No. 06-0354

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FAITH TEMPLE CHURCH,

Plaintiff-Appellant

v.

TOWN OF BRIGHTON, SANDRA L. FRANKEL, in her official capacity as Brighton Town Supervisor, THOMAS LOW, in his official capacity as Brighton Commissioner of Public Works, RAMSEY BOEHNER, in his official capacity as Brighton Town Planner, and JAMES R. VOGEL, RAYMOND TIERNEY III, JILL VIGDOR FELDMAN and SHERRY KRAUS, in their official capacity as Brighton Town Board Members,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF OF THE UNITED STATES AS *AMICUS CURIAE*
IN SUPPORT OF PLAINTIFF-APPELLANT

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INTEREST OF THE UNITED STATES

This case concerns the appropriate interpretation of the prohibitions in the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc *et seq.* The Department of Justice is charged with enforcing RLUIPA, see 42 U.S.C. 2000cc-2(f), and therefore has an interest in how courts

construe the statute's protections. The United States is entitled to participate as *amicus curiae* pursuant to Federal Rule of Appellate Procedure 29.

STATEMENT OF THE ISSUE

The United States will address the following question: Whether the statutory provision requiring that governmental actions challenged under RLUIPA involve the "impos[ition] or implement[ation]" of "a land use regulation," 42 U.S.C. 2000cc(a)(1), is satisfied by a municipality's commencement of eminent domain proceedings in furtherance of a comprehensive zoning plan.

STATEMENT OF THE CASE

1. Background

Plaintiff Faith Temple Church ("Faith Temple") is located in the Town of Brighton ("Town").[1] *Faith Temple* v. *Town of Brighton, et al.*, 405 F. Supp. 2d 250, 251 (W.D.N.Y. 2005). Having outgrown its existing facilities, Faith Temple purchased a 66-acre parcel of land (the "Groos Parcel") a few miles away with the intent to build a new and larger church campus. *Ibid.* The Groos Parcel is adjacent to a 49-acre parcel (the "Park") the Town owns. *Ibid.*

The Town's Comprehensive Plan, which was updated in 2000, recommends

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[1] Appellees will be referred to collectively herein as "the Town."

the Town acquire the Groos Parcel and use it to expand the Park. 405 F. Supp. 2d at 251. Toward this end, the Town negotiated with Alan Groos, owner of the Groos Parcel, but was not able to reach an agreement on price. *Ibid.* Faith Temple began negotiations with Groos in 2003 and announced its purchase of the Groos Parcel in January 2004. *Ibid.* On April 13, 2004, the Town announced it would commence proceedings under New York's Eminent Domain Procedure Law (EDPL) to seize the Groos Parcel for expansion of the Park. *Ibid.* The Town commenced eminent domain proceedings soon after this announcement. *Id.* at 251-252.

2. Proceedings Below

On July 30, 2004, Faith Temple filed a complaint in the Western District of New York alleging various violations of the federal and state constitutions, as well as RLUIPA. *Faith Temple*, 405 F. Supp. 2d at 252. The primary form of relief sought in the complaint was an injunction barring the Town's use of eminent domain to seize the church's land. *Ibid.*

The RLUIPA provision at issue states, in relevant part, that "[n]o government shall impose or implement a *land use regulation* in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that

imposition of the burden on that person, assembly, or institution – (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. 2000cc(a)(1) (emphasis added). The term "land use regulation," in turn, is defined as "a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest." 42 U.S.C. 2000cc-5(5).

Based on the foregoing provisions, the Town moved for partial summary judgment, arguing that RLUIPA did not apply to this case because the statute's "land use regulation" requirement was not satisfied. In its analysis, the district court focused on two questions: (1) whether the eminent domain proceedings at issue qualify as a "zoning law" for purposes of satisfying the "land use regulation" requirement, and (2) whether the eminent domain proceedings satisfy the "land use regulation" requirement because they constitute the application of a zoning law.

In first addressing whether the Town's eminent domain proceedings qualify as a zoning law, the district court emphasized the historic distinction between the concepts of zoning and eminent domain, focusing in particular on the fact that

RLUIPA includes the former within the definition of "land use regulation" while making no mention of the latter. *Faith Temple*, 405 F. Supp. 2d at 254-255. Based on this omission, the court concluded that Congress intended to exclude the exercise of eminent domain from the scope of RLUIPA. *Id.* at 255.

Turning next to the question whether the eminent domain proceedings may nevertheless satisfy the "land use regulation" requirement because they amount to the "application" of a zoning law, 42 U.S.C. 2000cc-5(5), the district court held that "the connection between the eminent domain proceedings and any of the Town's zoning laws is too attenuated to constitute the application of a zoning law." 405 F. Supp. 2d at 256. See also *id.* at 257 ("[T]he Town's employment of eminent domain to obtain the land is simply too far removed from any zoning regulations to fall with [*sic*] the purview of RLUIPA."). In reaching this conclusion, the district court again stressed the difference between zoning and eminent domain and stated again that the absence of the term "eminent domain" from the text of RLUIPA represents a conscious omission by Congress. See *id.* at 258 (noting that "at the stroke of a pen Congress could have included both [zoning and eminent domain] within the coverage of RLUIPA").

Having concluded that the eminent domain proceedings at issue do not constitute either a zoning law or the application thereof, the district court held that

RLUIPA's "land use regulation" requirement was not satisfied. The court accordingly granted the Town's motion for partial summary judgment and dismissed Faith Temple's RLUIPA claims. 405 F. Supp. 2d at 258. Faith Temple then stipulated to the dismissal of its remaining claims. This appeal followed.

SUMMARY OF ARGUMENT

The district court erred in granting partial summary judgment to the Town with respect to Faith Temple's RLUIPA claims. The RLUIPA provision at issue prohibits municipalities from "impos[ing] or implement[ing] a land use regulation in a manner that imposes a substantial burden" on religious exercise unless certain conditions are met. 42 U.S.C. 2000cc(a)(1). Here, the Town's Comprehensive Plan is a zoning law that restricts the use of land and therefore satisfies RLUIPA's definition of a "land use regulation." And the record demonstrates that the taking of the church's land was an "implement[ation]" of the Comprehensive Plan. The district court failed to so conclude because it focused on the abstract issue of whether eminent domain proceedings are "land use regulations." Instead, the court should have focused on the nature of the Comprehensive Plan, which is plainly a land use regulation. The court thus should have concluded that the requirement of RLUIPA that a challenged burden arise from the implementation or imposition of a land use regulation was met here.

ARGUMENT

TAKING FAITH TEMPLE'S PROPERTY PURSUANT TO THE COMPREHENSIVE PLAN WOULD CONSTITUTE THE IMPOSITION OR IMPLEMENTATION OF A LAND USE REGULATION UNDER RLUIPA

A. The Plain Language Of RLUIPA

1. RLUIPA's Statutory Elements

The substantive provision of RLUIPA at issue in this case contains two elements: (1) the existence of a "land use regulation" (2) that, when "impose[d] or implement[ed]," "imposes a substantial burden on * * * religious exercise." 42 U.S.C. 2000cc(a)(1). RLUIPA defines "land use regulation" as "a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land." 42 U.S.C. 2000cc-5(5). By its terms, RLUIPA must "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [the statute] and the Constitution." 42 U.S.C. 2000cc-3(g).

As with all congressional enactments, RLUIPA's terms must be given their plain meaning. See, *e.g.*, *Leocal* v. *Ashcroft*, 543 U.S. 1, 9 (2004) ("When interpreting a statute, we must give the words their ordinary or natural meaning.") (internal quotation marks omitted); *Harris* v. *Sullivan*, 968 F.2d 263, 265 (2d Cir. 1992) ("A fundamental canon of statutory construction is that, unless otherwise

defined, words will be interpreted as taking their ordinary, contemporary, common meaning.") (internal quotation marks omitted). Thus, in interpreting RLUIPA, courts "must first look to the language of the statute itself." *Greenery Rehab. Group* v. *Hammon*, 150 F.3d 226, 231 (2d Cir. 1998). "If the statutory terms are unambiguous, [this Court's] review generally ends and the statute is construed according to the plain meaning of its words." *Ibid.*

When conducting this inquiry, however, courts must read the statute as a whole, "since the meaning of statutory language, plain or not, depends on context." *Rock of Ages Corp.* v. *Secretary of Labor*, 170 F.3d 148, 155 (2d Cir. 1999) (internal quotation marks omitted). See also *Yerdon* v. *Henry*, 91 F.3d 370, 376 (2d Cir. 1996) ("[T]he interpretation of a statute requires consideration of the language of the relevant provision in conjunction with the entire statute."). Moreover, the Court should view RLUIPA's statutory terms in light of both the general principle that remedial statutes must be construed broadly, see *City of Memphis* v. *Greene*, 451 U.S. 100, 120 (1981) (Civil Rights Act is "broadly construed" "[t]o effectuate the remedial purposes of the statute"), and Congress' specific command that RLUIPA "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [the statute] and the Constitution." 42 U.S.C. 2000cc-3(g).

Analyzing the plain language of RLUIPA, the burden on the church is caused by the "implement[ation] or impos[ition of] a land use regulation." First, the Comprehensive Plan is a zoning law that restricts the use of land, and thus constitutes a "land use regulation" under RLUIPA. Second, the burden alleged by the church here arises through the operation of the Comprehensive Plan, and thus the burden is caused by the "implement[ation] or impos[ition of] a land use regulation."

2. The Town's Comprehensive Plan Is A Zoning Law That Limits Or Restricts Faith Temple's Use Or Development Of Its Land, And Thus Qualifies As A "Land Use Regulation" Under RLUIPA

Simply stated, the district court reached the wrong conclusion because it asked the wrong question. In examining whether the "land use regulation" requirement was satisfied, the court looked to the eminent domain proceedings themselves in an effort to determine whether such proceedings constituted a zoning law or the application thereof. Instead, the court should have analyzed the Town's Comprehensive Plan to determine whether it qualified as a land-use regulation.

RLUIPA defines land-use regulation as a "zoning or landmarking law * * * that limits or restricts a claimant's use or development of land." 42 U.S.C. 2000cc-5(5). And New York law views a comprehensive plan as a zoning law. See, *e.g.*, *Rayle* v. *Town of Cato Bd.*, 295 A.D. 2d 978, 979 (N.Y. App. Div. 2002) (noting

that "[t]he power to zone is derived from the Legislature and must be exercised in the case of towns . . . in accord with a 'comprehensive plan'") (internal quotation marks omitted), appeal denied, 747 N.Y.S. 2d 851 (N.Y.A.D. 2002); *Id.* at 979 ("A comprehensive plan has as its underlying purpose the control of land uses for the benefit of the whole community based upon consideration of its problems and applying the enactment or a general policy to obtain a uniform result.") (quoting *Kravetz* v. *Plenge*, 84 A.D. 2d 422, 429 (N.Y. App. Div. 1982)); *Udell* v. *Haas*, 21 N.Y. 2d 463, 469 (N.Y. 1968) ("[T]he comprehensive plan is the essence of zoning."). See also Black's Law Dictionary (8th ed. 2004) (defining "comprehensive zoning plan" as "[a] general plan to control and direct the use and development of a large piece of property"); App. Br. 17-22.[2]

The Comprehensive Plan itself states in its introduction that the purpose of comprehensive plans is to "provide[ ] a foundation from which town leaders can form policies and regulate land use to shape the future of a community." Comprehensive Plan, SPA 1170. A review of the Comprehensive Plan reveals that it is indeed a multi-factoral approach to meet the "vision and goals" of the community. SPA 1170. The section of the plan entitled "Implementation" covers

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[2] "App. Br." refers to Faith Temple's opening brief.

strategies such as increasing lot size requirements, creating new office zoning designations, and creating more open spaces in the town through zoning changes, land acquisitions, and easements. SPA 1298-1301. The Comprehensive Plan thus not only meets the New York legal definition of a zoning law, but the general understanding of the term. See, *e.g.*, 83 Am. Jur. 2d *Zoning and Planing* § 3 (2005) (defining "[z]oning" as "the division of land into distinct districts and the regulation of certain uses and developments within those districts," and "the process that a community employs to legally control the use which may be made of property and the physical configuration of development upon tracts of land located within its jurisdiction"). The Comprehensive Plan thus meets the definition of "land use regulation" under RLUIPA. 42 U.S.C. 2000cc-5(5).

3. The Commencement Of Eminent Domain Proceedings In This Case Is The "Implement[ation]" Of A "Land Use Regulation"

Having established that the Comprehensive Plan meets RLUIPA's definition of a "land use regulation," the next step in the inquiry is determining whether the challenged action represents the "implement[ation]" of the land use regulation.[3]

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[3] To prevail on the merits, Faith Temple also must demonstrate that such imposition or implementation "impose[d] a substantial burden on" Faith Temple's religious exercise. 42 U.S.C. 2000cc(a)(1). However, this issue was not addressed below and should be decided in the first instance by the district court following remand.

The plain meaning of the verb "implement" is "to carry out," or "to give practical effect to and ensure of actual fulfillment by concrete measures." Webster's Third New International Dictionary 1134 (1993). As noted above, the plain meaning of this term must be construed in context with Congress' instruction that RLUIPA be broadly construed. See 42 U.S.C. 2000cc-3(g).

The eminent domain proceedings at issue were undertaken pursuant to the Comprehensive Plan, which specifically recommended acquisition of the Groos Parcel. See App. Br. 23-30. Indeed, the Town itself has admitted as much. See App. Br. 30-33. Accordingly, the eminent domain proceedings unquestionably "carr[ied] out," "g[ave] practical effect to," and "ensure[d] * * * actual fulfillment by concrete measures" of the Comprehensive Plan. Thus, under the plain meaning of the term, the Town's use of eminent domain to obtain the church's land must be considered part of the "implement[ation]" of the Comprehensive Plan.

In view of the foregoing, all necessary statutory elements are satisfied in this case. The district court's ruling therefore contravenes the plain meaning of the statute. Accordingly, reversal is appropriate and this Court need – and should – proceed no further in its analysis. See *Wetzler* v. *Federal Deposit Ins. Corp.*, 38 F.3d 69, 73 (2d Cir. 1994) ("When the words selected by Congress to be included in the statute are clear and unambiguous, judicial inquiry ends.").

B. The Conclusion That RLUIPA Encompasses The Implementation Of The Comprehensive Plan In This Case Is Consistent With Its Goals And Purposes

While the plain text of RLUIPA leads to the conclusion that the district court was in error, this conclusion is also supported by its legislative history. Congress was concerned by municipalities' creative use of zoning laws to deprive religious institutions of the use of their property in favor of other, non-religious uses that may be preferred by the municipality, such as tax- or commerce-generating uses.[4] This concern of Congress has born out in practice. See, *e.g.*, *Midrash Sephardi* v. *Town of Surfside*, 366 F.3d 1214, 1222 (11th Cir. 2004) (city sought to ban

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[4] See, *e.g.*, 146 Cong. Rec. 16,698 (2000) (joint statement of Sens. Hatch & Kennedy) ("Churches in general, and new, small, or unfamiliar churches in particular, are frequently discriminated against on the face of zoning codes and also in the highly individualized and discretionary processes of land use regulation. Zoning codes frequently exclude churches in places where they permit theaters, meeting halls, and other places where large groups of people assemble for secular purposes."); H.R. Rep. No. 219, 106th Cong., 2d Sess. 19-20 (1999) ("House Report") (finding that secular assemblies such as "clubs" and "lodges" "are often permitted as of right in zones where churches require a special use permit, or permitted on special use permit where churches are wholly excluded"); *id.* at 20 ("[T]he Subcommittee heard testimony of repeated cases in Chicago where the City Council rezoned an individual parcel of property upon application for a special use permit by a church to disqualify the church altogether."); *id.* at 21-22 (noting examples of cases in which churches applied for permits to use former commercial facilities, but, "upon application for a use permit by the church, the land use regulator rezoned each small parcel of land into tiny manufacturing zones, rendering the churches non-permitted uses for these 'zones'").

synagogue from renting space above a bank in business district on grounds that other uses would have better commercial "synergy"), cert. denied, 543 U.S. 1146 (2005); *Cottonwood Christian Ctr.* v. *Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1222 n.9 (C.D. Cal. 2002) (city used zoning and eminent domain power to try to ensure that its preferred use, a Costco, was sited on the land rather than a church); *Elsinore Christian Ctr.* v. *City of Lake Elsinore*, 291 F. Supp. 2d 1083, 1086 (C.D. Cal. 2003) (city noted loss of tax revenue and desirability of keeping current grocery store and recycling business as reasons for denying church's permit to build church on site it purchased).

Congress therefore painted with a broad brush in allowing *any* method of implementation of a land use regulation to satisfy the requirements of RLUIPA. And it further reinforced this notion by expressly instructing that RLUIPA be construed broadly. See 42 U.S.C. 2000cc-3(g). The district court's holding that eminent domain cannot be an "implementation of a land use regulation" under RLUIPA cannot be squared with the operative language of RLUIPA or RLUIPA's broad purpose of curtailing abuse of local land use authority.

C. Other Federal Courts Have Recognized That Eminent Domain Proceedings May Fall Within The Scope Of RLUIPA

In view of the foregoing, it is not without reason that, prior to the decision below, no other federal court had held that eminent domain proceedings are categorically excluded from the scope of RLUIPA. The government is not aware of any federal circuit court decision addressing this question. But both federal district courts that addressed similar issues prior to the decision below recognized that there may be situations in which the commencement of eminent domain proceedings could satisfy the requirements of RLUIPA – a result foreclosed by the ruling below.

Cottonwood Christian Center is instructive. In that case, a town used its eminent domain power, pursuant to a zoning plan, to take a church's land to sell to Costco. The court rejected the argument that eminent domain is not a "land use regulation" under RLUIPA, stressing that "the Redevelopment Agency's authority to exercise eminent domain to contravene blight * * * is based on a zoning system developed by the City." 218 F. Supp. 2d at 1222 n.9.

Subsequently, the plaintiff in *St. John's United Church of Christ* v. *City of Chicago*, 401 F. Supp. 2d 887 (N.D. Ill. 2005) advocated a broad reading of *Cottonwood*, arguing that *Cottonwood* "stands for the proposition that all exercises

of eminent domain authority are subject to RLUIPA." *St. John's*, 401 F. Supp. 2d at 899-900. The *St. John's* court rejected this argument, but noted that *Cottonwood* "can be read to suggest that RLUIPA is applicable to the specific eminent domain actions where the condemnation proceeding is intertwined with other actions by the city involving zoning regulations." *Id.* at 900.

The *St. John's* court concluded that the condemnation proceedings at issue were not sufficiently linked to zoning regulations, holding that it was not "persuaded that it should construe the concept of zoning so broadly that any acquisition of land by the City pursuant to eminent domain proceedings is an act of zoning." 401 F. Supp. 2d at 900. However, the *St. John's* court was careful to state that there could be instances in which the exercise of eminent domain would satisfy the requirements of RLUIPA. See *ibid.* ("It is important to note that this Court's holding that the City does not act pursuant to a zoning or landmarking law should not be taken to mean that all condemnation proceedings necessarily are outside the scope of RLUIPA. This Court expresses no opinion with respect to that conclusion."); *id.* at 900 n.8 (noting that "an act to acquire land (through eminent domain) and then to rezone it and transfer it might very well fall with [*sic*] the reach of RLUIPA").

As discussed above, the primary error committed by the district court in this

case is that it failed to recognize that it is the Comprehensive Plan – not the eminent domain proceedings – that qualifies as a "land use regulation" under RLUIPA in this case. The district court therefore failed to understand that the eminent domain proceedings – while perhaps not satisfying RLUIPA's "land use regulation" requirement on their own[5] – do satisfy the statute's "implement[ation]" requirement since they were part of the implementation of the Comprehensive Plan.

The district court's ruling leaves no room for eminent domain proceedings to

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[5] The *Cottonwood* court concluded that eminent domain proceedings themselves may qualify as a "land use regulation" under RLUIPA. See *Cottonwood*, 218 F. Supp. 2d at 1222 n.9 (holding that the exercise of eminent domain "based on a zoning system developed by the City * * * would unquestionably 'limit[] or restrict[]' Cottonwood's 'use or development of land'" as required by 42 U.S.C. 2000cc-5(5)) (quoting 42 U.S.C. 2000cc-5(5)). This holding was rejected by the court in *St. John's*. See *St. John's*, 401 F. Supp. 2d at 900 (holding that "call[ing] the acquisition of [the property in question] a restriction on [the property owner's] use of the land * * * is more than mere understatement; it is, in fact, an incorrect classification of the actions at issue in this case"). The *St. John's* court held that, while "[c]ondemnation is, in one sense, the ultimate limitation on the use of property," "[i]t does not follow * * * that condemnation is a land use regulation as this term is used in [RLUIPA]." *Ibid.* A similar conclusion was also reached by the Supreme Court of Hawaii in *City and Council of Honolulu* v. *Sherman*, 129 P.3d 542, 561-564 (Haw. 2006) (holding that statute providing municipalities with the authority to initiate eminent domain actions does not satisfy RLUIPA's "land use regulation" requirement). However, the Court need not address this issue in this case, since under the facts here the alleged burden does not arise from the use of eminent domain standing alone, but through the implementation of the Comprehensive Plan, which is a zoning law.

ever fall within the scope of RLUIPA, even when intertwined with the operation of a zoning scheme. This conflicts with *Cottonwood* and is at odds with the discussion of the issue in *St. John's.* Both of these cases properly recognize that in some cases eminent domain proceedings may well fall within the scope of RLUIPA. And as demonstrated above, the implementation of the Comprehensive Plan through the use of eminent domain is such a case.

CONCLUSION

This Court should reverse the district court's dismissal of Counts IX and XI of Faith Temple's complaint and remand the matter for further proceedings.

Respectfully Submitted,

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CERTIFICATE OF ANTI-VIRUS SCAN

I hereby certify that, pursuant to Second Circuit Local Rule 32(a)(1)(E), I have scanned for viruses the PDF version of the BRIEF OF THE UNITED STATES AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT that was submitted in this case as an email attachment to <briefs@ca2.uscourts.gov> using Trend Micro Real Time Monitor, and that no viruses were detected.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(a)(7) and 29(d), I certify that the foregoing BRIEF OF THE UNITED STATES AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT is proportionally spaced, has a typeface of 14 points, and contains 3,930 words, as determined using the word-counting feature of WordPerfect 12.0.

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Dated: May 24, 2006

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2006, I served two copies of the foregoing brief by overnight delivery, and one PDF version of the same on a 3-1/2" disk on the following counsel of record:

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