

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

NATIONAL ASSOCIATION OF)
GOVERNMENT EMPLOYEES, INC.,)
)
Plaintiff,)
)
v.)
)
JANET YELLEN, Secretary of Treasury,)
in her official capacity,)
and JOSEPH BIDEN,)
President of the United States,)
in his official capacity)
)
Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. The Plaintiff National Association of Government Employees, Inc., (“NAGE”) asks that this Court enjoin the Defendants from cancelling or suspending the operations of the federal government on the ground that the limit on total indebtedness of the United States has been reached under 31 U.S.C. § 3101(b). In its present form 31 U.S.C. § 3101(b), known as the Debt Limit Statute, is in violation of the principle of the separation of powers, as set out in Articles I and II of the Constitution, because it necessarily confers on the Defendant President the unchecked discretion to cancel or curtail the operations of government approved by Congress without the approval of Congress. Plaintiff NAGE therefore seeks an order to declare that the Debt Limit Statute is presently unconstitutional and of no force and further seeks to enjoin Defendants from refusing to borrow to meet the operations of government approved by Congress and the debts and obligations that also must be paid pursuant to the Fourteenth Amendment until such time as 31

U.S.C. § 3101(b) is revised to ensure the constitutionally mandated role of Congress in determining what operations of government may be cancelled or curtailed and to bar layoffs or furloughs of any federal employees until 31 U.S.C. § 3101(b) is so revised.

2. While not challenging here in principle the controversial proposition that Congress can limit the indebtedness of the United States, Plaintiff asserts that Congress may not do so without at least setting the order and priority of payments once that limit is reached, instead of leaving it to the President to do so.

3. Plaintiff NAGE on behalf of itself and its members seeks to enjoin Defendant Yellen from complying with the borrowing limit set by 31 U.S.C. § 3101(b) and taking any additional actions beyond the extraordinary measures already taken to suspend investments in NAGE members' Thrift Savings Plan Funds that would result in any lays-offs, furloughs, loss of employment, or any loss of benefits to any of NAGE's members until 31 U.S.C. § 3101(b) is revised by Congress.

Jurisdiction and Venue

4. This Court has jurisdiction over this complaint under 28 U.S.C. § 1331, § 2201, and 5 U.S.C. § 702 because this case presents a substantial question of federal law.

5. This Court has the authority to issue a declaratory judgment and to order injunctive relief and other relief that is necessary and proper pursuant to 28 U.S.C. §§ 2201 & 2202 and 5 U.S.C. §§ 705, 706(2).

6. Venue is proper in this district under 28 U.S.C. § 1391(e)(1), as Plaintiff maintains its principal place of business in this judicial district and represents members, federal employees, throughout the United States, including this judicial district.

Parties

7. Plaintiff National Association of Government Employees, Inc., is a national labor organization affiliated with the Service Employees International Union. NAGE is incorporated in Delaware with its place of business at 159 Thomas Burgin Parkway, Quincy, MA 02169. It represents bargaining unit employees in U.S. government agencies including, but not limited to, the United States Department of the Army, the United States Department of the Air Force, the United States Department of the Navy, the Defense Commissary Agency, the Army and Air Force Exchange Service, the Defense Logistics Agency, the United States Department of Veterans Affairs, the United States Department of Transportation, the Federal Aviation Administration, the United States Environmental Protection Agency, the United States Department of the Interior, the United States Department of Commerce, and the Federal Mediation and Conciliation Service.

8. Defendant Janet Yellen is the Secretary of the Treasury of the United States and, in that position, has the responsibility for financing the operations of the federal government.

9. Defendant Joseph Biden is the President of the United States.

Facts

10. Plaintiff NAGE is the exclusive bargaining representative of nearly 75,000 federal employees, including approximately 6,000 in Massachusetts.

11. The members of Plaintiff NAGE work in U.S. government agencies including, but not limited to, the United States Department of the Army, the United States Department of the Air Force, the United States Department of the Navy, the Defense Commissary Agency, the Army and Air Force Exchange Service, the Defense Logistics Agency, the United States Department of Veterans Affairs, the United States Department of Transportation, the Federal Aviation Administration, the United States Environmental Protection Agency, the United States Department of the

Interior, the United States Department of Commerce, and the Federal Mediation and Conciliation Service.

12. At various times during periods when Congress has failed to approve a budget that continues full funding of one or more of these federal agencies, there have been layoffs or other loss of employment by members represented by Plaintiff NAGE at one or more of these agencies.

13. Unlike these previous layoffs, members of Plaintiff NAGE are now at immediate and imminent risk of layoff or furlough because shortly, possibly even next month, the limit on total indebtedness of the United States has been reached, the United States will run out of cash to meet the operations of government approved by Congress, and the Secretary of the Treasury will be forced to either prioritize the payments of government debt resulting in loss of benefits, layoffs and furloughs, or place the government in default by failing to borrow to cover the government's debt pursuant to 31 U.S.C. § 3101(b).

14. Since 1917, Congress has set a limit on the amount of indebtedness that the United States may incur.

15. From time to time since 1917, Congress has routinely raised such indebtedness of the United States without controversy until such limit was reached in 2011.

16. In 2011, Congress came much closer than previously to failing to enact an increase in total indebtedness of the United States. At that time, and since, the Secretary of the Treasury has taken preliminary measures to prioritize paying the principal and interest on government debt and delaying payments on other government expenses that result in NAGE members' loss of benefits, lay-offs, and furloughs.

17. Nonetheless, the limit was raised in 2011 in a timely manner and raised subsequently so that the limit on the total indebtedness of the United States is currently set at \$31.4

trillion.

18. On January 13, 2023, the defendant Secretary told Congress that early June may be the deadline when the Treasury could no longer pay the nation's bills without an increase in statutory borrowing and that she would be suspending reinvestments in retirement and health benefit funds, including the extraordinary measures of suspending new investments in the Thrift Savings Plan's G Fund investments and redeeming and suspending new investments off the Civil Service Retirement and Disability Fund

19. Nonetheless, despite taking these extraordinary measures, Defendant Yellen has stated that it is a certainty that the United States will soon be unable to pay its bills unless Congress raises the present limit on indebtedness set by 31 U.S.C. § 3101(b). Otherwise, Defendants will have to make decisions that belong exclusively to Congress in exercise of its legislative function.

20. At that time, the Defendants will be required to take various major actions to determine priorities for spending or whether certain spending should occur at all without any direction by Congress as to exercise of a function that belongs exclusively to Congress.

21. It is public knowledge, of which this Court can take judicial notice, that the majority party of the House of Representatives has declared that it will refuse to raise the statutory limit already reached unless and until the President guarantees and accepts the reduction in spending and cancellation of various regulations as described in the budget passed by the House along party lines on April 26, 2023.

22. The President, in turn, has stated that he will not negotiate in this manner in order to raise the level of indebtedness by law.

23. Unless and until Congress passes legislation that is signed and approved by the President that raises the limit on total indebtedness set by 31 U.S.C. § 3101(b), the Debt Limit

Statute will bar the defendant Secretary from paying in full for the operations of the United States government which will result, *inter alia*, in NAGE members' loss of employment, accrual of leave, and benefits paid into their pensions and retirement plans. Thrift Savings Plan contributions will be discontinued. Some employees may be forced to work unpaid with only the promise that they may be paid if and when the debt limit crisis is resolved. Specific statutes that prohibit certain outside activities, require prior approval, or prohibit outside employment altogether during a furlough will leave NAGE members with limited means of supporting themselves.

24. In addition to injury already suffered by members described above, and further injury they face, Plaintiff NAGE as an institution will suffer further certain and imminent reduction of its income as members who are furloughed and unable to pay dues to the union.

25. The Debt Limit Statute has placed the President in an impossible position, without legislative permission or constitutional authority as to how to proceed. Under Article II of the Constitution, the President is obligated to execute all the laws, without exception, and may not be placed by Congress in a position where the President has to determine what laws are of continuing force and require payment, once the limit on total indebtedness is reached.

26. The Fourteenth Amendment requires the President to meet obligations to the holders of federal debt. To do so, he must either borrow or find the necessary funds to do so from cancelling, suspending, or refusing to carry out spending already approved by Congress.

27. The Debt Limit Statute is unconstitutional because it puts the President in a quandary to exercise discretion to continue borrowing to pay for the programs which Congress has heretofore duly authorized and for which Congress has appropriated funds or to stop borrowing and to determine which of these programs the President, and not the Congress, will suspend, curtail, or cancel altogether.

28. In the case of the Anti-Deficiency Act, which is applicable in the absence of a duly enacted budget, yet to be determined, the President has limited authority to continue essential operations until the Congress has exercised its constitutional function of approving a budget and provides appropriate guidance to the President as to how to proceed. In complying with the Anti-Deficiency Act, the President does not have authority to suspend or cancel any laws or any programs that are, in fact, funded by Congress. By contrast, the Debt Limit Statute has a retroactive effect and requires a reduction of operations of government approved by Congress, with no legislative direction as to which obligations to cancel.

29. Plaintiff NAGE, accordingly, has standing to bring this action for prospective injunctive relief, as it is the exclusive bargaining representative of 75,000 federal employees and seeks to protect all its members from additional extraordinary measures as well as major spending related actions that will necessarily be taken without approval of Congress and that result in layoffs, furloughs, requirements for unpaid work, and loss of funding of the pensions and retirement plans of its members.

Claims

Count I: Violation of Separation of Powers and Presentment Clause

30. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

31. Article I of the Constitution vests the federal government's spending power exclusively in Congress. *See* U.S. Const. art. I, § 8, cl. 1. Nothing in the Constitution or any judicial decision interpreting the Constitution allows Congress to leave unchecked discretion to the President to exercise the spending power vested in the legislative branch by canceling, suspending, or refusing to carry out spending already approved by Congress. Such spending power resides solely

with Congress. Once such spending power is exercised by Congress and approved by the President under the Presentment Clause of Article I, section 7, it may not be further altered or revised by the President.

32. The Fourteenth Amendment prohibits any person from questioning the validity of the public debt and requires the President to first meet obligations to the holders of federal debt through borrowing or by finding the necessary funds from cancelling, suspending, or refusing to carry out spending already approved by Congress. Under the facts set forth above, and in violation of the separation of powers of Articles I and II, the Debt Limit Statute necessarily confers upon the Defendant President the unlawful discretion to cancel, suspend, or refuse to carry out spending approved by Congress, without the consent or approval of Congress as to how the President may do so, in order to pay the bondholders.

33. Because the Debt Limit Statute necessarily delegates the revision of such spending decisions to the President in order to meet its terms, and the members of the Plaintiff NAGE face continuing and imminent injury from such unlawful exercise of power, this Court should declare that 31 U.S.C. § 3101(b) in its current form is unconstitutional, unless and until the priorities for continued spending by the President are established by Congress once the debt limit is reached, and in the interim leave the defendant Secretary free to continue borrowing until there is a revision of 31 U.S.C. § 3101(b) to prevent the President from usurping the prerogatives of Congress.

34. Unless and until the Debt Limit Statute is amended or revised to allow Congress to determine the priority of payments among specific programs once the limit on indebtedness is reached, the Debt Limit Statute is illegal and unenforceable as a whole, as the constitutional defect in the law is not severable in its present form.

35. Unless and until the Debt Limit Statute is amended or revised to allow Congress to

determine the priority of payments among specific programs once the limit is reached, members of Plaintiff NAGE will suffer irreparable injury from layoffs, furloughs, and loss of employment that are taken without any legitimate authority by the President. While in the absence of a budget, the President may have authority under the Anti-Deficiency Act to extend forward the payment for essential services with cash on hand, or even with borrowing in the absence of a bar, the President has no such authority to do so when there is no cash on hand, and no authority to increase borrowing, and may not do so by refusing to execute other laws that Congress enacted and that the President has a constitutional obligation to continue.

36. Preliminary and permanent relief until 31 U.S.C. § 3101(b) can be properly revised is also in the public interest, and the balance of harms favors injunctive relief as well. Defendant Yellen has stated that the United States will suffer irreparable harm from the injury to its public credit and financial injury to all its citizens.

Count II: Violation of Fifth Amendment

37. Plaintiff repeats and realleges each and every allegation contained in the forgoing paragraphs as if fully set forth herein.

38. Under the facts set forth above, and in violation of the principles of equal protection and due process as incorporated into the Fifth Amendment of the Constitution, Congress has no scheme or set of classifications to determine or control which persons, corporations, or associations will or will not forfeit or lose amounts or suffer a taking of property and contractual rights due to them under 31 U.S.C. § 3101(b), or when the limit on the total indebtedness of the United States is reached, and the taking of such property or contractual rights or infliction of financial loss without the sanction of any law or consent of Congress deprives the Plaintiff NAGE of its right to equal protection.

WHEREFORE Plaintiff prays this Court to:

- A. Declare that, in order to meet payments to holders of the public debt of the United States, once the limit on total indebtedness is reached, the Debt Limit Statute both requires and unlawfully confers on the defendant President and defendant Secretary the unlawful discretion to cancel, suspend, or refuse to carry out spending decisions approved by Congress, without direction by Congress, in violation of the principle of the separation of powers as set forth in Articles I and II of the Constitution
- B. Enjoin the defendant Secretary under the inherent equity jurisdiction of this Court from limiting the borrowing of the United States pursuant to the Debt Limit Statute to the extent that it requires the defendant President and defendant Secretary to make decisions that exclusively belong to Congress and violate the separation of powers of the Constitution.
- C. Grant such other relief as may be appropriate to bar the defendant Secretary and President from involving or relying upon the Debt Limit Statute to de-fund any part of the operations of the federal government approved by Congress unless and until Congress specifically directs.
- D. Grant such and other further relief as the Court deems just and proper.

Dated: May 8, 2023

Respectfully submitted,

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES, INC.,

By its attorneys,

/s/ Shannon Liss-Riordan

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, INC.

(b) County of Residence of First Listed Plaintiff Norfolk County, MA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Shannon Liss-Riordan; Lichten & Liss-Riordan, P.C.; 729 Boylston Street, Suite 2000, Boston, MA 02116; 617-994-5800

DEFENDANTS

JANET YELLEN, Secretary of Treasury, in her official capacity, and JOSEPH BIDEN, President of the United States, in his official capacity

County of Residence of First Listed Defendant Washington D.C (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Foreign Nation, etc.)

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 2201 & 2202 and 5 U.S.C. §§ 705, 706(2)

Brief description of cause:

Seeking declaration that Debt Limit Statute, 31 U.S.C. § 3101(b), in its current form is unconstitutional

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/08/2023

SIGNATURE OF ATTORNEY OF RECORD

s/ Shannon Liss-Riordan

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) National Association of Government Employees, Inc. v. JANET YELLEN, Secretary of Treasury, in her official capacity, and JOSEPH BIDEN, President of the United States, in his official capacity

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 400, 410, 441, 535, 830*, 835*, 850, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.
- III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Shannon Liss-Riordan

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