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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ENIL JABIB CLAROS, Petitioner, v. SERGIO ALBARRAN, et al., Respondents.	Case No. 3:25-cv-9473-EMC **RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE** Hon. Edward M. Chen

I. INTRODUCTION

U.S. Immigration and Customs Enforcement's (ICE) redetention of Petitioner Enil Jabib Claros complied with the constitution, the relevant statutes, and the relevant regulations. Petitioner is subject to a final order of removal from the United States because he unlawfully reentered the United States after being ordered removed previously. After reinstatement of his prior removal order, Petitioner expressed a fear of returning to Honduras and requested a reasonable fear interview. Petitioner was released while his reasonable fear interview request remained pending. On November 3, 2025, an asylum officer determined that Petitioner did not have a reasonable fear of persecution or torture in Honduras, and ICE subsequently detained him to effectuate his removal. On November 10, 2025, the Immigration Judge (IJ) vacated the negative reasonable fear finding and placed Petitioner in withholding-only proceedings.

Petitioner brought this habeas petition and motion for temporary restraining order to prevent his detention without a bond hearing before the government effectuates his removal. However, Petitioner is subject to a final order of removal and is now in withholding-only proceedings. He is also inadmissible, a flight risk, and a danger to the community. Thus, the government is statutorily and constitutionally permitted to detain Petitioner to effectuate his removal, without providing a bond hearing, at least until his detention becomes impermissibly "prolonged." Because Petitioner was detained for only two days, his removal is presumptively foreseeable, and he cannot claim that he is subject to prolonged detention.

Petitioner's constitutional claims are without merit. Congress has created a comprehensive scheme governing the detention of noncitizens pending removal, and the Department of Homeland Security (DHS) has promulgated detailed regulations to implement that scheme, all of which the Supreme Court has consistently upheld. Granting Petitioner's requested relief would judicially graft on an additional layer of detention review that Congress, the Executive Branch, and the Supreme Court have never held is required in these circumstances. The Court should thus deny Petitioner's motion for a preliminary injunction.

II. FACTUAL BACKGROUND

A. Petitioner's Removal, Unlawful Reentry, and Criminal History

Petitioner is a native and citizen of Honduras. *See* Pet. ¶ 18. ICE records indicate that Petitioner first entered the United States unlawfully at an unknown time and place. *See* Declaration of Deportation

Officer Christopher Jerome ("Jerome Decl."), ¶ 8 & Exh. 1. On April 4, 2011, Petitioner was convicted for committing Battery in violation of Section 242 of the Cal. Penal Code. *See id.* ¶ 10 & Exh. 1. On April 6, 2011, DHS encountered Petitioner because of his arrest and incarceration in the Sacramento County Jail. *See id.* ¶ 11 & Exh. 1. DHS served Petitioner a Notice to Appear. *Id.* On May 18, 2011, the Petitioner accepted a removal order from the IJ after not filing an application for relief. *See id.* ¶ 12 & Exh. 2. On June 23, 2011, the Petitioner was removed from the United States. *See id.* ¶ 13 & Exh. 3.

On or around July 7, 2019, Border Patrol Agents encountered the petitioner and members of his family in the Del Rio, Texas Border Patrol Sector. *See id.* ¶ 14 & Exh. 4. Petitioner stated he entered the United States without inspection or admission. *Id.* DHS briefly detained Petitioner, he claimed a fear of returning to Hondruas, and then DHS released him the next day awaiting a reasonable fear interview. Pet. ¶ 19; Jerome Decl. ¶ 15 & Exhs. 4, 6. On July 8, 2019, DHS served Petitioner with Form I-871, Notice Of Intent/Decision To Reinstate Prior Order, which reinstated Petitioner's 2011 removal order. *See id.* ¶ 15 & Exh. 5. On June 12, 2021, Petitioner was arrested for felony domestic violence under section 273.5(a) of the Cal. Penal Code. *See id.* ¶ 16. He was not prosecuted. *See id.* & Exh. 6.

B. Petitioner's Request for Withholding of Removal to Honduras

On November 3, 2025, DHS interviewed Petitioner and found that Petitioner did not have a reasonable fear of persecution because there was no reasonable possibility that he would be persecuted or tortured in Honduras. *See* Jerome Decl. ¶ 17 & Exh. 6. Petitioner requested that an IJ review the officer's decision. *Id.* ICE detained Petitioner immediately following the negative reasonable fear finding. *See id.* ¶ 18. That same day, Petitioner filed a petition for writ of habeas corpus. *See id.* On November 4, 2025, Petitioner filed a motion for a temporary restraining order. *See id.* ¶ 19. On November 5, 2025, the U.S. District Court for the Northern District of California granted Petitioner's motion for temporary restraining order and ordered Petitioner's immediate release. *See id.* ¶ 20. ICE then released Petitioner from its custody. *Id.* On November 10, 2025, the IJ vacated DHS's negative reasonable fear determination and placed Petitioner in withholding-only proceedings. *See id.* ¶ 21. Petitioner is still subject to a final removal order, but the IJ will determine whether he can be removed to Honduras.

III. LEGAL STANDARDS

A. Detention of Noncitizens Under 8 U.S.C. § 1231

The detention of a noncitizen[1] following reinstatement of a prior order of removal is governed by 8 U.S.C. § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021). Section 1231(a)(2) provides that the government "shall detain" the noncitizen for a 90-day "removal period," the commencement of which can be triggered by various events in the noncitizen's proceedings. *See* 8 U.S.C. § 1231(a)(1)(B). Thereafter, the noncitizen "may be detained beyond the [90-day] removal period" if, among other things, he is "inadmissible" (for example, because he reentered the country unlawfully, *see* 8 U.S.C. § 1182(a)(9)(C)) or if the government determines that he is "a risk to the community or unlikely to comply with the order of removal." *Id.* § 1231(a)(6).

Section 1231(a) does not provide for a bond hearing for the noncitizen to challenge their detention. *See Guzman Chavez*, 594 U.S. at 526. Rather, noncitizens subject to final orders of removal can request review of their detention after the expiration of the 90-day removal period "where the alien has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). Additionally, the Supreme Court has recognized that detention of up to six months to effectuate the removal of a noncitizen is "presumptively reasonable" and constitutionally valid, though longer detention may require additional justification. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

B. Preliminary Injunctions

A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). The moving party must show that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

The purpose of a preliminary injunction is to preserve the status quo pending final judgment rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software,*

[1] This brief uses the term "noncitizen" as equivalent to the statutory term "alien." *See Barton v. Barr*, 140 S. Ct. 1442, 1446 n.2 (2020) (quoting 8 U.S.C. § 1101(a)(3)).

Inc., 739 F.2d 1415, 1422 (9th Cir. 1984). "A preliminary injunction can take two forms." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserves the status quo pending a determination of the action on the merits.'" *Id.* (internal quotation omitted). "A mandatory injunction orders a responsible party to take action," as Petitioners seek here. *Id.* at 879 (internal quotation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* Where plaintiffs seek a mandatory injunction, "courts should be extremely cautious." *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). The moving party "must establish that the law and facts *clearly favor* [their] position, not simply that [they are] likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original).

C. Habeas Corpus

Federal district courts may grant writs of habeas corpus if the petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). In immigration cases, the federal courts' habeas jurisdiction is limited by 8 U.S.C. § 1252(a)(2)(B), which provides that "no court shall have jurisdiction to review" "decision[s]" for which the statute grants "discretion" to the Attorney General.

IV. ARGUMENT

A. Petitioner's Due Process Claims Fail On The Merits

Petitioner is subject to a reinstated order of removal and is now in withholding-only proceedings. He is inadmissible due to his prior removal order, a flight risk given his previous illegal reentry, and a danger to the community when considering his criminal history. Thus, Petitioner's detention is thrice authorized by 8 U.S.C. § 1231(a)(6), and he has no right to a bond hearing before being detained. Petitioner's substantive and procedural due process claims therefore fail on the merits.

1. Petitioner's redetention does not violate 8 U.S.C. § 1231

Petitioner claims that his redetention outside the 90-day removal period violates 8 U.S.C. § 1231(a)(6). However, the plain language of 8 U.S.C. § 1231(a)(6) grants the Department of Homeland

Security the discretion to detain Petitioner beyond the 90-day removal if, among other things, he is "inadmissible" (for example, because he reentered the country unlawfully, *see* 8 U.S.C. § 1182(a)(9)(C)) or if the government determines that he is "a risk to the community or unlikely to comply with the order of removal." *Id.* § 1231(a)(6). Petitioner's immigration and criminal history establish that he is inadmissible, a risk of flight, and a danger to the community. Moreover, Congress authorized the Department of Homeland Security to promulgate regulations for the ongoing supervision of aliens who are not removed within 90 days. *See* 8 U.S.C. § 1231(a)(3). Those regulations specifically provide that the Department of Homeland Security may redetain an alien beyond the removal period in various circumstances, including, inter alia, if the purposes of release have been served. *See* 8 C.F.R. § 241.4(l).

That is what happened here. The Department of Homeland Security released Petitioner in July 2019 awaiting a reasonable fear interview. Pet. ¶ 19. On November 3, 2025, Petitioner received that reasonable fear interview, and an asylum officer determined that Petitioner did not establish a reasonable fear of persecution or torture in Honduras. Jerome Decl. ¶ 17. On November 10, 2025, the IJ vacated the negative reasonable fear finding and placed Petitioner in active withholding-only proceedings. *Id.* ¶ 21. Thus, the purposes of Petitioner's release in July 2019, to await the reasonable fear determination, had been served. Upon the completion of withholding-only proceedings, Petitioner will either be subject to removal to Honduras or to a third country. *See* 8 U.S.C. § 1231(b). The withholding-only proceedings *have no effect* on his underlying removability; instead, those proceedings only determine to which country he can ultimately be removed. *See* 8 C.F.R. § 1208.31(g)(2)(i); 8 C.F.R. § 1208.16. His redetention is therefore authorized by statute and regulation. *See* 8 U.S.C. § 1231(a)(3), (6); 8 C.F.R. § 241.4(l). A finding to the contrary would lead to the absurd result that Congress failed to provide the Department of Homeland Security with the authority to redetain an alien whose removal is reasonably foreseeable. Congress plainly authorized detention in these circumstances.

2. Petitioner's detention would not violate substantive due process.

The Supreme Court has held that noncitizens in Petitioner's procedural posture, i.e. those subject to reinstated removal orders in withholding-only proceedings, are subject to detention under § 1231 and "are not entitled to a bond hearing while they pursue withholding of removal." *Guzman Chavez*, 594 U.S. at 526; *see also, e.g.*, *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022) (rejecting argument

that § 1231(a)(6) "require[s] an initial bond hearing" "at the outset of detention"). "[T]he Supreme Court has ruled multiple times in multiple contexts that…1231(a) [is] facially constitutional without a bond hearing for at least a presumptive six-month period following detention." *Giorges v. Kaiser*, No. 25-CV-07683-NW, 2025 WL 2898967, at *6 (N.D. Cal. Oct. 10, 2025).

Indeed, the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also, e.g.*, *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that "the INS procedures are faulty because they do not provide for automatic review by an IJ of the initial deportability and custody determinations"); *Abel v. United States*, 362 U.S. 217, 233-34 (1960) (noting the "impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid."). Constitutional rights and procedures regarding criminal detention cannot be directly transposed onto immigration detention. As the Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Petitioner's substantive due process claim therefore fails. *See Demore*, 538 U.S. at 531; *see also Zadvydas*, 533 U.S. at 701 (recognizing a "presumptively reasonable period of detention" of up to six months to effectuate a final removal order).

True, noncitizens held under § 1231 may be able to obtain review of their detention after six months, including to avoid the constitutional problems with "prolonged" detention, but even then, only when their removal in no longer reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 ("After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing."). But Petitioner does not and cannot argue that his detention has become prolonged – he was only detained for two days – or that his removal is not reasonably foreseeable at this time. *See Guerra-Castro v. Parra*, No. 1:25-CV-22487, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) ("It is

only after the six-month period that the Court would consider Petitioner's evidence as to whether 'there is no significant likelihood of his removal from the United States in the reasonably foreseeable future.'"); *Thai v. Hyde*, No. 25-11499-NMG, 2025 WL 1655489, at *3 (D. Mass. 2025) (finding six-month *Zadvydas* period had not yet accrued, and Petitioner's previous ICE detention and years of release under an Order of Supervision did not count towards the detention period).

3. Procedural due process does not require an extra bond hearing

Petitioner asserts that his procedural due process claim is governed by *Mathews v. Eldridge*, 424 U.S. 319 (1976). The government does not concede that *Mathews* applies here, given "the unique constitutional treatment of detained aliens." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). The Supreme Court has never held that *Mathews* applies in the immigration detention context. Nevertheless, if the Court were to apply *Mathews*, it would consider three factors: the plaintiff's private interest, the risk of erroneous deprivation without additional procedures, and the government's interest. These factors weigh against the additional process requested here.

(i) Petitioner's history and status reduce his liberty interest

First, Petitioner's liberty interest is reduced by the fact that he is a noncitizen subject to a final order of removal. *See Uc Encarnacion v. Kaiser*, No. 22-cv-04369-CRB, 2022 WL 9496434, at *3 (N.D. Cal. Oct. 14, 2022); *see also Rodriguez Diaz* 53 F.4th at 1206-08. That is especially true in light of Petitioner's particular circumstances. Petitioner has unlawfully entered the country multiple times. He is subject to an administratively final order of removal. He has multiple criminal arrests and a conviction for battery. Jerome Decl. ¶ 10. Although he can seek withholding of removal to the specific country of Honduras, he cannot challenge the order of removal itself. *See Guzman Chavez*, 594 U.S. at 531, 535. Even if Petitioner's removal to Honduras is eventually withheld, Petitioner remains removable to other countries. *See* 8 U.S.C. § 1231(b). All of these factors reduce Petitioner's liberty interest here. *See Rodriguez Diaz*, 53 F.4th at 1206-08.

Petitioner's conditional prior release in July 2019 does not heighten his liberty interest. Petitioner has never been granted any form of lawful status in the United States; his release was always subject to revocation so that the government could effectuate his removal upon the conclusion of the reasonable fear/withholding-only process. Petitioner's conditional release does not somehow increase

the strength of his liberty interest now. *See Uc Encarnacion*, 2022 WL 9496434, at *3. This case is also fundamentally unlike cases such as *Morrisey v. Brewer*, 408 U.S. 471 (1972) and its progeny, where U.S. citizens were released from custody in other contexts, such as post-sentence parole: "The recognized liberty interests of U.S. citizens and aliens are not coextensive." *Rodriguez Diaz*, 53 F.4th at 1206. The government recognizes that any form of detention will implicate an individual's liberty interests, and that Petitioner, like virtually everyone subject to detention, has personal reasons for wanting to remain out of custody. But those reasons do not change the fact that Petitioner's status and his history in immigration proceedings reduce his liberty interest here.

(ii) The risk of erroneous deprivation is minimal

Second, the risk of erroneous deprivation of Petitioner's liberty here is minimal. *See Rodriguez Diaz*, 53 F.4th at 1209; *Uc Encarnacion*, 2022 WL 9496434, at *4. As the Supreme Court has long upheld, section § 1231 authorizes detention to effectuate an individual's removal. *See, e.g.*, *Guzman Chavez*, 594 U.S. at 526; *see also Zadvydas*, 533 U.S. at 701. And "existing agency procedures sufficiently protected [Petitioner's] liberty interest and mitigated the risk of erroneous deprivation." *Rodriguez Diaz*, 53 F.4th at 1209; *see also* 8 C.F.R. §§ 241.13(d)(1) & (j).

(iii) The government has a strong interest in detention pending removal

Turning to the third *Mathews* factor, the Ninth Circuit has held that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). And the Supreme Court has recognized that "aliens who reentered the country illegally after removal have demonstrated a willingness to violate the terms of a removal order, and they therefore may be less likely to comply with the reinstated order." *Guzman Chavez*, 594 U.S. at 544; *see also Rodriguez Diaz*, 53 F.4th at 1208-09 & n.8 (noting that "[t]he risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent").

Petitioner's request for an additional level of review would impose administrative and resource burdens on the government that would frustrate its ability to take congressionally authorized detention and removal actions. Congress empowered the Executive Branch to detain noncitizens ordered removed without providing them a pre-detention bond hearing. *See* 8 U.S.C. § 1231(a). Every extra hearing

before an IJ adds further congestion to an already backlogged immigration-court system. The government has a significant interest in avoiding these extra-regulatory burdens. *See Uc Encarnacion*, 2022 WL 9496434, at *4-5 (additional bond hearing would "thwart the Congressional design").

In short, the three *Mathews* factors weigh decidedly against granting Petitioner the additional, pre-detention hearing he now requests.

B. Petitioner Fails to Show Irreparable Harm

In addition to his failure to show a likelihood of success on the merits, Petitioner does not meet his burden of showing he will be irreparably harmed in the absence of a temporary restraining order. Petitioner claims irreparable injury if he is not afforded a hearing before he is detained again. However, Petitioner's speculative claimed injuries are "too tenuous" to support a preliminary injunction. *See Goldie's Bookstore, Inc. v. Superior Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Any claimed injuries regarding harm would arise from possible *detention*, not from the absence of a bond hearing. Petitioner's claimed injuries would not be prevented by a preliminary injunction that could still result in his re-detention following notice and a hearing.

Any injury from Petitioner's future potential detention is also insufficient because "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523; *see also, e.g.*, *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. And again, even if detained, Petitioner would have the opportunity to seek review of that detention if it extended more than six months and his removal were not reasonably foreseeable. Petitioner therefore cannot show that any injury he might suffer from the specific absence of a *pre*-detention hearing is "irreparable."

Finally, the alleged infringement of Petitioner's constitutional rights is insufficient when—as here—Petitioner fails to demonstrate "'a sufficient likelihood of success on the merits of [his] constitutional claims to warrant the grant of a preliminary injunction.'" *Marin All. For Med. Marijuana v. Holder*, 866 F. Supp. 2d 1142, 1160 (N.D. Cal. 2011) (quoting *Assoc'd Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)); *see also Meneses v. Jennings*, No. 21-cv-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021) (denying TRO where petitioner "assume[d] a deprivation to assert the resulting harm"). Given his undisputed status as a noncitizen subject to a final order of removal whose detention has not been prolonged, Petitioner cannot establish

that lawfully authorized detention would cause him irreparable harm.

C. Neither the Balance of Equities Nor Public Interest Favors Petitioner

When the government is a party, the last two factors that Petitioner must establish to obtain a preliminary injunction merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Here, for the same reasons that Petitioner has not shown the *Mathews* factors favor his requested additional process, Petitioner has not shown that a preliminary injunction barring his detention is in the public interest. To the contrary, the public interest lies squarely in detaining an individual subject to removal in the near term. *See Rodriguez Diaz*, 53 F.4th at 1208-09. "There is always a public interest in prompt execution of removal orders." *Nken v. Holder*, 556 U.S. at 436. Petitioner's motion ignores the public interest in application of immigration laws that the Supreme Court has long upheld. *See, e.g.*, *Demore*, 538 U.S. at 523; *see also Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (holding that the court "should give due weight to the serious consideration of the public interest" in enacted laws). Petitioner's claimed harm cannot outweigh the public interest in the application of the law, particularly since courts "should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (citation omitted). Recognizing the availability of preliminary injunction under such circumstances would permit any noncitizen who had been released pursuant to an order of supervision pending removal to petition a federal district court for additional review, circumventing the comprehensive statutory scheme that Congress enacted.

Petitioner's reliance on his assumed constitutional entitlement to an extra bond hearing does not save his argument. While it is "always in the public interest to protect constitutional rights," if, as here, the Petitioner has not shown a likelihood of success on the merits of that claim, that public interest does not outweigh the competing public interest in enforcement of existing laws. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The public and governmental interest in upholding the existing processes and permitting Petitioner to be detained without additional burdensome process is significant.

V. CONCLUSION

For the foregoing reasons, the Court should deny the motion for a preliminary injunction.

Respectfully submitted,

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Dated: November 12, 2025 By: */s/ William Skewes-Cox*
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