of due process. The state court proceedings satisfied the requirements of due process.

A. This Case is a Poor Vehicle to Decide the Questions Presented.

There are three principal reasons why Conahan's case would be an extremely poor vehicle for this Court to decide the questions presented: (1) it does not concern an important question of federal law, (2) this Court lacks jurisdiction to consider the questions, and (3) the lower court's decision does not conflict with any decision of a state court of last resort, United States court of appeals, or this Court.

First, Conahan's due process challenge does not concern an important question of federal law because the United States Constitution does not require a State provide a right to *any* postconviction collateral appeal. *Finley*, 481 U.S. at 557; *Murray v. Giarratano*, 492 U.S. 1, 10 (1989) (holding that, in the capital context, "[s]tate collateral proceedings are not constitutionally required as an adjunct to the state criminal proceedings and serve a different and more limited purpose than either the trial or appeal"). The due process Conahan was entitled to under the United States Constitution ended when his direct appeal and his federal habeas proceedings concluded. Any subsequent right he has to challenge his conviction arises exclusively from Florida Rules of Criminal Procedure 3.851 and 3.853, not his federal

constitutional rights. *Finley*, 481 U.S. at 559. He has no right under the United States Constitution to raise any additional challenge, nor can he claim that any federal due process rights were violated in a procedure governed entirely by state procedural rules.

Second, this Court lacks jurisdiction over the questions presented because the Florida Supreme Court's opinion on Conahan's due process challenge was based on adequate and independent state grounds. *Michigan v. Long*, 463 U.S. 1032, 1040 (1983) ("If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.") The independent grounds doctrine applies regardless of whether the state law is "substantive or procedural." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). Conahan first sought postconviction DNA testing under Florida Rule of Criminal Procedure 3.853. The Florida Supreme Court determined that, under well-established state law, he was not entitled to such testing. *See Conahan*, 2026 WL 2603686. That analysis is undisputedly a decision rooted in state law. As to the "compressed warrant litigation schedule," the Florida Supreme Court referenced its own case law to determine that Conahan made no showing that he was denied any "notice or an opportunity to be heard." *Id.* Moreover, the judicial process he now claims violated his federal due process rights arises solely from his right to seek additional postconviction relief under state law. As more fully explored above, a decision about a right solely granted to him under state procedural

rules logically must be grounded exclusively in state law. This court lacks jurisdiction over his due process challenge.

Third, the Florida Supreme Court's decision does not conflict with the decision of any other court of last resort, United States court of appeals, or this Court. *See* Sup. Ct. R. 10(b)-(c). As explained above, the decision of the Florida Supreme Court is entirely consistent with the precedent of this Court and Conahan has pointed to no conflicting state or federal court decisions. Therefore, there would be little value in this Court granting review of the state court's sound judgment.

B. Conahan was Afforded Adequate Due Process.

Even if federal due process protections apply to Conahan's postconviction challenge, his claim fails because he has not adequately identified how he was denied notice or the opportunity to be heard. The United States Constitutional right to due process does not preclude a state from imposing limits on when and under what circumstances a defendant may advance a postconviction challenge. Rather, "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (*quoting Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). While Conahan presents this Court with lengthy complaints about the inconvenience of his execution schedule, none of these complaints amount to a violation of federal due process protections.

In the State of Florida, to initiate a defendant's execution, the Governor must sign a "death warrant." *See* § 922.052(2)(a)-(c), Fla. Stat. A Defendant becomes "death

eligible” once they have exhausted their initial state and federal appellate remedies. *See* § 922.052(2)(a), Fla. Stat. When the Governor signed his death warrant, Conahan had already challenged his death sentence in a direct appeal, an initial postconviction challenge, a federal habeas petition, and multiple successive postconviction challenges. *Conahan*, 2026 WL 2603686. He now claims that the schedule of his death warrant did not afford him sufficient time to develop *another* collateral challenge to his death sentence. Conahan was convicted in 1999; he has had more than 26 years to advance challenges and he has taken full advantage of every opportunity to do so. That he was not given even more time to advance meritless claims fails to establish a denial of due process.

Despite his general insistence he was improperly denied evidentiary development of his motion for additional DNA testing, Conahan has not sufficiently identified what notice or opportunity to be heard he was denied. The record before this Court provides two reasons why he cannot do so. First, he was able to present to the trial court reasons in support of his challenge. The trial court duly considered the factual claims advanced in Conahan’s Motion and made rulings based on the information presented. That Conahan was unable to provide a sufficient factual basis to justify his request is not a denial of due process, but instead merely demonstrates the meritless nature of the claim. Second, both the trial court and Florida Supreme Court determined that, as a matter of state law, Conahan’s Rule 3.853 motion failed because it was meritless. *Conahan*, 2026 WL 2603686. Affording Conahan more time to litigate a meritless challenge would be fruitless. He was afforded all the process he

was due. His disagreement with the *outcome* of that process fails to demonstrate a violation of any federal due process protections.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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