UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

OSCAR MOREJON VILLALOBOS	§	
	§	
Petitioner,	§	
	§	
v.	§	CIVIL NO. 5:25-cv-00246
	§	
MIGUEL VERGARA, *et al.*,	§	
	§	
Respondents.	§	

RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR SUMMARY JUDGMENT

The Government[1] responds to Petitioner's habeas petition and respectfully requests that this Court deny his petition under 28 U.S.C. § 2241 and grant summary judgment for the Government under Federal Rule of Civil Procedure 56.

SUMMARY OF THE ARGUMENT

Prior to addressing the merits, the Government acknowledges that this Court has previously rejected its arguments concerning the applicability of § 1225(b)(2). However, the Government, with this motion, requests a reconsideration of that prior ruling. *See Camreta v. Greene*, 563 U.S. 692, 701 n. 7 (2011)("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case."). For the reasons discussed below, including recent decisions from other courts in the Fifth

[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

Circuit and the Southern District of Texas, this Court should reconsider its interpretation of § 1225(b)(2) and find that Petitioner is subject to mandatory detention.

Petitioner fails to show his detention is unlawful. Based on the statute's plain language and structure, he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Additionally, the Board of Immigration Appeals (BIA) decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) and persuasive district court decisions, including the recent decision in *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (J. Eskridge), further show why Petitioner's detention is mandatory. Accordingly, this Court should deny Petitioner's habeas petition and grant summary judgment for the Government.

I. NATURE AND STAGE OF THE PROCEEDING

1. Petitioner is an alien currently in the custody of the United States Department of Homeland Security, Immigration and Customs Enforcement ("ICE") at the Webb County detention center in Laredo, Texas for removal proceedings pursuant to 8 USC §1229(a). Petitioner requested a custody redetermination from an immigration judge pursuant to 8 C.F.R. §1236, but later voluntarily withdrew the request pending clarification of whether Petitioner is a class member under *Maldonado Bautista v. Santacruz, Jr.*, No. 5:25-cv-1873, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 256, 2025). [Gov. Ex. 1]. The removal proceedings remain pending with Petitioner's initial immigration court hearing scheduled for December 30, 2025, at 8:30 am.

2. On December 02, 2025, Petitioner filed a petition for Writ of Habeas Corpus under 28 U.S.C. §2241 [Ecf. No. 1]. On December 03, 2025, this Court issued an Order to Answer the petition for Writ of Habeas Corpus and address whether Petitioner is a class member under *Bautista* by December 17, 2025, and the Government timely files this response.

II. RELEVANT FACTS

3. Petitioner, a citizen of El Salvador, entered the United States illegally in 2003 and has continued his illegal presence in the United States until ICE officials learned of his illegal status on November 10, 2025, and lawfully detained Petitioner. [ECF No. 1, at ¶¶ 15, 42-44]; [Gov. Ex. 2, I-213 Report of Petitioner, at p.2].

4. ICE served Petitioner with a Notice to Appear ("NTA") charging him with removability pursuant to Immigration and Nationality Act ("INA") section 212(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(6)(A)(i), as an alien "present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General." [Gov. Ex. 3]. In the NTA, the examining immigration official denied Petitioner admission into the United States, explained the basis for charging Petitioner with being subject to removal, and ordered Petitioner to appear in immigration court. *Id*.

5. The Department of Homeland Security instituted removal proceedings against Petitioner pursuant to 8 USC §1229(a), which remain pending before the Laredo Immigration Court, with an initial hearing scheduled December 30, 2025. [ECF No. 1, at ¶47].

6. On December 02, 2025, Petitioner filed a writ of habeas corpus, challenging the legality of his detention. [ECF No. 1]. He specifically alleges that 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b)(2), governs his detention and consequently, he should be released, amongst other relief requested. (*See generally* ECF No. 1).

III. APPLICABLE LAW

7. In a petition for a writ of habeas corpus, the petitioner is challenging the legality of the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it comes to

detention during removal proceedings, it is well-understood that the authority to detain is elemental to the authority to deport, as "[d]etention is necessarily a part of th[e] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."). As the Supreme Court has stated, "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

IV. ARGUMENT

A. Petitioner failed to exhaust his administrative remedies prior to filing the petition.

8. As a threshold matter, the Court should dismiss the habeas petitioner because Petitioner has not administratively exhausted his claims. In accord with the general rule that parties seeking relief against federal agencies must exhaust administrative remedies prior to seeking judicial relief, it is well-taken that a habeas petitioner must exhaust all administrative remedies prior to filing a federal habeas petition under § 2241. *See*, *e.g.*, *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (holding that a federal prisoner seeking habeas relief under § 2241 must first exhaust all available administrative remedies); *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (same); *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (same).

9. Petitioner argues that "he may choose to pursue a bond redetermination hearing before an Immigration Judge" even though Petitioner believes an administrative appeal of the bond decision would be futile in light of *Hurtado*. [ECF No. 1, at ¶ 48]. Yet. Petitioner filed then withdrew his request for custody redetermination with the Immigration Court Judge to determine if he is a member of the *Bautista* class. [Gov. Ex. 1]. Regardless, Petitioner has not exercised a custody redetermination at the time of this response and thus failed to exhaust his administrative remedies.

Moreover, the Fifth Circuit has recognized exceptions to the exhaustion requirement and noted that they "apply only in extraordinary circumstances," including when exhaustion would be "patently futile." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (internal quotation marks omitted). *Fuller* itself is illustrative, where the petitioner argued that administrative appeal was futile because the time for filing an appeal has already elapsed. *See id.* The Fifth Circuit disagreed, holding that "until he actually appeals and that appeal is acted on, we do not know what the appeals board will do with [petitioner]'s claim, and until the appeals board has been given an opportunity to act, [petitioner] has not exhausted his administrative remedies." *Id.*

10. Here, just because the administrative body is unlikely to find the law in the petitioner's favor does not mean that the "extraordinary circumstances" apply where exhaustion is futile. Petitioner must seek a bond, and if denied, she must appeal to (and receive a decision from) the BIA for the matter to be administratively exhausted. It is of little moment whether Petitioner would be able to successfully convince the BIA that *Hurtado* was wrongly decided or that his circumstances are factually distinguishable from *Hurtado*; the point is that Petitioner cannot eschew the process altogether. *See Abdoulaye Ba v. Director of Detroit Field Office, ICE*, No. 4:25-CV-02208, 2025 WL 2977712, at *2 (N.D. Ohio Oct. 22, 2025) (dismissing for failure to exhaust where petitioner sought "review of the application and interpretation of *Matter of Yajure Hurtado*" but had yet to appeal to the BIA). In sum, not only does the law require exhaustion, practical and intuitive considerations highlight why this result must follow here in the bond context.

B. Petitioner is Subject to Mandatory Detention Under 8 U.S.C. § 1225

11. Petitioner fails to meet his burden to show his detention is unlawful. He is an "applicant for admission" and consequently subject to mandatory detention under 8 U.S.C. § 1225(b)(2). When deciding whether 8 U.S.C. § 1225(b)(2) or 8 U.S.C. § 1226(a) is the applicable statute, the

underlying, dispositive issue is whether Petitioner is an "applicant for admission." *Compare* 8 U.S.C. § 1225(a),(b)(2) *with*, *id.* § 1226(a). If he is not, then 8 U.S.C. § 1226(a) is applicable and he would be entitled to a bond hearing. However, if he is considered an applicant for admission then 8 U.S.C. § 1225(b)(2) applies and his detention is not only lawful but mandated. *See id.* § 1225(b)(2)(A) (using "shall"). Based on the plain language of 8 U.S.C. § 1225, as well as other persuasive authorities, Petitioner is an applicant for admission. Consequently, 8 U.S.C. § 1225(b)(2) is the applicable statute, which mandates his detention. Thus, Petitioner fails to show his detention is unlawful.

i. The Plain Language and Statutory Structure of the INA

12. As always, "our inquiry begins with the statutory text, and ends there as well if the text is unambiguous." *BedRoc Ltd., LLC v United States*, 541 US 176, 183 (2004). And the text of 8 U.S.C. 1225 unambiguously provides that Petitioner is an "applicant for admission," subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

13. First, 8 U.S.C. § 1225(a)(1)'s clear meaning demonstrates Petitioner is an "applicant for admission." The statute defines such an applicant as "an alien present in the United States who has not been admitted or who arrives in the United States[]whether or not at a designated port of arrival." § 1225(a)(1). On its face, the statute defines an alien who *by his mere presence* in the United States without legal permission is an "applicant for admission" irrespective of when, where, or how the alien was apprehended during his unlawful presence in the United States. *See id.*

14. Section 1225(b)(2) provides the following:

> in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for [removal proceedings].

15. Based on this text, if an alien is an "applicant for admission," then they are subject to mandatory detention. The INA defines "applicant for admission" as "an alien present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). Here, there is no question that Petitioner was not previously admitted into the United States, and the Petitioner is therefore subject to mandatory detention and not eligible for a bond.

16. Petitioner argues, and the Government acknowledges that this Court has previously opined that there is a separate requirement: that Petitioner also be "seeking admission" as that phrase appears in 8 U.S.C. § 1225(b)(2). [ECF No. 1, at ¶39-41, 51]; *Jose Abercio Perdomo Flores v. Kristi Noem, et al*, No. 5:25-cv-00162, at *9-10 (S.D. Tex. 11/25/25)(Kazen, J.). Like in *Perdomo-Flores*, Petitioner avers that he is subject to the discretionary bond provisions in 8 U.S.C. § 1226(a) because although he entered the United States illegally, he was not apprehended until years later and is thus not "seeking admission," under 8 U.S.C. § 1225(b)(2) subjecting Petitioner to mandatory detention. [ECF No. ¶¶5-6, 37-41].

17. In *Perdomo-Flores*, this Court held the term "seeking admission is a present-tense, or current, ongoing action, and varies materially from the passive state of being an applicant." *Perdomo Flores*, No. 5:25-cv-00162, at *10. District Court's in this Circuit and outside have held the opposite. *See Valencia v. Chestnut*, No. 1:25-cv-01550 WBS JDP, 2025 U.S. Dist. LEXIS 225888, at *6-7 (E.D. Cal. 2025) ("The statutory language may cover a pro-active engagement with the process of becoming a lawful entrant, but…the term also functions as a legal designation -- describing an individual's legal status for purposes of the statutory removal scheme -- rather than a description of present conduct."); *Oliveira v. Patterson*, 2025 U.S. Dist. LEXIS 218128, at *9 (W.D. La. 2025) ("under the plain text of § 1225(a)(1), any alien physically present in the United

States who has not been admitted is an 'applicant for admission,' regardless of how long they have been in the country or whether they intended to apply or enter properly.")

18. Again, in the context of § 1225(b)(2), "seeking admission" and "applying for admission" are plainly synonymous. Congress has linked these two variations of the same phrase in Section 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). Read properly, a person "seeking admission" is just another way of describing a person applying for admission, meaning he is an applicant for admission, which includes both those individuals arriving in the United States and those already present without admission. 8 U.S.C. § 1225(a)(1).

19. A comparison of Section 1225's mandatory-detention provisions against the discretionary detention provisions of Section 1226 also supports the Government's interpretation. A basic canon of statutory construction is that a specific provision should govern over a more general provision encompassing that same matter. *See Matter of GFS Indus., L.L.C.*, 99 F.4th 223 (5th Cir. 2024). Here, Section 1226(a) is the general provision, applicable to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is much more specific, applying particularly to aliens who are "applicants for admission"—a specially defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not be admitted." *Id.* § 1225(a). So while the general rule might be that aliens detained pending removal may be detained, the specific rule for aliens who have not been admitted is that this subset of aliens must

be detained.[2] The Court should be loath to eviscerate the specific text of Section 1225(b)(2)(A) in favor of the more general text of Section 1226(a). *See*, *e.g.*, *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) ("It is our duty to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section[.]"). Because Petitioner falls squarely within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

ii. The BIA's Decision in Matter of Hurtado

20. The text of the INA requires that aliens like Petitioner already present in the United States are applicants for admission and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2). To be sure, while this interpretation is straightforward, that is not to say there are no colorable counterarguments. (*See* ECF No. 1, at ¶35 (citing cases presenting such counterarguments). However, the BIA's decision in *Hurtado* thoughtfully and meticulously considered and rejected a myriad of counterarguments. *See* 29 I. & N. at 221–27 (discussing and rejecting no fewer than six distinct legal counterarguments). *Hurtado* is a unanimous, published decision from the BIA and binding on immigration courts. Here, the BIA utilized its immigration expertise and gave a lengthy, comprehensive account as to why the Government's position in this case is not only correct, but comfortably so.

iii. Persuasive Decisions from Other Courts

21. In the absence of controlling authority, other district courts' decisions—decisions applying the plain language of the INA and finding aliens like the Petitioner subject to mandatory detention

[2] To be clear, there remains a large population of aliens who remain subject to § 1226 discretionary detention (and not § 1225 mandatory detention). For example, aliens who were admitted to the United States via a tourist visa, but who overstayed that visa, are subject to § 1226 detention.

under 8 U.S.C. § 1225(b)(2)—are persuasive. Although the Government acknowledges that there are district court decisions that hold to the contrary,[3] several district courts have adopted the Government's and the BIA's interpretation. *See, e.g.*, *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) and *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

22. Recently, a district court in the Western District of Louisiana agreed with the BIA's reading of the INA. *See Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025). In denying the habeas petition, the court held that "[b]ecause Petitioner crossed the United States-Mexico border without being inspected by an immigration officer, [Petitioner was] therefore also appropriately categorized as an inadmissible alien . . . [and thus concluded] that § 1225(b)(2)'s plain language and the 'all applicants for admission language' of *Jennings* permits [DHS] to detain Petitioner under § 1225(b)(2)." *Id*.; *see Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The court dismissed the same argument averred by Petitioner, providing:

> "[T]o conclude that an alien who has unlawfully entered the United States and managed to remain in the country for a sufficient period of time is entitled to a bond hearing, while those who seek lawful entry and submit themselves for inspection are not, not only conflicts with the unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA."

Id. at *6.

[3] This includes decisions from other courts in the Southern District of Texas. *See, e.g., Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025)(on appeal under 5th Cir. Case No 25-20496); *Covarrubias v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025) (appeal consolidated into 5th Cir. Case No 25-20496) ; *Fuentes v. Lyons*, 5:25-cv-153 (S.D. Tex. October 16, 2025); *Ortiz v. Bondi*, 5:25-cv-132 (S.D. Tex. October 15, 2025); *Baltazar v. Vasquez*, 5:25-cv-175 (S.D. Tex. October 14, 2025);

23. Additionally, another court from the Southern District of Texas found the same. *See Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (J. Eskridge). In denying the habeas petition and granting the Government's motion for summary judgment, the *Cabanas* Court held "[t]he text of § 1225(b)(2)(A) supports the Government's position." The *Cabanas* Court reasoned that "[t]he statutory definition of *applicant for admission* is broad and, indeed, so broad that Petitioner doesn't dispute that he is such a person . . . . That factual determination itself resolves the question as to whether 8 U.S.C. § 1225(b)(2)(A) applies." *Id*. at *4 (emphasis in original). Thus, the *Cabanas* Court held that the plain language of the INA required a ruling in the Government's favor, explaining why it was not persuaded by the other district court decisions deciding to the contrary. *Id*. at *5.

24. Thus, both *Sandoval* and *Cabanas*—and their application of 8 U.S.C. § 1225(a),(b)(2)—further demonstrate that Petitioner is an "applicant for admission" and subject to mandatory detention.

V. ADVISORY ON *BAUTISTA* CLASS CERTIFICATION

25. The *Bautista* court granted class certification under Rule 23(b)(2) and partial summary judgment for the petitioners in that case but did not issue a class-wide declaratory judgment. *See* [Gov. Ex.4, at p.17]. The court also did not issue a class-wide injunction, which would not be permitted by law. Rather, the court set a January 9, 2026, joint status report deadline and January 16, 2026 status conference. 2025 WL 3288403. [Gov. Ex.4, at p. 32].

26. The Bautista court defined the certified class as follows:

> Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the

> Department of Homeland Security makes an initial custody determination.

Bautista, 2025 WL 3288403 at *9.

27. Petitioner is a member of the *Bautista* class. [ECF No. 1, at ¶6]. Petitioner entered the United States without inspection; he was not apprehended upon arrival; he is not subject to detention under § 1226(c)(criminal aliens), § 1225(b)(1)(arriving alien), or § 1231(post final order of removal) at the time the Department of Homeland Security made their initial custody determination. *Id*; *see also* [Gov. Ex. 2].

28. Because Petitioner is a member of the *Bautista* class, the Court should dismiss or, in the alternative, stay this action. Certification of a 23(b)(2) class precludes individual suits for the same injunctive or declaratory relief. *See U.S. v. Sanchez-Gomez*, 584 U.S. 381, 387 (2018)(noting that "[t]he certification of a suit as a class action has important consequences for the unnamed members of the class, including being "bound by the judgment") (cleaned up); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) ("To allow individual suits would interfere with the orderly administration of the class action and risk inconsistent adjudications.").

29. In *Gillespie*, the Fifth Circuit held that an individual class member is barred from pursuing his own individual lawsuit that seeks equitable relief within the subject matter of the class action. *Gillespie*, 858 F.2d at 1103. In so holding, the Fifth Circuit explained that "[i]ndividual members of the class . . . may assert any equitable or declaratory claims they have, but they must do so by urging further action through the class representative and attorney, including contempt proceedings, or by intervention in the class action." *Id.* Thus, Petitioner, who is an individual class member cannot bring claims seeking equitable relief in this action and the habeas petition should be dismissed. *See, e.g., Oliver v. Scott*, No. CIV. 3:98-CV-2246-H, 2000 WL 140745, at *3 (N.D. Tex. Feb. 4, 2000)(dismissing claims based on *Gillespie*).

30. Assuming for the sake of argument that the Court finds that Petitioner is a member of the *Bautista* class, but that dismissal is not warranted, the *Bautista* court's decision does not have preclusive effect in this matter. As noted above, the *Bautista* court did not enter a final judgment with respect to the class. Although the court stated it was extending "the same declaratory relief" to the class, a court cannot grant declaratory relief prior to the entry of a final judgment, *i.e.*, a declaratory judgment. *See Doran v. Salem Inn, Inc.,* 422 U.S. 922, 931 (1975)("prior to final judgment there is no established declaratory remedy comparable to a preliminary injunction"). A pre-final judgment declaration is, by its nature, not a declaratory judgment "[b]ecause a preliminary declaration—unlike a final declaration—does not specifically bind anyone, it is more akin to an advisory opinion, which the Court is precluded from issuing by history and the implicit policies embodied in Article III." *Vazquez Perez v. Decker*, No. 18-CV-10683 (AJN), 2019 WL 4784950, at *10 (S.D.N.Y. Sept. 30, 2019).

31. Absent an entry of final judgment with respect to the class, or a certification of partial final judgment under Rule 54(b), there is no declaratory judgment in *Bautista*. The partial summary judgment ruling does not operate as a "judgment" because it is not an appealable order and "does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(a), (b). Thus, there is no class-wide judgment, let alone any final judgment that could have preclusive effect as to class members.

32. In short, the *Bautista* court did not enter a class-wide judgment. As such, there is currently no declaratory relief, let alone relief with preclusive effect on *Bautista* class members' claims concerning the proper interpretation of 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention provision.

Conclusion

For the foregoing reasons, the Government respectfully request that this Court deny Petitioner's request for habeas relief and grant the instant motion. This Court should enter judgment as a matter of law finding that Petitioner is lawfully subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2).

Dated: December 12, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on December 12, 2025, the foregoing was filed and served on all attorneys of record via the District's ECF system.

/s/ Randy E. Lopez
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