

**ORIGINAL**

No. 24-101

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In the Supreme Court of the United States

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FILED  
JUL 17 2024  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

JOHN CASSIDY,

*Petitioner,*

v.

COMMONWEALTH OF MASSACHUSETTS,

*Respondent.*

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**On Petition For A Writ Of Certiorari  
To The Supreme Judicial Court Of  
Massachusetts**

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

John Cassidy legally purchased common firearms in Texas and carried them to Massachusetts as part of his move to the state in 2010.

1. What type of 'Arms' are protected by the Second Amendment when a state's multi-level firearm licensing scheme attaches criminal liability for in home possession by a qualified but unlicensed individual?
2. Can a law-abiding citizen who lawfully owns firearms in one state carry those arms to another state as part of a change in residence and as a new resident be convicted for their 'newly unlicensed conduct' by way of their *continued* possession of firearms inside their new home?
3. Does a state's multi-level firearm licensing scheme violate the Second Amendment when that scheme requires a license to *carry* to merely possess common firearms in one's home and punishes all without a carrying license with a felony, mandatory jailtime, and a lifetime ban on constitutionally protected conduct?

**PARTIES TO THE PROCEEDING**

All parties appear in the caption of the case on the cover page.

**STATEMENT OF RELATED PROCEEDINGS**

*Cassidy v. Commonwealth*, 2023-P-0517(2024).

Audio and video archive of oral argument held  
12/06/2023 at Appeals Court:

[https://www.youtube.com/watch?v=VW-  
dVprz3zQ](https://www.youtube.com/watch?v=VW-dVprz3zQ)

3rd case on docket beginning at 55 minute  
mark for John Cassidy(See App. A & D)

*Cassidy v. Commonwealth*, 2020-P-0872(2021).

*Commonwealth v. John Cassidy*, 479 Mass.  
527(2018).

Audio and video archive of Oral Argument:  
[www.youtube.com/watch?v=kLpNfWs-7ZA](http://www.youtube.com/watch?v=kLpNfWs-7ZA)  
Cassidy begins at 18 minutes 40 seconds

*Commonwealth v. John Cassidy*, 2017 Mass. App.  
Un-pub LEXIS 218(2017).

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**OPINIONS BELOW**

The notice by The Supreme Judicial Court of Massachusetts denying Petitioner's motion for further appellate review is contained in Appendix C. Appendix A contains the unpublished opinion denying Cassidy's motion, dated March 2024 issued after oral arguments from December 2023 in which the Commonwealth abstained from answering any questions or offering any position about Cassidy's possession post-*Bruen*.

Appendix B contains the trial court's written opinion relying wholly upon the state's brief in opposition. Both the judge's opinion and the Commonwealth's brief are inside the appendix.

**JURISDICTION**

The date and judgment of The Supreme Judicial Court of Massachusetts sought to be reviewed is April 19, 2024. This petition is filed July 17, 2024, which is within the 90-day filing period and in compliance with Rule 30. The Supreme Judicial Court of Massachusetts is the highest court of Massachusetts. The jurisdiction of this Court is invoked under 28 U.S.C. s1257(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Second Amendment to The United States Constitution provides:

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Mass. Gen. Laws c. 140, §131M provides:

No person shall . . . possess an assault weapon or a large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994.

Whoever not being licensed under the provisions of section 122 violates the provisions of this section shall be punished, for a first offense, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years.

Mass. Gen. Laws c. 269, § 10(m) provides:

Notwithstanding the provisions of paragraph (a) or (h), any person not exempted by statute who knowingly has in his possession a large capacity weapon or large capacity feeding device therefore who does not possess a valid Class A or Class B license to carry firearms issued under section 131 or 131F of chapter 140, except as permitted or otherwise provided under this section or chapter 140, shall be punished by imprisonment in a state prison for not less than two and one-half years nor more than ten years. The possession of a valid firearm identification card issued under section 129B shall not be a defense for a violation of this subsection; provided, however, that any such person charged with violating this paragraph and holding a valid firearm



identification card shall not be subject to any mandatory minimum sentence imposed by this paragraph.

Mass. Gen. Laws c. 269, § 10(h)(1) provides: Whoever owns, possesses or transfers a firearm, rifle, shotgun or ammunition without complying with the provisions of section 129C of chapter 140 shall be punished by imprisonment in a jail or house of correction for not more than 2 years or by a fine of not more than \$500.

#### **STATEMENT OF THE CASE**

John Cassidy (“Cassidy”), a lifelong resident of Texas, moved to Massachusetts at twenty-six years old to attend law school in August 2010. He lawfully owned a nine-millimeter handgun, an AK-47-like pistol, and ammunition in Texas. Both firearms came with multiple magazines/feeding devices as part of the original purchase.

Cassidy moved to Massachusetts with all his possessions, including these items. He carried these firearms to Massachusetts from Texas as a law-abiding citizen. Receipts for purchase are part of court records, his exemptions and safety training have been duly submitted to the courts.

In March 2011 Massachusetts indicted Cassidy for illegally possessing large capacity firearms, devices, and ammunition inside his home.

In August 2011 Petitioner enrolled in and finished Massachusetts’s local firearm safety course which meets Massachusetts’s licensing scheme’s

requirement for Class A License to carry in order to possess the types of firearms Cassidy owned.

Cassidy otherwise qualified for a Massachusetts Class A License to carry prior to his arrest. The firearms Cassidy owned and possessed are not outright illegal in Massachusetts and are owned by others in the state.

In March 2015 a Massachusetts Superior Court found Cassidy guilty of seven felonies. One violation of M.G.L. c. 140 § 131M, five violations of M.G.L. c. 269 § 10(m), and one violation of M.G.L. c. 269 § 10(h).

The Massachusetts Supreme Judicial Court (“SJC”) affirmed all seven felony possession convictions and issued a thirteen-page opinion. *Commonwealth v. John Cassidy*, 96 N.E.3d 691, 479 Mass. 527 (2018). Noting that Cassidy at age twelve took an approved hunter’s education course which is accepted by Massachusetts’s in lieu of the local course he took in 2011.

Massachusetts’s highest state court ruled Petitioner Cassidy was rightly convicted of in-home possession of firearms, devices, and ammunition. The SJC explained that the state’s licensing scheme can convict for in home possession of firearms and is valid under federal Second Amendment law. “There have been no successful challenges to the state’s licensing regiment and the requirement of having a *carrying license for possession of firearms inside one’s home is valid, and the requirement is ‘presumptively lawful.’*” *citations omitted, Cassidy at 539-540*. The court did not review the requirements under any level of judicial scrutiny.

Petitioner Cassidy sought a new trial or a new trial with simultaneous dismissal due to the United States Supreme Court's clarification of Second Amendment rights in *Bruen* and the recent *Morin* order by the same court. Cassidy's convictions hinged upon his lack of having a *carrying license* issued by the Commonwealth of Massachusetts, even though all items Cassidy possessed were inside his home.

The Massachusetts Appeals Court ultimately denied this argument after oral arguments in December 2023 and the SJC then denied further appellate review. Notwithstanding the SJC's denial of Cassidy's 2024 appeal, the SJC granted further appellate review for two almost identical cases in 2024. Those cases are SJC-13561 and SJC-13562. See Appendix F.

Cassidy and the two cases for which the SJC granted further appellate review deal with the Commonwealth of Massachusetts prosecuting citizens of other states possessing firearms legally possessed and owned in their home states merely possessing those same items in Massachusetts without a Massachusetts issued license to carry. Massachusetts charged each U.S. citizen with felonies. It should not escape notice that the appellants in the two new cases for which the SJC granted further appellate is the Commonwealth of Massachusetts. In those two cases, a Massachusetts District Court dismissed the felony charges against New Hampshire residents possessing their firearms in Massachusetts.

The punishment for merely possessing commonly owned and legally purchased firearms in

one state but having those same items in the Commonwealth of Massachusetts without Class A License to Carry is a mandatory prison term and lifetime ban from owning firearms. It should not be lost on this Court that the only conduct required to violate the licensing scheme is the exact conduct protected by our Second Amendment: possession.

### **REASONS FOR GRANTING THE PETITION**

The SJC's ruling in Cassidy's case pre-dates *Bruen*. In addition, the SJC's 2018 ruling did not follow the two prong (common means) test for Second Amendment challenges that was valid law at that time due to Massachusetts's wrongly applying a 'dangerous and unusual' standard. A burden the government never met.

Cassidy possessed common firearms, feeding devices and ammunition in his home in Massachusetts having legally purchased the items in Texas while a resident there. Massachusetts **reclassifies** his firearms as large capacity and assault weapons and charges these crimes as a felony with mandatory prison sentences under their state licensing scheme. As an example: Massachusetts charges in home possession of ammunition as a felony and has convicted Cassidy of simply possessing ammunition inside his home. Petitioner Cassidy noting he has owned firearms his whole life and never violated any gun or license law prior to his encounter in Massachusetts and but for these convictions he is qualified to own firearms.

In essence Massachusetts's punishes prior lawful acts. The presumption of lawful possession does not exist in Massachusetts and by this writ

Petitioner Cassidy hopes to bring this ongoing suppression to a stop. *See* also recently denied writs from this Court 23-863 and 23-877. It appears both these and others were denied a writ recently and dealt with Illinois and Maryland banning large capacity and assault weapons.

Maryland, Illinois, and Massachusetts have already shown disregard to this Court and continue to plan to suppress the Second Amendment through the judiciary or the legislature. And if either of the cases recently denied writs by this Court make it back on something beyond a pre-liminary injunction it will most likely come back in the form of a final judgement such as Cassidy's case: a law-abiding citizen who was well within his Second Amendment right possessing common firearms inside his home has been convicted, jailed, and banned from exercise for life.

These three states should not be allowed to determine what our federal Second Amendment is, it is time for a more direct approach to addressing this right and balancing that right against the need for public safety. This can be done by granting this petition and squarely addressing what types of firearms are 'Arms' protected by the Second Amendment.

The above statement is not made with grandeur illusions by an already guilty criminal, it is made by a law-abiding citizen who at twenty-six years old moved states with no criminal record to attend law school and ultimately ended up a seven-time convicted felon, thrown out of law school, and serving a lifetime ban on a constitutionally protected right. Certainly not at all congruent with the spirit

of America, constitutional protections generally, or as laid out by this Court's dissent in *U.S. v. Hayes* by Chief Justice Roberts' joined by Scalia, "this is a textbook case for application of the rule of lenity....if the rule of lenity means anything, it is that an individual should not go to jail for failing to conduct a fifty-state survey or comb through obscure legislature history. Ten years in jail is too much to hinge on the will-o-wisp of statutory meaning pursued by the majority." 129 S.Ct 1079, 1093(2009)(18 U.S.C. § 922(g)(9) case).

In short, Cassidy's case plays out what happens when states such as Illinois, Maryland, Massachusetts, and even Pennsylvania are allowed to categorically ban common firearms and devices by crafting legislature and/or judicial opinions that *directly* attack our Constitution's Amendments. Cassidy's writ is not a preliminary injunction, Cassidy is banned from ever exercising his Second Amendment rights AND the state's highest court says this is in accord with the Second Amendment. "...This Court must not permit the 7<sup>th</sup> Circuit.." or Massachusetts "...to regulate the Second Amendment to a second-class right." *Friedman*, at 1043(opinion of Thomas, J) quoting *Harrel* 603 US \_\_\_\_\_ (2024).

I. Massachusetts requires a Class A License to carry for in home possession of commonly possessed firearms, which Massachusetts categorizes as large capacity and assault weapons.

Regardless of how Maryland, Illinois, Massachusetts, or any other state chooses to define firearms having certain characteristics, the firearms Cassidy possessed are in fact common: (1) common

categorically, as they are all functionally semiautomatic in their operation, (2) they are common characteristically, as they are all popular configurations of arms (e.g., rifles, shotguns, handguns) with varying barrel lengths, and common characteristics like pistol grips and the like, and (3) they are common jurisdictionally in almost all states, lawful to possess and used in the vast majority of states now and throughout relevant history for a wide variety of lawful purposes including self-defense, proficiency training, competition, recreation, hunting, and collecting.

At the time of Cassidy's arrest to possess large capacity weapons and assault weapons, Massachusetts required the person to have a Class A License to carry. Even though Cassidy never intended for the items he possessed to leave his home, to legally possess those items, Cassidy had to have a Class A license. Such a restriction on Cassidy's Second Amendment Rights contravenes this Court's holding in *Heller*.

The firearms Cassidy possessed are possessed in every state in the United States. Massachusetts's firearm rosters contain the same or the functional equivalent makes and models which simultaneously hold varying classifications (descriptions) of large capacity, assault weapon, or contain firearms of larger caliber and capacity which are approved in Massachusetts. Cassidy noting he has analyzed these rosters and they are part of numerous filings and can provide if requested but they are contained in his appeals court filing 2023-P-0517, record of appendix, RA43 to RA123.

The arms in question are not unusual at all in Massachusetts; and although all operable firearms are dangerous, they are dangerous for the purpose of a crime when the object is *used* dangerously. A response to a firearm or device being called dangerous as a singular reason to ban them is not something that would ever override an enumerated constitutional right. In fact, firearms in the same sense are inherently safe: they provide for self-defense and protect one's personal or real property. They improve the safe keeping of our country from bad actors as gun ownership, hunting, and familiarity with firearms as an adolescent promotes higher proficiency in combat and arms in anyone joining our military, and firearms can also provide a release through leisure activity in sport shooting, competition, hunting, or general camaraderie.

The state cannot license certain classes of firearms to some citizens but at the same time decide that the exact same makes and models or functionally equivalent arms are also 'dangerous and unusual,' then punish other citizens for possessing them when there is no substantial difference in the possessors. *Heller* and the Second Amendment have limitations, but its 'core' protections of in-home possession "shall not be infringed," and is not subject to the will of a government official. Firearm ownership inside one's home is not a privilege, it is a right. See *Caetano v. Massachusetts*, 136 S. Ct. 1027, 1030(2016)(Alito, J., concurring)(quoting *Heller* at 625)." The Second Amendment guarantees the right to carry weapons "typically possessed by law-abiding citizens for lawful purposes." See *Hightower v. Bos-*



ton, 693 F.3d 61, 71(1st Cir 2012)(“Courts have consistently recognized *Heller* established that the possession of operable firearms for use in defense of home constitutes the ‘core’ of The Second Amendment.”).

To end, John Cassidy possessed common firearms inside his home. Arms that were able to be licensed and owned in the state so long as a carrying license was paid for. A carrying license was something John Cassidy was qualified for but as a new resident failed to timely apply and pay the taxes for. Cassidy’s possession is the quintessential Second Amendment exercise and just as *Miller* and *Heller* so aptly noted, “...it would have been odd to examine the character of the weapon rather than simply note that the two crooks were not militiamen.” *Heller* at 622.

John Cassidy’s exercise falls within the Second Amendment protections and his rights need to be affirmed by this Court and his convictions overturned.

**II.** Massachusetts’s courts refuse to review statutes related to firearms in light of *Heller* and its progeny. “A constitutional guarantee subject to a future judge’s assessments of its usefulness is no constitutional guarantee at all.” *Heller* at 635. Precedent by this Court and others agree, “firearm possession is an act sufficiently innocent that no one could be expected to know that ‘they’ would violate the law by possessing a gun and without more than simple possession **is not** the kind of activity comparable to possession of hand grenades, narcotics, or child pornography.” *U.S. v. Meade*, 175 F.3d 215,226 (1st Cir. 1999) quoting *Staples* at 610-

612. See also *U.S. v. Hart*, 726 F.Supp.2d 56(2010). See also *U.S. v. Anderson*, 885 F.2d 1248 (1989 5th Cir).

When a state's laws or licensing scheme for a constitutionally enumerated right is subject to the discretionary power of a government official that right is converted into a privilege. Our Bill of Rights and Constitution places limits on the government, not the other way around.

Massachusetts is the birthplace of America. Every school child is taught that in early 1775 General Thomas Gage sought to seize cannons, firearms, and supplies the American rebels had in Lexington and Concord. When Gage dispatched troops to seize the stores as well as their leaders Samuel Adams and John Hancock, the rebel Paul Revere made his legendary midnight ride and that is how our country was birthed.

How things have changed in the Commonwealth relative to private citizens' possession of firearms. Massachusetts courts often cite to *Heller* and its own words about placing limits on ownership in sensitive places, by dangerous people, or noting this Court's "limited guidance" or "that there are limits to gun possession." But in their quest to restrict rights and using a contemporary lens as a blinder with these citations these same courts gloss over the fact that this Court in *Heller* during the historical analysis found only three pre-constitution charters in which an individual right to bear arms was established. *Id.* at 604-05. And yes, Massachusetts was one of the three. See also *Commonwealth v. Seay*, 376 Mass. 735,742 (1978)(holding carrying a firearm within one's

residence or place of business by one having a valid FID card but not having a license under Ch.140 s.131 is NOT a criminal offense).

Cassidy has appealed his convictions several times to the courts of the Commonwealth. Not once has a court of the Commonwealth reviewed any of the statutes for which Cassidy was convicted of using any kind of judicial scrutiny or this Court's decision in *Heller*.

Post-*Bruen*, a state is required to review firearm laws under the parameters set by the Supreme Court when considering a statute restricting the Second Amendment. Moreover, federal law is clear, firearm possession is presumptively lawful, "when the Second Amendment's plain text covers an individual's conduct [here the right to bear arms], the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." See *Bruen* at 2134.

If all a government official needed to do was arrest, prosecute, and then 'show' that an individual's conduct violated a statute without ensuring the statute fell within the parameters of the Constitution of the United States, than the government or a state could simply deprive certain people or classes of people of any unpopular constitutionally protected conduct in an arbitrary and capricious manner. This is not the case in our country.

The Commonwealth proliferates that Cassidy possessed 'dangerous and unusual' weapons and thus outside the scope of the Second Amendment

*including* review under any level of scrutiny(pre-*Bruen*) or historical tradition analysis(post-*Bruen*). Nor was it a burden that the Commonwealth was held to bear at trial--that is the state never offered a scintilla of evidence to meet the *conjunctive* test of 'dangerous and unusual.' Which then allowed Ch. 269 s. 10(m) to strip Cassidy of his Second Amendment exercise<sup>1</sup>.

Massachusetts cannot justify a lifetime revocation of an enumerated constitutional right by a qualified individual, acting unlicensed by possessing prior legally purchased common firearms inside their home. Nor can the licensing scheme survive strict scrutiny or a historical analysis as the statutes in question did not exist in Massachusetts until sometime after 1998<sup>2</sup>.

For the state's highest court to not allow a license to issue or dismissal outright *in lieu* of confiscation, imprisonment, and lifetime ban clearly

<sup>1</sup> Petitioner Cassidy noting that had the district attorney not charged with large capacity or assault weapon, than the unlicensed possession comes under M.G.L. 269 § 10(a) which enumerates in home/business possession as an affirmative defense to which Cassidy could have availed himself to on all counts.

<sup>2</sup> Petitioner Cassidy referencing the history of his charging statute MGL ch.269 s.10 originally provided for unlicensed actors. See St. 1974 c. 649, § 2, approved July 30, 1974, and by § 3 made effective Jan. 1, 1975 rewrote the section removing "...and where it has been the finding of the court that a person has been guilty of unlawful possession of a firearm, but makes the further finding *that such possession was in ignorance of the law, the court may order the return of said firearms to its owner upon his compliance with those regulations relative to the establishment of lawful possession.*"

shows the court's pursuit of their own predilection and warrants the entire gun licensing scheme of Massachusetts needs to be struck down. The modern Second Amendment tolerates none of this and *Commonwealth v. Depina*, is no longer an acceptable interpretation of the Second Amendment and cannot be relied upon by Massachusetts. 456 Mass. 238(2010). It is time that Justice Kaplan's learned interpretation to be highly scrutinized. *Id. At 252-53* &n12(respectfully stated by filer). See *Commonwealth v. Davis*, 369 Mass. 886(1976).

**APPLICATION OF VACATED MORIN STANDARD  
1ST CIRCUIT**

Currently, Cassidy lives in Texas and cannot obtain any arms legally, as it would result in an automatic denial by a federal firearms license holder during the disclosure of his status initially or during the paperwork process of filling out an ATF-4473 form for purchase.

In *Morin v. Lyver*, a Massachusetts resident with a Class A License to carry brought with him to Washington D.C. a "pistol" while visiting. When he inadvertently brought the handgun with him to a museum, Morin was arrested, charged and pleaded guilty. When Morin applied to renew his Class A License to carry in Massachusetts, he was denied because of his criminal convictions. Morin sought relief in the Massachusetts Federal District Court pursuant to 42 U.S.C. § 1983 which the district court rejected without conducting any type of analysis on the underlying Massachusetts statute. Morin appealed, The First Circuit Court of Appeals considered, discussed, and accepted *Morin's* actual ability to obtain approval for firearm ownership in

Massachusetts. The District Court "assume[d], without deciding, that [Morin] is correct that these provisions burden conduct falling within the scope of the Second Amendment right" and moved on to address the level of scrutiny to apply. The Appeals Court upheld the District Court's decision. *Morin* appealed to The Supreme Court of the United States which vacated the decision and remanded for further consideration in light of *Bruen*. See judgment and order of the Supreme Court of the United State No. 21-1160, *Alfred Morin v. William Lyver, et al.*

Compare *Morin* to Cassidy's case and appeals in which no review was ever done under any level of judicial scrutiny. The district court concluded that only intermediate scrutiny and not the more intensive strict scrutiny for which *Morin* advocated applied because the provisions at issue burdened only those individuals who were not "law-abiding, responsible citizens," and that *Morin* did not qualify as such an individual due to his earlier firearms-related convictions in D.C. *Id.* at 415 (quoting *Heller* 635).

Using the 1st Circuit's ruling of how to apply a standard of scrutiny in firearm cases (at the time of Cassidy's trial and appeals) John Cassidy's case demands strict scrutiny because the Appeals court in affirming the *Morin* case, chose to only apply intermediate scrutiny because *Morin* did not qualify as a law-abiding citizen due to his earlier firearms related conviction. See *Morin* at 415. Cassidy has no criminal convictions other than the ones in question by this writ and Cassidy's case should have been reviewed pre-*Bruen*, under strict scrutiny following the now vacated 1<sup>st</sup> Circuit ruling.

## CONCLUSION

A license of any kind generally bestows upon its holder the ability to rely upon it in some form or another or to gain access to places or items. The generally accepted definition of a license is: permission to act, freedom of action, permission granted by competent authority to engage in business or occupation. Yet a license never replaces your eye, ear, or brain, it is simply issued by a governing body as proof 'you are' a competent or trained person in the object or event being regulated.

In the case of firearms, there are licenses to manufacture, buy, sell, own, ship, and destroy them. Gun control is effectuated through federal and state officials. Gun control has limitations and can and has been used to regulate the individual into being disarmed. The Second Amendment to The United States Constitution protects U.S. Citizens from that situation and so it should for this Petitioner.

As a result of the above infringements on Cassidy's rights under the Second Amendment of the United States Constitution and this Court's decisions pursuant thereto, the Court must grant Certiorari or vacate the Massachusetts Supreme Judicial Court's decision in this matter and remand the same for consideration in light of *Heller* and *Bruen*.

Along with affirming Cassidy's rights this Court will also make clear what 'Arms' are protected by the Second Amendment; **and** that when an unlicensed but qualified individual possesses firearms legally purchased and possessed as a resident of one state and that person brings those firearms to another state as a move in residency,

whether the Second Amendment protects the American Citizen's right to keep those firearms in their homes without fear of felony convictions for simple possession.

Respectfully submitted,

John Cassidy /s/  
7-17-2024

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