UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

BRITTANY KNIGHT;

Petitioner,

v. Case No.: 4:17cv464

STATE OF FLORIDA; et al.;

Respondents.

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**KNIGHT'S MOTION TO CERTIFY A CLASS**

Petitioner Brittany Knight ("Knight") requests the Court certify a class pursuant to Fed.R.Civ.P. 23(b)(2) and states as follows:

**INTRODUCTION**

Roughly 210-300 presumably-innocent criminal defendants like Knight are eligible for pretrial release, but remain incarcerated awaiting trial in the county jail for Leon County, Florida ("Jail"), solely because they cannot afford the imposed monetary bail.[1] Thomas Decl., at ¶ 2, attached and incorporated as Ex. 5-1. By filing this lawsuit as a class action, Petitioner seeks to vindicate her rights and the

[1] Statewide, nearly 12,000—40%, Thomas Decl. (ECF 5-1), at ¶ 2, of the 57% of the 52,000 total inmates in Florida's county's jail, FDOC, *County Detention* (ECF 1-5), at 6 ("p. 4")—are eligible for pretrial release on a monetary bail they cannot afford.

rights of similarly situated pretrial detainees who have not been afforded constitutional protections under the Fourteenth Amendments of the U.S. Constitution.

When it comes to pretrial detention, the government cannot be allowed to sidestep the constitutionally required procedures for pretrial detention by simply imposing an unaffordable bail. Just like an order of pretrial detention, the imposition of an unaffordable bail constitutes pretrial detention; and therefore, the government must comply with the substantive and procedural requirements—however it effects pretrial detention. Thus, when the accused alerts the government and state court that the monetary bail is unaffordable and requests a reduced bail, *see* Verified Pet., at ¶ C(2)(a)-(b), the government must establish by clear and convincing evidence that pretrial detention in each particular defendant's case is necessary. *See* Fla.R.Crim.P. 3.132; § 907.041(4)(c), Fla. Stat. This requires the government to show that there are no less restrictive alternatives available to reasonably assure that the defendant will appear in court. However, in practice, Leon County is notorious for regularly circumventing these substantive and procedural requirements and effecting pretrial detention. As a result, hundreds of individuals like Petitioner unnecessarily remain jailed because they lack the financial resources to satisfy the monetary bail. The goal of this lawsuit is to affirm the constitutional rights of pretrial detainees with respect to the imposition

of an unaffordable monetary bail and to ensure that the government abides by the constitutional and statutory framework for effecting pretrial detention.

## BACKGROUND

Knight, a Leon County native and single mother of three children with no criminal history, was arrested on June 17, 2016, and she has been in pretrial detention ever since. Verified Pet. (ECF 1), ¶¶ 7, 55(a), 58-59. She has never had an affordable monetary bail. *Id*., ¶¶ 14-16. Since her arrest, she has challenged this unaffordable bail as a violation of the Fourteenth Amendment. However, it has taken considerable time at every stage.

The state court originally set her monetary bail at $500,000 without any argument from the government that such an exorbitant amount was necessary to reasonable assure Knight's appearance at future court proceedings. *Id*., at ¶ 12; Capias (ECF 1-4 at 5). On June 28, 2016, she filed a motion to reduce the bail amount, but several weeks later when the court finally heard the motion, it only reduced her monetary bail to $250,000. Mot. to Modify Bail (ECF 1-4 at 9); Order Denying Mot. (ECF 1-4 at 30). That amount was equally unaffordable. Verified Pet. (ECF 1), at ¶ 14.

On September 23, 2016, Knight first raised her Fourteenth Amendment claims to Florida's First District Court of Appeal ("First District"). Knight's Sept.

2016 Habeas Pet., No. 1D16-4322 (Fla. 1st DCA) (ECF 1-1). Five months later, the First District denied the petition on the ground that Knight had not properly presented these claims in the lower court. *Knight v. State*, 213 So. 3d 1019, 1022 (Fla. 1st DCA 2017). To cure this alleged defect, on Feb. 28, 2017, Knight filed another motion in the lower court and included the Fourteenth Amendment claims. Knight's Second Mot. to Modify Bail (ECF 1-4 at 31-35). It took the trial court seven weeks to deny her motion. Tr. of Hearing (ECF 1-4 at 42-54).

On May 4, 2017, Knight again raised these Fourteenth Amendment claims to the First District. Knight's May 2017 Habeas Pet., No. 1D17-1832 (Fla. 1st DCA) (ECF 1-3). And again, nearly five months later, the First District denied Knight relief. *Knight v. State*, No. 1D17-1832, 2017 WL 4341369 (Fla. 1st DCA Oct. 2, 2017).

Knight has now fully exhausted her claims in state court and seeks federal court relief on behalf of herself and other similarly situated pretrial inmates.

## CLASS DEFINITION

Knight requests the Court certify a class defined as follows:

> All current and future (a) Florida residents (b) detained awaiting trial (c) in the county jail for Leon County, Florida, (d) who are eligible for pretrial release upon satisfaction of monetary bail, (e) but they cannot afford it.

## ARGUMENT

"Pretrial detention is by nature temporary, and it is most unlikely that any given individual could have his constitutional claim decided on appeal before he is either released or convicted." *Gerstein v. Pugh*, 420 U.S. 103, 111 n.11 (1975). Before the federal courts can ultimately resolve Knight's Fourteenth Amendment claims, she will have most likely resolved her underlying criminal case and, thus, her individual claims will be moot. Consequently, to ensure the government does not unconstitutionally detain pretrial inmates through the imposition of an unaffordable bail, the Court should certify a class. The Petitioner has satisfied all of the requirements for class certification.

It is well-established that habeas petitions can be brought on behalf of a class. In *Cox v. McCarthy*, 829 F.2d 800, 804 (9th Cir. 1987), the Ninth Circuit explained class habeas petitions are appropriate and should be supported where "no other avenue is available to escape mootness" for the members of the class—as is the case here. Notably, habeas class actions have been certified to correct systemic unconstitutional detentions. *See Fernandez-Roque v. Smith*, 91 F.R.D. 117 (N.D. Ga. 1981) (approving an immigration habeas class action);[2] *Rodriguez v. Hayes*,

[2] The court also noted that "classwide habeas corpus relief by means of issuing the writ itself is fairly novel; however, a number of circuit courts have upheld the notion of class

591 F.3d 1105, 1112 (9th Cir. 2010) (district court certified a class of immigrants held for longer than 6 months who sought declaratory relief and an adequate immigration hearing to determine whether their prolonged detention is justified); *Hernandez v. Lynch*, No. EDCV1600620, 2016 WL 7116611 (C.D. Cal. Nov. 10, 2016) (approving similar class action); *see also Schall v. Martin*, 467 U.S. 253, 261 (1984) (observing, without addressing, that the district court approved a class habeas action seeking a declaration that preventative detention of juveniles violated the Fourteenth Amendment); *St. Jules v. Savage*, 512 F.2d 881, 882 (5th Cir. 1975) (ruling on class exhaustion and thus permitting class action habeas to proceed).

As set forth below, Knight's proposed class satisfies the four requirements of Rule 23(a), and is appropriate under Rule 23(b)(2). For a district court to certify a class action, every putative class first must satisfy the prerequisites of "numerosity, commonality, typicality, and adequacy of representation" and at least one of the alternative requirements of Rule 23(b). Fed.R.Civ.P. 23; *Mills v. Foremost Ins. Co*., 511 F.3d 1300, 1307-08 (11th Cir. 2008) (citations omitted). Here, the putative class satisfies each of the four requirements of Rule 23(a) and—because each class member is detained pretrial in violation of the Fourteenth

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certification in habeas cases …." *Fernandez-Roque v. Smith*, 539 F. Supp. 925, 929 n.5 (N.D. Ga. 1982).

Amendment for the same reason—it qualifies through Rule 23(b)(2) for class certification.

**1. <u>The requirements of Rule 23(a) are satisfied.</u>**

For a class to be certified, the following four requirements must be satisfied: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed.R.Civ.P. 23(a). As Petitioner demonstrates below, all four requirements of Rule 23(a) are clearly met.

**A. Numerosity – Rule 23(a)(1).**

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." While there is no magic number of putative class members necessary to satisfy the numerosity standard, the Eleventh Circuit has indicated that more than forty members is generally enough to satisfy the rule. *See Cox v. Amer. Cast Iron Pipe Co.,* 784 F.2d 1546, 1553 (11th Cir. 1986).

The proposed class contains more than 40 members and is so numerous and so fluid that joinder of all members is impracticable and uneconomical. Several thousand persons are admitted to the Jail annually. Thomas Decl. (ECF 5-1), at

¶ 2(g). The identity of inmates held pretrial on an unaffordable bail changes daily. *Id*. There are approximately 210-300 class members at any one time—Florida residents detained awaiting trial in the county jail for Leon County, Florida ("Jail"), who are eligible for pretrial release upon satisfaction of monetary bail, but they cannot afford it. *Id*., at 1, ¶ 2.

The numerosity requirement of Rule 23(a)(1) is therefore satisfied.

**B. Commonality – Rule 23(a)(2).**

Rule 23(a)(2) requires that "there [be] questions of law or fact common to the class." "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury" so that the resolution of the individual claim would also resolve other class members' claims "in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011) (quotation omitted).

With few factual disputes, Knight's petition raises legal questions that will affect all or a significant number of the class members, *see Williams v. Mohawk Indus., Inc*., 568 F.3d 1350, 1355 (11th Cir. 2009): (1) Whether an unaffordable bail constitutes pretrial detention? (2) Whether a monetary bail that results in pretrial detention must be narrowly tailored to the government's compelling interests? (3) Whether a monetary bail that results in pretrial detention must have no less-restrictive alternative? (4) Whether the government bears the burden to

establish the need for a monetary bail that results in pretrial detention by clear and convincing evidence?

As pure questions of law, all of these issues are "susceptible to class-wide proof." *Cooper v. Southern Co.,* 390 F.3d 695, 714 (11th Cir. 2004) (quotations/citations omitted), *overruled on other grounds by Ash v. Tyson Foods, Inc.,* 546 U.S. 454 (2006). Importantly, a class proceeding will generate common answers to those questions. *See Wal-Mart Stores,* 564 U.S. at 349-50. A judgment declaring that unaffordable monetary bail constitutes pretrial detention and violates the U.S. Constitution where the government has failed to clearly establish pretrial detention is necessary and will benefit all class members.

In sum, this class action challenges the systemic course of conduct that has caused all class members to suffer the exact same constitutional injury. It presents several common questions of law and facts that are susceptible to classwide proof and to which a class proceeding will generate common answers. Accordingly, the commonality requirement of Rule 23(a)(2) is satisfied.

**C. Typicality – Rule 23(a)(3).**

Fed. R. Civ. P. 23(a)(3) requires that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Although commonality and typicality overlap, *Prado-Steiman ex rel. Prado v. Bush*, 221

F.3d 1266, 1278-79 (11th Cir. 2000), the focus of typicality is whether the class representative's interest is aligned enough with the proposed class members to stand in their shoes for purposes of the litigation. *Vega v. T-Mobile USA, Inc.,* 564 F.3d 1256, 1275 (11th Cir. 2009). *See also Busby v. JRHBW Realty, Inc.,* 513 F.3d 1314, 1322 (11th Cir. 2008) ("A class representative must possess the same interest and suffer the same injury as the class members in order to be typical under Rule 23(a)(3)."") (citations omitted).

Here, Knight's claims, interests, and reasons for her detention in violation of the Fourteenth Amendment are identical to those of the putative class members. Her claims are therefore "reasonably co-extensive" with those of the absent class members, and they share the same "essential characteristics" as the claims of the class at large. *In re Checking Account Overdraft Litig.*, 275 F.R.D. 666, 674 (S.D. Fla. 2011); *Appleyard v. Wallace*, 754 F.2d 955, 958 (11th Cir. 1985) (citations omitted). Petitioner, therefore, satisfies the typicality requirement.

**D. Adequacy of Representation – Rule 23(a)(4).**

The fourth element of the Rule 23(a) analysis requires that the "representative parties will fairly and adequately protect the interests of the class." Fed.R.Civ.P. 23(a)(4). This requirement "involves questions [1] of whether plaintiffs' counsel are qualified, experienced, and generally able to conduct the proposed litigation, and [2] of whether plaintiffs have interests antagonistic to

those of the rest of the class." *Griffin v. Carlin,* 755 F.2d 1516, 1533 (11th Cir. 1985); *see also Valley Drug Co. v. Geneva Pharmaceuticals, Inc*., 350 F.3d 1181, 1189 (11th Cir. 2003). These criteria are satisfied here.

Regarding the first prong, Petitioner's counsel (ACLU of Florida) have extensive experience in class action cases involving federal civil rights claims and have the resources to fully litigate this lawsuit. The attorneys are currently and have previously litigated class actions for prisoners in federal courts. *See, e.g., CAIR Florida, Inc. v. Miami-Dade Co.*, No. 1:15cv23324 (S.D. Fla.) (challenging denial of Halal diets to Muslim inmates); *Carruthers v. Israel*, No. 76cv6086 (S.D. Fla.) (involving mental health, excessive force and religious freedom claims related to conditions of confinement against Broward County Jail); *Underwood v. Manfre*, No. 3:13-cv-192 MMH (M.D. Fla. Jan. 8, 2014) (challenging Flagler County Jail's postcard-only mail policy); *Hamilton v. Hall,* No. 3:10cv355 MCR, 2011 WL 2161139 (N.D. Fla. May 26, 2011) (challenging Santa Rosa County Jail's postcard-only mail policy). Counsel represented Knight in the underlying state court appeals and are very familiar with the claims and arguments presented in this case. *See* ECF 1-1, 1-2, and 1-3. They are qualified, experienced, and fully committed to this litigation.

The second prong merely requires that there be no major conflicts between the proposed class representatives and the class. *See Valley Drug Co.,* 350 F.3d at 1189 ("[T]he existence of minor conflicts alone will not defeat a party's claim to class certification: the conflict must be a 'fundamental' one going to the specific issues in controversy.") (citations omitted). That requirement is easily satisfied as the proposed class representative has no interest antagonistic to or in conflict with the interests of the class members. Knight and the proposed class share a common goal: an end to the unconstitutional use of an unaffordable bail to effect unnecessary pretrial detention without the required safeguards. Thus, there is no likelihood of conflicts or antagonistic interests developing between the class representative and the class.

Furthermore, Knight will retain the ability to represent the class even after her individual claims become moot. *Stein v. Buccaneers Ltd. P'ship*, 772 F.3d 698, 708 (11th Cir. 2014) (discussing *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66 (2013)), *cited with approval, Edwards v. Cofield*, No. 3:17cv321, 2017 WL 3015176, at *2 (M.D. Ala. July 14, 2017) (denying a motion to dismiss a class action challenging the constitutionality of pretrial detention on unaffordable bail even though the named plaintiff's claim was moot); *Walker v. City of Calhoun, Georgia*, No. 4:15cv170, 2016 WL 361580, at *9 (N.D. Ga. Jan. 28, 2016)

(approving adequacy of class representative who was no longer in jail to challenge pretrial detention on unaffordable bail).

Knight and her counsel will adequately represent the class.

**2. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2).**

Certification is appropriate pursuant to Rule 23(b)(2) when the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. Fed. R. Civ. P. 23(b)(2). This requirement must be fashioned for a habeas context. A habeas petition is brought against the custodian, not the person who necessarily *caused* the unconstitutional detention. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (ruling although Padilla was apprehended by federal agents executing a material witness warrant, he must pursue habeas relief against his current detainer, the Commander Marr, even though Marr neither acted nor refused to act to otherwise cause his unconstitutional detention); *see also St. Jules v. Savage*, 512 F.2d 881, 882 (5th Cir. 1975) (permitting class action to proceed against the Texas Department of Corrections who merely detained the class members and was not the cause of the unconstitutional detention). Interpreting Rule 23(b)(2) in the habeas context, certification is appropriate when the class is detained for the same unconstitutional reason so that "a single injunction or declaratory judgment would provide relief to

each member of the class." *Wal-Mart Stores,* 564 U.S. at 360; *Heffner v. Blue Cross & Blue Shield of Alabama, Inc*., 443 F.3d 1330, 1345 (11th Cir. 2006) ("Certification under Rule 23(b)(2) is proper when the relief sought necessarily affects all class members."). That is clearly the case here.

In certifying a class pursuant to Rule 23(b)(2), two basic requirements must be met: (1) the class members must have been harmed in essentially the same way; and (2) the common injury may properly be addressed by classwide injunctive or equitable remedies. *Holmes v. Continental Can Co.,* 706 F.2d 1144, 1155 (11th Cir. 1983) ("[T]he claims contemplated in a [Rule 23] (b)(2) action are *class* claims, claims resting on the same grounds and applying more or less equally to all members of the class.") (emphasis in original).

In this case, Knight challenges her pretrial detention through the imposition of an unaffordable bail as violative of the Fourteenth Amendment. Through a systemic practice and policy that persists in the state courts in Leon County, Florida, each other class member has been harmed in essentially the same way. In Leon County, the government rarely seeks pretrial detention by filing a pretrial detention motion or signals an intent to do so. Thomas Decl. (ECF 5-1), at ¶ 4. Instead, the government regularly requests an unaffordable monetary bail to accomplish pretrial detention. *Id*. The state court does not consider the accused's

financial resources to ensure the monetary bail is affordable. *Id*., at ¶ 5(d). Yet, often everyone knows the monetary bail is unaffordable because the criminal defendant was just found to be indigent and appointed an attorney at the state's expense.[3] *Id*., at ¶ 5(b). Indeed, in the vast majority of cases, when an accused remains jailed pretrial on a monetary bail, the inescapable conclusion is that she cannot afford it. *Id*., at ¶ 5(e). Because state court proceeds outside the pretrial detention statute and rule when setting monetary bail, it neither considers nor finds that (i) there is a need for pretrial detention or (ii) no less-restrictive alternatives to pretrial detention or additional conditions of pretrial release in conjunction with a reduced monetary bail would reasonably achieve the government's legitimate interests. *Id*., at ¶ 5(e). Furthermore, the state court does not find that the government established this need for pretrial detention by clear and convincing proof. *Id*. Appeals of unaffordable bail are rarely successful given the First District's practice and rulings that leave this decision in the trial court's hands. *Id*., at ¶5(f); *see also Mehaffie v. Rutherford*, 143 So. 3d 432, 434 (Fla. 1st DCA 2014).

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[3] Before a felony defendant may be appointed counsel at the state's expense, the defendant must provide financial information on a standard application to the clerk of court. *See* § 27.52(1), Fla. Stat.; Fla.R.Crim.P. 3.111; Fla.R.Crim.P. 3.984 (Florida's form *Application for Criminal Indigent Status* (rev. Oct. 29, 2015)). The applicant must "attest[] to the truthfulness of the information provided" under penalty of perjury. § 27.52(1)(a), Fla. Stat. The clerk should find a criminal defendant is indigent if his income is "equal to or below 200 percent of the then-current federal poverty guidelines" and his net assets are less than $2,500 (excluding one vehicle whose value is no more than $5,000). § 27.52(2), Fla. Stat. The Annual Update of the HHS Poverty Guidelines (Jan. 31, 2017), 82 FR 8831-03, reports the 100% of the poverty guidelines.

And appeals are rarely effective because the First District's determination often arrives months after the arrest. Thomas Decl. (ECF 5-1), at ¶ 5(g); *Stack v. Boyle*, 342 U.S. 1, 4 (1951) ("Relief in this type of case must be speedy if it is to be effective."). Even if the class members' precise experiences with the policy may vary, "factual differences among the claims of the putative class members do not defeat certification." *Cooper,* 390 F.3d at 713 (quotations/citations omitted).

This common injury may properly be addressed through the sought narrow, classwide relief that largely leaves to the state the mechanics of constitutionally determining bail. First, she seeks a declaration of the state court's obligations under the Fourteenth Amendment when imposing an unaffordable bail. Verified Pet. (ECF 1), ¶ B. Second, she requests this Court first give the government an opportunity to correct the unconstitutional detention, *id*. at ¶ C(2), when a class member represents that the monetary bail is unaffordable and requests a reduction, *id*. at ¶ C(2)(a)-(b). She requests that the state court first determine whether the monetary bail is unaffordable and if the government has shown by clear and convincing evidence a need for it. *Id*., at ¶ C(2)(i)-(iii). Only when the government continues to detain the accused on an unaffordable bail without complying with the strictures of the Fourteenth Amendment would this Court be asked to order the release of an inmate. This classwide relief would address the classwide injury.

In sum, this challenge and relief of the unconstitutional detention is particularly appropriate for certification under Rule 23(b)(2).

**3. <u>The Court should appoint the undersigned as class counsel.</u>**

Rule 23(g)(1) provides that "unless a statute provides otherwise, a court that certifies a class must appoint class counsel." Rule 23(g)(1)(A) outlines the factors relevant to the appointment of class counsel: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.

All of these factors weigh in favor of appointing the undersigned as class counsel. The ACLU represented Knight before the Florida appellate courts where she filed her habeas petitions. The ACLU has already done substantial work investigating the facts and identifying the claims for the class. The undersigned counsel has previously represented in federal court classes of jail inmates. *See Adequacy of Representation* §1(D)*, supra.* In addition, undersigned counsel has sufficient resources that they will commit to representing the class.

**4. The class claims are exhausted.**

In light of Knight's exhaustion of her individual claims, other class members have vicariously exhausted their claims. *St. Jules v. Savage*, 512 F.2d 881, 882 (5th Cir. 1975) (holding where a state court "rejected, without opinion" the "single constitutional challenge" of an individual, the class claims were also exhausted because "individual consideration of each petition would serve no useful purpose"); *see also Chandler v. Crosby*, 379 F.3d 1278, 1287 (11th Cir. 2004) (ruling the exhaustion by one class member satisfies the PLRA's exhaustion requirement for the certified class); *U.S. ex rel. Sero v. Preiser,* 506 F.2d 1115, 1130 (2d Cir.1974) (finding that a class of prisoners seeking habeas corpus relief pursuant to 28 U.S.C. § 2254 satisfied the exhaustion requirement through vicarious exhaustion).

## CONCLUSION

The government has systemically detained pretrial Leon Jail inmates through the imposition of an unaffordable bail with neither the "degree of confidence" required to deprive a person of liberty nor consideration of less-restrictive alternative measures to achieve the government's legitimate interests. For this Court to remediate the unconstitutional practice, it should certify a class. Her individual claim will not survive long enough for the federal courts to resolve this dispute.

**WHEREFORE**, Petitioner requests that the Court certify a class of pretrial inmates, appoint Petitioner's counsel as the class counsel, and Knight as class representative.

## N.D. FLA. LOC. R. 7.1(B) CONFERENCE COMPLIANCE

Respondents have neither been served with the petition nor entered an appearance. Their position with respect to this motion is uncertain.

## N.D. FLA. LOC. R. 7.1(F) CERTIFICATE OF WORD LIMIT

This filing contains a total of 4,181 words—within the 8,000 word limit.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed today the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all persons registered for this case, including any opposing counsel that have appeared.

Oct. 17, 2017

Respectfully Submitted,

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