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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Mateo De La Cruz-Saldivar

Petitioner,

v.

John Cantu, Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement;
Markwayne Mullin, Secretary, U.S. Department of Homeland Security;
U.S. Department of Homeland Security;
Todd Blanche, Acting U.S. Attorney General;
Executive Office for Immigration Review;
Eric Rokosky, Warden of Eloy Detention Center,

Respondents.

File No.-26-CV-.....

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Mateo De La Cruz-Saldivar, is in the physical custody of Respondents at the Eloy Detention Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. See 8 U.S.C. § 1182(a)(6)(A)(i).

3. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such

individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

6. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

7. Furthermore, Petitioner was previously detained and released from ICE custody on a bond in 2015. Petitioner's re-detention is unlawful because his prior release from custody created a protected liberty interest in his freedom, and Respondents have not taken procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution.

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be immediately released from custody or, in the alternate, that Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Eloy Detention Center located in Eloy, Arizona.

10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Arizona, the judicial district in which Petitioner currently is detained.

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Arizona.

REQUIREMENTS OF 28 U.S.C. § 2243

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

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

16. Petitioner Mateo De La Cruz-Saldivar is a citizen of Mexico who has been in immigration detention since February 27, 2026. After re-arresting Petitioner in Phoenix,

Arizona, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

17. Respondent John Cantu is the Director of the Phoenix Field Office of ICE's Enforcement and Removal Operations division. As such, Respondent Cantu is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.

18. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Respondent Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

19. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

20. Respondent Todd Blanche is the Acting Attorney General of the United States. As such, he is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

21. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

22. Respondent Eric Rokosky is employed by CoreCivic, Inc. as Warden of the Eloy Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

FACTS

23. Petitioner has resided in the United States since approximately 2002 and lives in Phoenix, Arizona.

24. Petitioner was previously served with a Notice to Appear by DHS on June 13, 2015. See Exhibit A. He was encountered by ICE agents after being arrested for a driving under the influence offense. See Exhibit B. He was then released on bond on July 22, 2015. See Exhibit C. The Immigration Judge then administratively closed removal proceedings on July 20, 2016. See Exhibit D.

25. Petitioner remained free from immigration detention for over ten years. On February 27, 2026, ICE ERO officers conducted a targeted enforcement operation in search of Petitioner after ICE's Office of the Principal Legal Advisor filed a motion to re-calendar the previously administratively closed removal proceedings. See Exhibit E. Despite no circumstances existing to warrant re-calendaring of his case or re-detention, ICE ERO officers re-detained Petitioner. See Exhibit F. Petitioner is now detained at the Eloy Detention Center.

26. DHS re-opened Petitioner's previously administratively closed removal proceedings. ICE has charged Petitioner with, inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

27. Petitioner has lived in the United States for over twenty-four years. He is married to a United States citizen and has an approved I-130 Petition for Alien Relative from his spouse. See Exhibit G. He is the father to four United States citizen children. Aside from his 2015 arrest for driving under the influence, Petitioner has no other criminal arrests or convictions. Petitioner is neither a flight risk nor a danger to the community.

28. Following Petitioner's arrest and transfer to Eloy Detention Center, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

29. Petitioner subsequently requested a bond redetermination hearing before an Immigration Judge. Pursuant to *Matter of Yajure Hurtado*, Immigration Judge denied bond, stating that under the language of the Immigration and Nationality Act, the Immigration Judge is unable to consider Petitioner's bond request.

30. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

LEGAL FRAMEWORK

I. Petitioner's Detention Violates the INA.

31. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

32. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§

1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

33. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

34. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

35. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

36. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended in 2025 by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

37. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

38. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice

was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

39. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

40. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

41. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

42. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There,

the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

43. In addition, numerous federal courts have rejected ICE and EOIR's interpretation of the INA's detention provisions. These courts found that § 1226(a), rather than § 1225(b)(2), governs the detention authority in cases involving noncitizens who entered without inspection. Courts that have come to this conclusion include but are not limited to: Massachusetts, Arizona, New York, Minnesota, California, and Nebraska. See: *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

44. Furthermore, the Central District of California vacated *Matter of Yajure Hurtado* on February 18, 2026. *Lazaro Maldonado Bautista et al. v. Ernesto Sanchez Jr et al.*, No. 25-CV-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026). This vacatur was stayed by the Ninth Circuit pending appeal on March 6, 2026. *Lazaro Maldonado Bautista et al v. U.S. Department of Homeland Security et al.*, No. 26-1044 (9th Cir,. March 6, 2026). While Immigration Judges and the BIA may continue to argue that this vacatur does not apply outside of the Central District of California, this decision, combined with the above-

mentioned District Court decisions, support the position that the government's reliance on § 1225(b)(2) is erroneous in cases involving those whose immigration status lawfully falls under § 1226(a).

45. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

46. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

47. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

48. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

49. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

50. Moreover, the Laken Riley Act amended 8 U.S.C. § 1225 to apply mandatory detention to certain noncitizens who entered the United States without inspection. Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025). This amendment further demonstrates that Section 1225(b) was never intended to apply to noncitizens in the interior of the United States who are not seeking admission.

51. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

II. Petitioner's Re-detention Violates His Right to Due Process.

52. The Due Process Clause protects persons in the United States from being deprived of life, liberty, or property without due process of law. U.S. Const, Amend. V. It is firmly established that these protections extend to noncitizens present in the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent."); *Wong Wing v. U.S.*, 163 U.S. 228, 238

(1896) ("It must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by [the Fifth Amendment], and that even [non-citizens] shall not ... be deprived of life, liberty, or property without due process of law.").

53. Courts analyze procedural due process claims in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

54. Under 8 U.S.C. § 1226(b) and 8 C.F.R. 242.2(c), the DHS has authority to revoke a noncitizen's bond or parole "at any time," even if that individual has previously been released. The BIA has placed the following limitation on this authority: "where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance." *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981). However, "the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process." *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017).

55. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas* 533 U.S. at 690. Release from custody creates a protected liberty interest and an implied promise that the person will not be re-detained unless they fail to meet release conditions. *See Morrissey v. Brewer*, 408 U.S. 471 (1972), *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

Courts have also found that the context of civil immigration detention creates an arguably greater protected liberty interest than that of parolees in a criminal setting. *Ortega v. Bonnar, et al.*, 415 F. Supp 3d 963 (N.D. Cal. 2019), *citing Morrisey*, 408 U.S. at 487. Prior release from custody further reflects a determination by the Government that the noncitizen is not a danger to the community or a flight risk. *Saravia v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

56. Petitioner here was previously released from custody on bond in 2015. Since that time, Petitioner has no new arrests or criminal convictions, and there is no other indication that he failed to comply with his terms of release. Indeed, the Immigration Judge administratively closed his case in 2016. The Office of the Principal Legal Advisor filed a motion to reopen proceedings but provided no new facts or circumstances warranting Petitioner's re-detention. As such, Petitioner has established that he has a protected liberty interest in his freedom from custody.

57. Having determined that Petitioner has a protected liberty interest in continued release having been released previously, the court proceeds to determine the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. To make that determination, the court applies the test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976). The *Mathews* test considers three factors: (1) the private interest affected; (2) the risk of an erroneous deprivation; and (3) the government's interest. 424 U.S. at 335.

58. Considering the first *Mathews* factor, Petitioner has a private interest in remaining free from detention, as discussed above. Petitioner was released from custody for over ten

years prior to being re-detained. Petitioner's prior release from custody creates a powerful interest for him in his continued liberty. *See Morrissey v. Brewer*, 408 U.S. 471 (1972), *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). Thus, this factor favors finding Petitioner's private interest has been affected by his detention.

59. The second Mathews factor, the risk of erroneous deprivation to petitioner, also weighs in his favor. "The risk of an erroneous deprivation [of liberty] is high" when "[the petitioner] has not received any bond or custody redetermination hearing." *A.E. v. Andrews*, No. 25-cv-00107-KES-SKO, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025). Civil immigration detention is "nonpunitive in purpose and effect" and is justified when a noncitizen presents as a danger to the community or risk of flight. *Zadvydas*, 533 U.S. at 690; *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). Petitioner has been detained for more than two months without being provided a bond hearing before an immigration judge. Thus, "the probable value of additional procedural safeguards" including a bond hearing—which should have occurred before his re-detention—is high. *A.E.*, 2025 WL 1424382, at *5.

60. As for the third *Mathews* factor, while the government has an interest in the steady enforcement of its immigration laws, the government's interest in re-detaining Petitioner without any procedural protections is substantially "low." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Calif. 2025). Custody hearings in immigration court are routine and impose a "minimal" cost on the government. *Doe*, 787 F. Supp. 3d at 1094. "If the government wishes to re-arrest

[petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without [any procedural protections] is low." *Ortega*, 415 F. Supp. 3d at 970.

61. On balance, the *Mathews* factors favoring Petitioner show due process required that he be released from custody.

62. Prior release from custody reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). Prior release from custody also creates a protected liberty interest and an implied promise that re-detention will not occur unless release conditions are not met. *Morrissey v. Brewer*, 408 U.S. 471 (1972), *Gagnon v. Scarpelli*, 411 US 778 (1973).

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

63. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

64. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

65. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II

Violation of Due Process

66. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

67. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas* at 690.

68. Petitioner has a fundamental interest in liberty and being free from official restraint.

69. The government's re-detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the District of Arizona while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e. Declare that Petitioner's detention is unlawful;

f. Award Petitioner attorney's fees and costs and grant any other and further relief that this Court deems just and proper.

Dated this 17th day of April, 2026

/s/ Lisa L. Elkin

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