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9  
10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF ARIZONA**

12 **Jose Tanori Carbajal,**  
13 **Petitioner,**

14 v.

15 **Kristi Noem**, Secretary of the United States  
16 Department of Homeland Security, in her official  
17 capacity; **Todd Lyons**, Acting Director U.S.  
18 Immigration and Customs Enforcement, in his official  
19 capacity; **John Cantu**, Field Office Director for ICE's  
20 Enforcement and Removal Operation's ("ERO") Field  
21 Office, in his official capacity; **Sirce Owen**, Acting  
22 Director of Executive Office for Immigration Review,  
23 in her official capacity; **Fred Figueroa**, Warden of the  
24 Eloy Detention Center, in his official capacity,  
25 **Respondents.**

Case No.

Agency No. 

**PETITION FOR WRIT  
OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C.  
§2241**

26 **INTRODUCTION**

27 The Respondents are unlawfully detaining Petitioner Jose Tanori Carbajal, at the  
28 Eloy Detention Center, due to the Department of Homeland Security (DHS) recently  
changed its long-standing position with regard to the status of mandatory detention. See,  
ICE Memo: Interim Guidance Regarding Detention Authority for Applications for  
Admission filed herewith as Exhibit 1. The Bureau of Immigration Appeals (BIA)

1 issued a precedential decision on September 5, 2025, holding that all noncitizens present  
2 in the United States without admission – no matter how long they have resided here –  
3 are still “applicants for admission” under 8 U.S.C. § 1225(a) and not entitled to bond  
4 hearings because they are subject to mandatory detention under § 1225(b)(2)(A). *See,*  
5 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) filed herewith as Exhibit 2.  
6

7  
8 But this interpretation of the Immigration and Naturalization Act (INA) violates  
9 both procedural and substantive Fifth Amendment protections, ignores the plain  
10 statutory language of both § 1225 and § 1226, and is contrary to numerous recent Federal  
11 Court decisions in this District that have rejected these exact arguments. *See e.g.*  
12 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-  
13 PHX-DWL (ESW), (D. Ariz. 10/3/2025), filed herewith as Exhibit 16.  
14

15 Petitioner has lived in the United States for approximately thirty-one years. *See,*  
16 Petitioner’s Affidavit, filed herewith as Exhibit 4. He is the father of three U.S. citizen  
17 children, ages seventeen, fifteen, and eleven. *Id.* Based on his long-term residence and  
18 qualifying U.S. citizen children, he is statutorily eligible to apply for non-LPR  
19 cancellation of removal. Further, when Respondents issued a Notice to Appear, it  
20 identified Petitioner as an “alien present in the United States” despite “arriving alien”  
21 being an option. *See,* Petitioner’s Notice to Appear, filed herewith as Exhibit 5.  
22

23  
24 In addition to BIA decisions not being binding precedent upon this Court, the  
25 Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S.  
26 369, 400 (2024), made clear that federal courts must independently interpret statutes and  
27 no longer defer under so-called “Chevron deference.” This Court is therefore in the best  
28

1 position to determine whether the Respondents are misinterpreting the relevant federal  
2 statutes and improperly denying alien detainees bond hearings on the grounds that they  
3 are all subject to mandatory detention under § 1225(b)(2)(A). The petition for writ of  
4 habeas corpus should be granted.  
5

### 6 JURISDICTION & CUSTODY

7  
8 1. Petitioner Jose Tanori Carbajal, is in the physical custody of  
9 Respondents and Immigration and Customs Enforcement (ICE), an agency within the  
10 Department of Homeland Security.

11  
12 2. Petitioner is currently detained at Eloy Detention Center and is under  
13 the direct control of Respondents and their agents.

14  
15 3. This action arises under the Constitution of the United States and 8  
16 U.S.C. § 1101 et seq.

17  
18 4. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of  
19 the United States Constitution, 28 U.S.C. § 1331, and the common law. This Court may  
20 grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. §  
21 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

22  
23 5. Congress has preserved judicial review of challenges to immigration  
24 detention. *See Jennings v. Rodriguez*, 583 U.S. 122, 130-131 (2018) (holding that 8  
25 U.S.C. §§ 1226(e) and 1252(b)(9) do not bar review of challenges to prolonged  
26 immigration detention).

27  
28 6. The Court must grant the petition for writ of habeas corpus or order  
Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28

1 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return  
2 “within three days unless for good cause additional time, not exceeding twenty days, is  
3 allowed.” *Id.*


4  
5 7. The Court has inherent power to release the petitioner pending review  
6 of his petition. *See Martin v. Solem*, 801 F.2d 324, 329 (8th Cir. 1986).

### 7 VENUE

8  
9 8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410  
10 U.S. 484, 493- 500 (1973), venue lies in this Court, the federal judicial district in which  
11 Petitioner is currently is in custody.

12  
13 9. Venue is also properly in this Court pursuant to 18 U.S.C. § 1391(e)  
14 because Respondents are employees, officers, and agencies of the United States.

### 15 PARTIES

16  
17 10. Petitioner Jose Tanori Carbajal was born on  in  
18 Sonora, Mexico. *See*, Petitioner’s Affidavit, filed herewith as Exhibit 4. Petitioner is  
19 currently detained by ICE at Eloy Detention Center. *See*, ICE Online Detainee Locator,  
20 filed herewith as Exhibit 3.

21  
22 11. Respondent Kristi Noem is the Secretary of the U.S. Department of  
23 Homeland Security (“DHS”). In this capacity, Respondent Noem is a legal custodian of  
24 Petitioner. Respondent Noem is sued in her official capacity.

25  
26 12. Respondent DHS is a federal executive agency responsible for, among  
27 other things, enforcing federal immigration laws and overseeing lawful immigration to  
28 the United States. Respondent DHS is a legal custodian of Petitioner.





1 unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It  
2 is therefore reasonable to read these statutes “against [that] backdrop.” *See Hewitt v.*  
3 *United States*, 605 U.S. —, 145 S. Ct. 2165, 2173 (2025).  
4

5 26. Due process thus requires “adequate procedural protections” to ensure  
6 that the government’s asserted justification for a noncitizen’s physical confinement  
7 “outweighs the individual’s constitutionally protected interest in avoiding physical  
8 restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).  
9

10 27. In the immigration context, the Supreme Court has recognized only  
11 two valid purposes for civil detention: to mitigate the risks of danger to the community  
12 and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528. The government may not detain a  
13 noncitizen based on any other justification.  
14

15 28. Congress has granted the Attorney General discretion to decide  
16 whether to detain or release certain noncitizens pending a removal decision. *See* 8 U.S.C.  
17 § 1226(a). The Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19,  
18 1236.1.  
19

20 29. On July 8, 2025, DHS adopted a new policy on mandatory detention  
21 for noncitizens who have been residing in the United States. *See*, ICE Memo: Interim  
22 Guidance Regarding Detention Authority for Applications for Admission filed herewith  
23 as Exhibit 1.  
24

25 30. On September 5, 2025, the BIA entered the precedential decision  
26 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed herewith as Exhibit 2,  
27 which holds that all noncitizens who enter without inspection are “applicants for  
28

1 admission" under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under  
2 § 1225(b)(2), without regard for the length of time they have lived in the United States.

3  
4 31. The Ninth Circuit has held that § 1226(a) is the “default” detention  
5 statute for aliens in removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the  
6 default detention statute for noncitizens in removal proceedings and applies to  
7 noncitizens “[e]xcept as provided in [Subsection C].” 8 U.S.C. § 1226(a).” *Avilez v.*  
8 *Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*,  
9 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD  
10 Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-*  
11 *Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

12  
13  
14 32. Almost every Federal District Court that has considered the issue has  
15 found that DHS’s interpretation defies the INA. In Arizona, the following decisions so  
16 find and collect the cases from other district courts around the country:

- 17  
18 a. 11/26/2025 Order granting habeas in *Luna-Gonzalez v. Noem*, et al., Case  
19 No. 25-cv-03794-PHX (D. Ariz. 11-26-25)(The court rejected the  
20 government’s argument that the petitioner is an “arriving alien” subject to  
21 mandatory detention under § 1225 and agrees instead with the growing  
22 majority of courts that people like the petitioner—who were arrested  
23 inside the United States long after entering—are detained under § 1226(a),  
not § 1225.), gathering cases, filed with the Habeas Petition as Exhibit 7;
- 24 b. 11/24/25 Order granting habeas in *Padron-Carreron v. Noem*, et al., Case  
25 No. 25-cv-04204-PHX (D. Ariz. 11-25-25)(“Respondents correctly  
26 acknowledge that their view still represents the minority position—in the  
27 weeks since the Court considered the issue in *Echevarria*, dozens of other  
28 courts have reached the same conclusion... [that] § 1226(a)’s application  
for the past three decades supports its application to noncitizens in

1 petitioner's position"), gathering cases, filed with the Habeas Petition as  
2 Exhibit 8;

3 c. 11/18/2025 Order granting habeas in *Rodrigues da Silva v. Figueroa*, et  
4 al., Case No. 25-cv-04015-PHX (D. Ariz. 11-18-25)("dozens of other  
5 district courts have concluded individuals like Petitioner are subject to §  
6 1226 and not § 1225 and, therefore, are not subject to mandatory  
7 detention"), gathering cases, filed with the Habeas Petition as Exhibit 9;

8 d. 11/13/2025 Order granting habeas in *Perez Rodriguez v. Noem*, et al., Case  
9 No. 25-cv-03921-PHX (D. Ariz. 11/13/2025)("the vast majority of courts  
10 concluded individuals like Petitioner are subject to § 1226 and not § 1225  
11 and, therefore, are not subject to mandatory detention"), gathering cases,  
12 filed with the Habeas Petition as Exhibit 10

13 e. 11/6/25 Order granting habeas in *Gonzalez Rodriguez v. Bondi*, et al., Case  
14 No. 25-cv-03917-PHX (D. Ariz. 11-6-25)("dozens of other district courts  
15 have concluded individuals like Petitioner are subject to § 1226 and not §  
16 1225 and, therefore, are not subject to mandatory detention"), gathering  
17 cases, filed with the Habeas Petition as Exhibit 11

18 f. 11/6/2025 Order Granting Habeas in *Abrego-Zarate v. Noem*, et al., Case  
19 No. 25-cv-03564-KML (D. Ariz. 11-6-25)("the great weigh of authority  
20 is that individuals like petitioner are not subject to mandatory detention.  
21 This court agrees with the majority view. For these reasons, the petition is  
22 granted, and petitioner must receive a bond hearing without application of  
23 *Matter of Yajure Hurtado*, 29 I&N 216 (B.I.A. 2025."), filed herewith as  
24 Exhibit 12.

25 g. 11/03/25 Order granting habeas petition in *Lopez-Cruz v. Noem*, et al, No.  
26 2:25-cv-03566-DJH--ASB (D. Ariz. 11/3/2025)("dozens of other district  
27 courts have concluded individuals like Petitioner are subject to § 1226 and  
28 not § 1225 and, therefore, are not subject to mandatory detention. This  
Court agrees with this conclusion."), filed herewith as Exhibit 13.

h. 10/22/2025 Order granting habeas in *Garcia-Rosales v. Noem*, et al., No.  
2:25-cv-03391-SHD-DMF at page 2 (D. Ariz. Oct. 22, 2025)("while

1 Respondents point to two district court opinions adopting their  
2 interpretation of § 1225(b)(2)(A), myriad other district courts have  
3 reached the same conclusion as *Echevarria* and held individuals like  
4 Petitioner are not subject to mandatory detention under 1225(b)(2)(A)",  
5 filed herewith as Exhibit 14.

6 i. 10/17/2025 Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et*  
7 *al.*, No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)("individuals like  
8 Petitioner are not "arriving aliens" subject to mandatory detention but,  
9 rather, are subject to the general removal statute, 8 U.S.C. § 1226(a)",  
10 filed herewith as Exhibit 15.

11 j. 10/09/2025 Order granting habeas entered in *Hector Lopez-Melo v. Bondi,*  
12 *et. al.*, Case No. Case 2:25-cv-03394-DJH--JZB (D. Ariz.  
13 10/9/2025)("petitioner, who had been present in the United States for  
14 years, was not an applicant for admission under 1225(b)(2)(A) or subject  
15 to mandatory detention"), filed herewith as Exhibit 16.

16 k. 10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No.  
17 CV-25-02989-PHX-SPL (D Arizona 10/07/2025)("Respondents maintain  
18 he is subject to mandatory detention under 1225(b)(2). Again,  
19 Respondents are mistaken."), filed herewith as Exhibit 17.

20 l. 10/3/2025 Order granting habeas corpus in *Echevarria v. Bondi, et al.*, No.  
21 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3,  
22 2025)("Court agrees with the majority of courts that have concluded that  
23 § 1226(a), rather than § 1225(b)(2)(A), applies in this circumstance."),  
24 filed herewith as Exhibit 18.

25 m. 08/11/2025 Magistrate's Report and Recommendation in *Rocha Rosado*  
26 *v. Figueroa*, No. CV-25-02157-PHX-DLR 2025 WL 2349133 at \*10 (D.  
27 Ariz. Aug. 13, 2025)(Magistrate's Report and Recommendation Adopted  
28 at 2025 WL 2349133)([t]he text of § 1226, the canons of statutory  
interpretation, this section's legislative history, and longstanding agency  
practice indicate that Rosado is subject to § 1226(a)'s 'default' rule for  
discretionary detention rather than § 1225's mandatory detention  
requirement, and that the IJ erred by finding they did not have jurisdiction

1 to consider Rosado's detention.”) *report and recommendation adopted sub*  
2 *nom.* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025), filed herewith as  
3 Exhibit 19.

4 33. Petitioner has located only 5 cases holding to the contrary. In *Vargas*  
5 *Lopez v. Trump*, --F. Supp. 3d--, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), the court  
6 held that Vargas Lopez failed to meet his burden to show that he falls under § 1226(a),  
7 so “his Petition fails regardless of the parties’ arguments about the scope of § 1225(b)  
8 and § 1226(a).” *Vargas Lopez v. Trump*, 2025 WL 2780351 at \*7 (emphasis added). In  
9 *Chavez v. Noem*, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), the  
10 court denied a temporary restraining order on the grounds that the petitioners had “not  
11 demonstrated serious questions about the application of Section 1225 to aliens present  
12 in the United States.” *Chavez v. Noem*, 2025 WL 2730228 at \*4. However, the court  
13 spent less than 2 pages analyzing the statutory language and caselaw before concluding  
14 that “Petitioners have not shown either a likelihood of success or serious questions going  
15 to the merits [therefore] we do not address the remaining Winter factors.” *Chavez v.*  
16 *Noem*, 2025 WL 2730228 at \*5. *Mejia Olalde v. Noem*, 2025 U.S. Dist. LEXIS 221830  
17 (E.D. Mo. Nov. 10, 2025) was concerned with whether the habeas petition had been  
18 properly filed in that court’s jurisdiction and never reached the application of § 1225(b)  
19 to the petitioner. *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657 (E.D. Va. Aug.  
20 5, 2025) and *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025)  
21 were each shorter than two pages long and neither contained any significant analysis.  
22 Thus, none of these cases are particularly instructive.  
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1           34.       In 1997, after Congress amended the INA through the Illegal  
2 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and  
3 the then-Immigration and Naturalization Service issued an interim rule to interpret and  
4 apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and  
5 Detention of Aliens,” the agencies explained that:  
6

7                       Despite being applicants for admission, aliens who are  
8 present without having been admitted or paroled (formerly  
9 referred to as aliens who entered without inspection) *will be*  
10 *eligible* for bond and bond redetermination.

11 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that  
12 individuals who had entered without inspection *were* eligible for consideration for  
13 bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing  
14 regulations.  
15

16           35.       Thus, for almost 30 years, all participants in the immigration system  
17 have understood that people arrested inside the United States generally fall within §  
18 1226 for detention purposes and are therefore required to receive a bond hearing upon  
19 request—even if they initially entered the country without permission. *See Martinez v.*  
20 *Hyde*, No. 25-11613, 2025 WL 2084238, at \*4 n.9 (D. Mass. July 24, 2025) (citing the  
21 United States Solicitor General’s representation to the Supreme Court at oral argument  
22 that “DHS’s long-standing interpretation has been that 1226(a) applies to those who  
23 have crossed the border between ports of entry and are shortly thereafter apprehended”).  
24

25           36.       Despite the overwhelming number of federal cases that have ruled  
26 against the government’s position, DHS and DOJ are continuing to systemically  
27  
28

1 misclassify people and unlawfully deny them access to bond hearings and release on  
2 bond during the pendency of their immigration proceedings.

3  
4 **CLAIMS FOR RELIEF**  
**FIRST CLAIM FOR RELIEF**

5 **Violation of Fifth Amendment – Substantive Due Process**

6  
7 37. Petitioner realleges and incorporates herein the allegations contained  
8 in the preceding paragraphs of the petition as if fully set forth herein.

9 38. The Due Process Clause of the Fifth Amendment forbids the  
10 government from depriving any “person” of liberty “without due process of law,”  
11 including noncitizens. U.S. Const. amend. V.

12  
13 39. Substantive due process asks whether a person’s life, liberty, or  
14 property is deprived without sufficient purpose. There is no question that Petitioner has  
15 been deprived of his liberty in this case.

16  
17 40. The government’s continued detention of Petitioner is not supported  
18 by any special interest or compelling justification that outweighs his liberty interest.

19  
20 41. Petitioner’s ongoing detention when so many federal courts have held  
21 that he is entitled to be considered for release upon posting an appropriate bond under §  
22 1226 constitutes prolonged detention and violates his substantive due process rights.

23  
24 **SECOND CLAIM FOR RELIEF**  
**Violation of Fifth Amendment Right - Procedural Due Process**

25  
26 42. Petitioner realleges and incorporates herein the allegations contained  
27 in the preceding paragraphs of the petition as if fully set forth herein.  
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Date: December 12, 2025

By: /s/ *Erica Sanchez*  
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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner Jose Tanori Carbajal and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 12<sup>th</sup> day of  
December, 2025.

By: /s/ *Erica Sanchez*  
Erica Sanchez, Esq.

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## LIST OF EXHIBITS

Exhibit 1	<u>ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission</u> (last visited September 8, 2025).
Exhibit 2	<i>Matter of Yajure Hurtado</i> , 29 I&N Dec. 216 (B.I.A. 2025).
Exhibit 3	ICE Online Detainee Locator Printout
Exhibit 4	Petitioner's Affidavit
Exhibit 5	Notice to Appear
Exhibit 6	Cover Page: Petitioner's Application for Cancellation of Removal for Certain Nonpermanent Residents
Exhibit 7	Order granting habeas in <i>Luna-Gonzalez v. Noem, et al.</i> , Case No. 25-cv-03794-PHX (D. Ariz. 11-26-25)
Exhibit 8	Order granting habeas in <i>Padron-Carreron v. Noem, et al.</i> , Case No. 25-cv-04204-PHX (D. Ariz. 11-24-25)
Exhibit 9	Order granting habeas in <i>Rodrigues da Silva v. Figueroa, et al.</i> , Case No. 25-cv-04015-PHX (D. Ariz. 11-18-25)
Exhibit 10	Order entered <i>Perez Rodriguez v. Noem, et al.</i> , Case No. 25-cv-03921-PHX (D. Ariz. 11/13/2025)
Exhibit 11	Order entered <i>Gonzalez Rodriguez v. Bondi, et al.</i> , Case No. 25-cv-03917-PHX (D. Ariz. 11-6-25)
Exhibit 12	Order entered in <i>Abrego-Zarate v. Noem, et al.</i> , Case No. 25-cv-03564-KML (D. Ariz. 11-6-25)
Exhibit 13	Order entered in <i>Lopez-Cruz v. Noem, et al.</i> , No. 2:25-cv-03566-DJH--ASB (D. Ariz. 11/3/2025)
Exhibit 14	Order entered in <i>Garcia-Rosales v. Noem, et al.</i> , No. 2:25-cv-03391-SHD—DMF (D. Ariz. Oct. 22, 2025)
Exhibit 15	Order granting habeas corpus in <i>Benitez-Cornejo v. Cantu, et al.</i> , No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)
Exhibit 16	Order entered in <i>Hector Lopez-Melo v. Bondi, et al.</i> , Case No. Case 2:25-cv-03394-DJH--JZB [docket no. 11] (D.C. Ariz. 10/9/2025)
Exhibit 17	Order granting habeas corpus in <i>Bo Li v. Cantu, et al.</i> , No. CV-25-02989-PHX-SPL (D. Arizona 10/07/2025)
Exhibit 18	Order entered in <i>Francisco Echevarria v. Pam Bondi, et al.</i> , CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025)

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Exhibit 19	Magistrate's Report and Recommendation in <i>Rocha Rosado v. Figueroa</i> , No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025)
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