No. 25-112

IN THE

Supreme Court of the United States

OKELLO T. CHATRIE,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

Brief of the Liberty Justice Center as Amicus Curiae Supporting Petitioner

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Question Presented

Whether the execution of the geofence warrant violated the Fourth Amendment?

Table of Contents

Table of Authorities

Cases

Other Authorities

Constitutional Provisions

Interest of the Amicus Curiae

Liberty Justice Center (LJC) is a nonprofit, nonpartisan public-interest litigation firm that pursues strategic, precedent-setting litigation aimed at revitalizing constitutional restraints on government power and protecting individual rights.[1]

LJC is interested in this case because it frequently litigates important cases against government overreach and violations of Americans' Fourth Amendment rights. For example, in *Scholl v. Ill. State Police*, 776 F. Supp. 3d 701 (N.D. Ill. 2025), LJC has argued that warrantless dragnet surveillance of every citizen that drives by automated license plate readers (ALPRs) constitutes an unreasonable search.

LJC also files amicus briefs on similar issues, such as its brief in *Greater Las Vegas Short Term Rental Ass'n v. Clark Cty.*, 555 P.3d 265 (Nev. 2024), which argued that forcing property-owners to consent to warrantless searches of short-term rental properties was an unconstitutional condition, and its brief in *Page v. Comey*, 137 F.4th 806 (D.C. Cir. 2025), *petition for cert. filed*, No. 25-705 (U.S. Dec. 11, 2025), which highlighted the importance of judicial review of Fourth Amendment violations.

Summary of Argument

This country was founded for the specific purpose of outlawing general warrants. The Crown had issued

[1] Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than Amicus funded its preparation or submission.

writs of assistance, licensing customs officials to enter homes. "Then and there the Child Independence was born," James Adams later wrote.[2] "Every Man of an immense crouded [sic] Audience appeared to me to go away, as I did, ready to take Arms against Writs of Assistants."[3] These royal abuses formed the primary motivation for what became the Fourth Amendment, proposed and ratified specifically to protect against general warrants, which allowed the government to broadly search in the hopes of finding some evidence of wrongdoing. Geofence warrants are the modern-day analog of general warrants, empowering the government to search anyone at any time without particularity, reasonable suspicion, or probable cause. For that reason, this Court should find their use violates the Fourth Amendment.

Geofence warrants are based on a series of hunches—that a suspect possessed a smartphone, that the device used a service capable of tracking location, that the service in fact collected the data, that the tracking data was retained, and that investigators have correctly identified the service provider holding it. But if just one of these hunches is incorrect, investigators will not find their suspect, intruding into innocent citizens' lives unnecessarily. As companies adopt stronger privacy protections and limit the retention of geolocation data those hunches, grow increasingly tenuous.

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[2] John Adams, Letter from John Adams to William Tudor, Sr. (Mar. 29, 1817) *reprinted by* NAT'L ARCHIVES: FOUNDERS ONLINE, https://founders.archives.gov/documents/Adams/99-02-02-6735.

[3] *Id.*

Investigators then broadly collect geolocation data of every individual in the suspect's vicinity. But mere proximity to a crime scene cannot provide the constitutional basis for a government search of one's geolocation data.

These geofence searches are indiscriminate by design. They are analogous to stopping and searching every passing vehicle on the chance one might contain evidence of crime. Evidence may indeed be discovered if enough vehicles are searched. But that possibility does not justify the sweeping intrusion on individual privacy. If this Court allows geofence warrants to continue, the geolocation data of any person could be subject to search merely because that individual happened to be near the location of alleged criminal activity.

Even if that result was permissible under the Fourth Amendment, it is based upon the presumption that the geolocation data is precise and reliable. It often is not. Location data can reflect only an estimate, sometimes placing individuals within a geofenced area when they were in fact elsewhere. As a result, even more innocent Americans may have their movements searched and scrutinized—not because they were near criminal activity, but because imperfect technology suggested that they were.

This Court should hold that the probable cause, particularity, and reasonableness requirements of the Fourth Amendment do not allow such indiscriminate rummaging through Americans' geolocation data. To do otherwise would allow the government to violate Americans' privacy based on hunches.

Argument

I. The Fourth Amendment reasonableness of geofence warrants is incorrectly premised on the accuracy of the technology.

The Fourth Amendment provides: "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST., amend. IV.

A. The reasonableness of geofence searches is premised on them providing accurate geolocation data.

The reasonableness of a search is determined by "balancing the need to search against the invasion which the search entails." *Camara v. Mun. Ct. of S.F.*, 387 U.S. 523, 536–37 (1967). Reasonableness of warrants requires "specification of the documents to be produced adequate, but not excessive, for the purposes of the relevant inquiry." *Okla. Press Pub. Co. v. Walling*, 327 U.S. 186, 209 (1946).

The premise of a geofence warrant is that a suspect's smartphone was physically present at the crime scene and that the service provider possesses that geolocation data. But if the geolocation data produced does not include the suspect's smartphone, it is of no value. Conversely, if the geolocation data captured smartphones outside the crime scene, there is no reason to search them. By sweeping up data that is either irrelevant or inaccurate, geofence warrants fail the basic requirement that a search be reasonable.

B. Geofence searches are inadequate and excessive.

But geolocation searches can and do miss suspects' data and provide data for Americans that were not at the scene of the crime, making them unreasonable.

As the Court below described, geolocation data is very inaccurate. There is only a 68% chance that an American whose geolocation data was provided by Google was actually present at the location requested. *Chatrie*, 107 F.4th at 323. And there is a chance the actual suspect, assuming they had a smartphone, was not provided in the geofence search results.

Such issues with accuracy are not specific to Google. GPS geolocation data, like that used by Google, is typically accurate within five meters. *How accurate is geofencing? The truth about real-world precision*, RADAR (Nov. 12, 2025) https://radar.com/blog/how-accurate-is-geofencing. But cell tower data, like that used by the major mobile carriers, is typically only accurate within 100–500 meters. *Id.* When different sources of data are combined, accuracy can increase but stays within that general range. *Id.* Accuracy of five meters or less, as well as the smallest geofence allowable, is recommended for commercial compliance and anti-fraud efforts to prevent false positives and false negatives. *Id.* A similar approach is warranted for criminal investigations.

Given the variations in the accuracy and precision of geolocation data, and the potential for it to be both over- and under-inclusive—or excessive and inadequate—there are real questions about the

reasonableness of allowing Americans' privacy to be violated based on it.

C. The inaccuracy of other evidence technologies has led to false convictions.

Issues regarding the inaccuracy of new technologies and methods of evidence collection are not new. History is full of evidence analysis techniques once considered iron-clad that were later proven to be unreliable. These past failures should serve as a warning to this Court about the risk that unproven technologies pose to innocent Americans. Just because a collection method is new or high-tech does not mean it is exempt from the rigorous scrutiny required to protect individual liberties.

In 2005 the National Academy of Sciences published a report that "strongly suggested many forms of forensic evidence that previously had been accepted by courts"—specifically "bitemark analysis, microscopic hair analysis, fingerprint analysis, shoe print comparisons, toolmark and firearms examination, and handwriting comparisons"—"were, in fact, scientifically unsound." *McCrory v. Alabama*, 144 S. Ct. 2483, 2484 (2024) (Sotomayor, J. concurring) (citing COMM. ON IDENTIFYING THE NEEDS OF THE FORENSIC SCIENCES CMTY., NATIONAL RESEARCH COUNCIL, STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD (2009)). The Federal Bureau of Investigation's preliminary review of its analysts' testimony regarding microscopic hair analysis later found that "erroneous statements" were provided by approximately 93% (26/28) of its examiners in 96%

(257/268) of cases, which led to the execution of nine defendants. FED. BUREAU OF INV., FBI TESTIMONY ON MICROSCOPIC HAIR ANALYSIS CONTAINED ERRORS IN AT LEAST 90 PERCENT OF CASES IN ONGOING REVIEW, (2015).

In 2016, the President's Council of Advisors on Science and Technology (PCAST) also reviewed forensic evidence methodologies and similarly found issues with their validity and reliability. PRESIDENT'S COUNCIL OF ADVISORS ON SCI. AND TECH., EXEC. OFF. OF THE PRESIDENT, FORENSIC SCIENCE IN CRIMINAL COURTS: ENSURING SCIENTIFIC VALIDITY OF FEATURE-COMPARISON METHODS (2016)); *see McCrory*, 144 S. Ct. at 2484 (Sotomayor, J. concurring). PCAST found that firearms analysis, which analysts had claimed had "near-perfect accuracy," actually had an estimated false positive rate of 1 in 66, and possibly as high as 1 in 46, "fall[ing] short of the scientific criteria for foundational validity." *Id.* at 11. It also found that footwear analysis to tie a particular shoe to a shoeprint was "unsupported by any meaningful evidence or estimates of [] accuracy and thus [was] not scientifically valid." *Id.* at 13.

The response from law enforcement and the forensic community to the report was perhaps even more concerning. "Some of the commentators raised the question of whether empirical evidence is truly needed to establish the validity and degree of reliability" of the forensic evidence methods. PRESIDENT'S COUNCIL OF ADVISORS ON SCI. AND TECH., EXEC. OFF. OF THE PRESIDENT, AN ADDENDUM TO THE PCAST REPORT ON FORENSIC SCIENCE ON CRIMINAL COURTS 2 (2017). Instead, some respondents suggested "forensic science should be considered as

analogous to medicine, in which physicians often treat patients on the basis of experience and judgment even in the absence of established empirical evidence." *Id.* at 3 n.6. But while "[p]hysicians may rely on hunches; experts testifying in court . . . may not." *Id.*

Allowing geofence warrants to be used, though, allows just such hunches to be the basis for searches. There are serious questions about reliability and over- and under-inclusiveness, which are not adequately addressed by geofence warrants. These hunches should not serve as a basis for the invasion of Americans' privacy.

D. The inaccuracy of geofence searches has already led to a false arrest.

"[T]here are already documented accounts of innocent bystanders being swept into geofence warrants based solely on their proximity to a crime." *Smith*, 110 F.4th at 825. In one case cited by the Fifth Circuit, an individual was arrested on suspicion of murder after an old smartphone of his was identified in a geofence search. *Id.* at n.4. In another case, an individual's geolocation data was captured in a geofence search because he had biked past the scene of a home burglary. *Id.*

These instances highlight the risk posed by the lack of accuracy of geolocation data. It can lead both to over-inclusiveness—and thus wrongful arrests—as well as under-inclusiveness—and thus the potential to miss the actual suspect.

Lessons from the failures of previous evidence technologies should give this Court pause. The inaccuracy of geofence search data raises serious

questions about its Fourth Amendment reasonableness given its simultaneous inadequacy and excessiveness.

II. Geofence warrants lack the probable cause required by the Fourth Amendment.

Whether there is probable cause is a "practical, common-sense decision" informed by a "totality-of-the-circumstances analysis." *Massachusetts v. Upton*, 466 U.S. 727, 732 (1984) (per curiam) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). There is probable cause when "all the facts . . . viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime." *Florida v. Harris*, 568 U.S. 237, 248 (2013).

A magistrate should have a "'substantial basis for concluding' that a search would uncover evidence of wrongdoing." *Gates*, 462 U.S. at 236 (quoting *Jones v. United States*, 362 U.S. 257, 271 (1960), *overruled on other grounds by United States v. Salvucci*, 488 U.S. 83 (1980)) (cleaned up). And that "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Id.* at 238.

A. Geofence warrants are based on a series of "hunches."

Probable cause cannot be based on a "mere uninformed and unconfirmed guess." *Upton*, 466 U.S. at 734. Nor can it be based on "nothing more substantial than inarticulate hunches." *Terry v. Ohio*, 392 U.S. 1, 22 (1968).

Geofence warrants are based on a series of hunches rather than the firm foundation of probable cause. Investigators must assume: the suspect had a smartphone on their person while committing the crime; the smartphone used an application or service that allowed the smartphone to be tracked; the application or service company was tracking the smartphone's geolocation data during the crime; the geolocation data was not later deleted by the suspect or the company, and that they are requesting geolocation data from the correct company.

This series of hunches is analogous to an officer signing an affidavit saying "he has cause to suspect and does believe" that he will find evidence at a particular location, which is legally insufficient. *Gates*, 462 U.S. at 239 (quoting *Nathanson v. United States*, 290 U.S. 41, 44 (1933)). And this series of hunches is based on even less than an affidavit stating an officer "[has] received reliable information from a credible person and do[es] believe" that evidence will be found in a specific place, which is also legally insufficient. *Id.* (quoting *Aguilar v. Texas*, 378 U.S. 108, 109 (1964)).

The hunches underpinning geofence search warrants are "bare conclusions" that fall far short of the "substantial basis" needed to provide probable cause. *Id.* If any of these hunches are incorrect, the geolocation data will not provide investigators with the subject.

B. Those "hunches" are becoming less accurate.

As privacy protections increase to protect Americans' geolocation data, these hunches are becoming less reliable.

Probable cause requires there be a "fair probability" or a "substantial chance," not a "moderate chance," "of discovering evidence of criminal activity." *Safford Unified Sch. Dist. #1 v. Redding*, 557 U.S. 364, 371 (2009) (citing *Gates*, 462 U.S., at 238, 243 n. 13). While this Court has not put a number on what percent chance reaches that threshold, the probability that a geofence warrant will reveal relevant evidence is steadily diminishing, thus decreasing the probable cause to justify it.

Currently 91% of Americans own a smartphone. *Mobile Fact Sheet*, PEW RESEARCH CTR., https://www.pewresearch.org/internet/fact-sheet/mobile/ (Nov, 20, 2025). If investigators could access a single, comprehensive database containing the geolocation data of all smartphone users, there might be a "substantial chance" of uncovering evidence. But no such database exists. Instead, investigators must go to specific companies, each of which holds only a fraction of the population's data. These smaller datasets reduce the probability of finding relevant evidence—at best, what might be considered a "moderate chance."

Approximately 40% of smartphone users have a Google smartphone, representing an estimated 36% of Americans. *Mobile Operating System Market Share in United States Of America - December 2025*, STATCOUNTER, https://gs.statcounter.com/os-market-

share/mobile/united-states-of-america (last visited Jan. 27, 2025). And additional, non-Google phones use Google services, which might provide geolocation data to Google, raising the percent of Americans whose geolocation data Google might have. But Google itself felt there were privacy concerns with geofence warrants and therefore changed its process for processing them to better protect users' privacy. *See United States v. Smith*, 110 F.4th 817, 824–26 (5th Cir. 2024), *cert. denied*, No. 24-7237, 2025 U.S. LEXIS 4192 (U.S. Nov. 10, 2025). Google has since gone further and is no longer storing geolocation data from Google Maps via the cloud, meaning Google can no longer access that data to be able to provide it in response to a geofence warrant. *See* Rob Pegoraro, *Google Maps Location Data to Be Stored on Your Device, Not the Cloud*, PCMAG (Dec. 12, 2023), https://www.pcmag.com/news/google-maps-location-data-to-be-stored-on-your-device-not-the-cloud. The result is straightforward: Google now retains substantially less geolocation data capable of being produced. The likelihood that it can provide relevant evidence has correspondingly declined.

Perhaps investigators could turn to the other major smartphone operating system. Approximately 60% of smartphone users have an Apple smartphone, representing an estimated 55% of Americans. STATCOUNTER, *supra*. But Apple Maps has never stored geolocation data of users in a location that Apple could provide in response to a geofence warrant. Pegoraro, *supra*. And Apple has reported it "does not have any data to provide in response to Geofence Requests." *Apple Transparency Report: Government and Private Party Requests – July 1-December 31, 2024*, APPLE 17,

https://www.apple.com/legal/transparency/pdf/requests-2024-H2-en.pdf (last visited Jan. 27, 2025).

Investigators might instead seek geolocation data from mobile service carriers. But there are numerous carriers in the United States. The main three carriers—T-Mobile, Verizon Wireless, and AT&T—held market shares in 2024 of 35%, 34%, and 27%, respectively. Pete Bell, *Mobile Market Overview: Still Buoyant Into 2025*, TELEGEOGRAPHY (Apr. 10, 2025) https://blog.telegeography.com/2025-mobile-market-summary?spm=a2700.accio_bizSeo.0.0.44a71a82UEil83. Each carrier reflects only a portion of the population. Even assuming investigators identify the correct carrier—and assuming the data exists and has been retained—the resulting probability of uncovering evidence would amount to no more than a "moderate chance," not the "substantial chance" required for probable cause.

And that moderate chance exists only if *all* the investigator's hunches are correct.

C. Geofence warrants are also based on "mere propinquity."

Geofence search warrants also sweep too broadly and allow for the geolocation of Americans to be searched if they were merely physically close to the location of a crime.

This Court dealt with a similar issue in *Ybarra v. Illinois*, 444 U.S. 85 (1979). There, a judge signed a search warrant to allow for a tavern to be searched for evidence of drug dealing. During the search, officers conducted pat-down searches of all patrons, including Ybarra. This Court found the search of Ybarra to be

unconstitutional. Probable cause for the search was lacking because "the agents knew nothing in particular about Ybarra, except that he was present, along with several other customers, in a public tavern at a time when the police had reason to believe that the bartender would have heroin for sale." *Id.* at 91.

Investigators requesting geofence warrants are searching Americans' geolocation data based on a similar lack of probable cause. They know nothing in particular about the Americans whose data are being searched, except that they were present, potentially along with several others, usually in public places when the police had reason to believe a crime had occurred.

"But, a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Id.* (citing *Sibron v. New York*, 392 U.S. 40, 62–63 (1968)). So too, mere propinquity to the scene of criminal activity should not, without more, give rise to probable cause to search the geolocation data of Americans.

III. Geofence warrants lack the particularity required by the Fourth Amendment.

In addition to the probable cause requirement, warrants must also meet the particularity requirement of the Fourth Amendment. The particularity requirement "ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." *Maryland v. Garrison*, 480 U.S. 79, 84 (1987). It helps to prevent searches similar to writs of

assistance, which "noted only the object of the search . . . and thus left [] officials completely free to search any place where they believed [the object] might be." *Steagald v. United States*, 451 U.S. 204, 220 (1981).

"[T]he purpose of the particularity requirement is not limited to the prevention of general searches," though. *Groh v. Ramirez*, 540 U.S. 551, 561 (2004) (citing *Garrison*, 480 U.S. at 84). It "also 'assures the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search.'" *Id.* (quoting *United States v. Chadwick,* 433 U.S. 1, 9 (1977)).

A. Geofence warrants have an arbitrary and "indiscriminate sweep."

Because of the particularity requirement, warrants cannot be approved for "general searches" with an "indiscriminate sweep." *Stanford v. Texas*, 379 U.S. 476, 485–86 (1965). Instead, "some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure." *United States v. Martinez-Fuerte*, 428 U.S. 543, 560 (1976).

But with geofence search warrants, no such individualized suspicion is provided. Absent a showing of a suspect using a smartphone, there is no individualized reason to believe geolocation data could identify a suspect. And even if a suspect used a smartphone, there is no individualized suspicion that the suspect used the services of the specific company to which the warrant is directed. Instead, geofence warrants indiscriminately sweep up the geolocation

data for all Americans from one of many possible companies in the hopes of finding some data of use.

The inaccurate nature of geofence searches increases their indiscriminate nature. Geofence searches are both over- and under-inclusive. As the Court below described, for example, Google geolocation data has a "confidence interval," or geographic radius, for which Google estimates "there is a 68% chance that a user is somewhere within the confidence interval." *United States v. Chatrie*, 107 F.4th 319, 323 (4th Cir. 2024), *vacated on reh'g en banc on other grounds*, 136 F.4th 100 (4th Cir. 2025). Thus, when Google reports an American's smartphone was within that geofence, there remains a meaningful chance that it was not—and a corresponding chance that other devices, including the real suspect's, were inside the geofence but not captured at all. "In other words, the list . . . that the Government received from Google . . . represented an arbitrary subset of all the people who were actually within the geofence." *United States v. Brown*, No. 1:16-CR-427-AT-JKL-31, 2025 U.S. Dist. LEXIS 112603, at *51 (N.D. Ga. June 13, 2025).

Such indiscriminate and arbitrary results lack the particularity required under the Fourth Amendment.

B. Geofence warrants seek to uncover "evidence of ordinary wrongdoing" without "individualized suspicion."

Additionally, geofence warrants are intended to detect evidence of ordinary criminal wrongdoing by broadly checking geolocation data for all Americans who may have been at a particular location.

This Court has held that narcotics checkpoints of all vehicles in a particular location is unconstitutional where officers did not have "some measure of individualized suspicion" and instead were seeking "to detect evidence of ordinary criminal wrongdoing." *City of Indianapolis v. Edmond*, 531 U.S. 32, 41–42 (2000).

Geofence search warrants are similarly without individualized suspicion that each of the Americans whose geolocation data is provided committed a crime. Instead, officers are looking at data for all smartphone users in a particular location to detect evidence of ordinary criminal wrongdoing. Geofence warrants are therefore inappropriately "justified only by the generalized and ever-present possibility that . . . inspection" of geolocation data "may reveal that any given" smartphone user "has committed some crime." *Id.* at 44.

Allowing such geofence searches could open the floodgates into Americans' private geolocation data even further than they already are. *See Smith*, 110 F.4th at 822 (noting that more than 25% of all warrant requests Google received were geofence warrants, which totaled 11,500 requests in 2020, and that geofence warrants have been used for low-levels crimes).

The ubiquity of smartphones means that nearly every crime scene involves a device that tracks and stores precise geolocation data. If investigators are permitted to use the mere presence of a smartphone as a justification for a geofence warrant, then every crime becomes a gateway to sweeping government surveillance. Such a standard would render the private movements of all Americans perpetually vulnerable to state scrutiny.

C. Geofence warrants could be used more broadly to identify Americans not even suspected of crimes.

And if geolocation data can be used to identify suspects, there is no logical limit to prevent its use in identifying potential witnesses. Any American physically present near a crime scene may have observed relevant events or recorded evidence on their smartphone. If the mere possibility that a citizen possesses evidence justifies a search, then every bystander's smartphone becomes a target for government seizure and inspection.

The same logic that would allow investigators to gather geolocation data in the hopes of identifying a suspect would seem to allow for geolocation data to be used to identify smartphones that may contain evidence of a crime. By allowing for geofence warrants to identify suspects, this Court opens the potential for Americans' geolocation data to also be searched to identify witnesses, and risks government intrusion into Americans' privacy anytime they might have been close to the scene of a crime.

Conclusion

In theory, geofence search warrants sound like an investigator's dream—a digital dragnet that identifies a suspect dead to rights at a crime scene. But the truth is much more speculative. These warrants rely on a precarious chain of assumptions: that the suspect carried a smartphone, that the device was running a specific tracking service, that the data was collected and retained, and that investigators correctly identified the provider. Rather than proceeding on

probable cause, investigators rely on these compounding hunches to justify a search in the hope of uncovering a lead.

But the Fourth Amendment does not permit searches with such an indiscriminate sweep. This is especially true when that sweep is both inadequate and excessive, failing to capture actual suspects while ensnaring innocent Americans who were never even present.

While the need to solve crimes is a weighty one, it remains a matter of ordinary crime control. And mere proximity to a crime scene cannot provide a sufficient constitutional basis for the government to seize and search one's private geolocation data.

Evidence technologies can provide great assistance to investigators. But they can also lead them astray. When the government relies on unproven and imprecise methods, it risks allowing the guilty to escape while wrongly targeting innocent Americans.

Because geofence warrants lack the probable cause, particularity, and reasonableness that the Fourth Amendment requires, this Court should hold their use unconstitutional.

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