

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**HAROLD HARRIS; PASTOR ROBERT
TIPTON, JR.; DELTA SIGMA THETA
SORORITY, INC.; and DESOTO COUNTY MS
NAACP UNIT 5574**

PLAINTIFFS

VS.

CIVIL NO.: 3:24-CV-00289-GHD-RP

**DESOTO COUNTY, MISSISSIPPI; DESOTO
COUNTY BOARD OF SUPERVISORS; and
DESOTO COUNTY ELECTION
COMMISSION**

DEFENDANTS

**REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' [199]
MOTION TO STAY OR, ALTERNATIVELY, MOTION FOR
CONTINUANCE OF TRIAL**

The United States Supreme Court is the Highest Court in the Land. That is why litigants and lower courts “are bound to follow the Supreme Court precedent that most squarely controls our case.” *Freedom From Religion Found., Inc. v. Mack*, 4 F.4th 306, 315 (5th Cir. 2021). At present, it is unclear what governing Supreme Court precedent will be. That decision will not be made until *Louisiana v. Callais*, Case No. 24-109 (consolidated with *Robinson v. Callais*, Case No. 24-110), a case reargued just last week, is decided.

Plaintiffs’ argument in opposition to staying this case until the Supreme Court issues its decision in *Callais* is predicated almost entirely on their speculation that they will prevail at trial on the merits of their Section 2 claim. From this speculative basis, Plaintiffs rely on cases where stay requests have been denied, but each of those cases suffer the same distinguishing flaw: Violations had already been found at the time the stay requests were made. Plaintiffs point to no case in which a stay request has been made prior to trial and has been denied. Plaintiffs similarly make no effort to address either the implications of any modifications the Supreme Court may make to the law underlying their Section 2 claim or what the parties and the Court will have to do

should trial proceed as scheduled in January 2026 but the Supreme Court's decision in *Callais* results in a change to the law underlying liability or remedial proceedings under Section 2.

As shown in Defendants' opening [200] Memorandum and below, prudence, practicality, judicial economy, and concerns for the resources of the parties and the Court all militate heavily in favor of a brief stay of proceedings in this case pending the Supreme Court's decision in *Callais*. In the alternative, Defendants have shown—and Plaintiffs have essentially conceded through their failure to address—that good cause supports continuing trial until a date after June 2026, the time by which the Supreme Court's decision in *Callais* is anticipated to be issued. Defendants' [199] Motion to Stay, or, alternatively, Motion to Continue Trial should be granted.

REBUTTAL ARGUMENTS

I. Plaintiffs' opposition falls well short of justifying denial of Defendants' request to stay proceedings pending the Supreme Court's decision in *Callais*.

A. The fact that the merits of this case have not been reached militates heavily in favor of staying proceedings prior to trial.

Plaintiffs oppose the requested stay by shamelessly engaging in the very same speculation about their Section 2 claim in which they claim Defendants engage related to *Callais*. Compare [282] Opp'n at 5 (claiming Plaintiffs currently suffer ongoing and irreparable harm by residing in racially diluted districts in DeSoto County) with *id.* at 10-12 (arguing Defendants speculate that the Supreme Court will make modifications or other changes to the law underlying Plaintiffs' Section 2 claim and the remedial relief Plaintiffs seek). This argument blatantly overlooks a critical fact: The very law that will govern their Section 2 claim—and control whether they will be able to prove they reside in racially diluted districts—is currently under review by the Supreme Court in *Callais*. But even if Plaintiffs prevail on their Section 2 claim at trial, the issue of what remedial action the law will allow is also being considered by the Supreme Court in *Callais*.

These two critical facts, essentially ignored by Plaintiffs, should be enough to warrant a stay in this case. This Court should have the benefit of *Callais* before making the decision as to whether Plaintiffs have prevailed on their Section 2 claim. Similarly, this Court should have the benefit of *Callais* before deciding what remedial action is permitted under Section 2. *See Veasey v. Abbott*, 830 F.3d 216, 269 (5th Cir. 2016) (en banc) (“When devising a remedy to a [Section] 2 violation, the district court’s ‘first and foremost obligation . . . is to correct the Section 2 violation.’”). In fact, courts watchers have observed that the decision in *Callais* “could be one of the most consequential rulings for the Voting Rights Act since it was enacted in 1965”¹ and that the Supreme Court “appears ready to curtail” Section 2.²

To obscure these facts, Plaintiffs rely heavily on *Alabama State Conference of the NAACP v. Allen*, claiming “that case presents similar issues to this one, because there are upcoming elections for the seats at issue.” [282] Opp’n at 7-8 (citing No. 2:21-cv-1531-AMM, 2025 WL 2835140, at *3 (N.D. Ala. Oct. 1, 2025)). *Allen*, however, is distinguishable in at least one significant way and, in any event, should not control.

Start with the distinction. The stay request in *Allen* came after the *Allen* Court determined that Plaintiffs prevailed on their Section 2 claim. The *Allen* Court relied on this fact in denying the stay request: “The plaintiffs are Alabamians who prevailed in their challenge to the State’s redistricting plan under Section Two. They are entitled to relief for the next scheduled election.” *Id.* at *3 (emphasis added). Plaintiffs acknowledge this fact but attempt to downplay it,³ claiming

¹ Sam Levine, ‘The stakes are quite large’: US supreme court case could gut Voting Rights Act, *The Guardian* (Oct. 9, 2025), <https://www.theguardian.com/us-news/2025/oct/09/supreme-court-voting-rights-act>

² Amy Howe, *Court appears ready to curtail major provision of the Voting Rights Act*, SCOTUSblog (Oct. 15, 2025), <https://www.scotusblog.com/2025/10/court-appears-ready-to-curtail-major-provision-of-the-voting-rights-act/>

³ In acknowledging this fact, Plaintiffs claim the *Allen* Court “observed that ‘no other court has granted a stay where it would deny a Section Two prevailing party a remedy for the next scheduled elections[,]’”

that “staying the case now would severely undermine [Plaintiffs’] ability to have their harms remedied.” [282] Opp’n at 8. Plaintiffs offer no explanation to support this lone conclusory, speculative contention.

To the extent Plaintiffs’ contention is based on their desire to have a majority-minority district created in DeSoto County prior to the 2026 elections, the 2026 elections in DeSoto County must be viewed in context. *See* [282] Opp’n at 7 (arguing this case is similar to *Allen* because “granting the stay would deny voters relief in the next elections”). The election districts in DeSoto County are used to elect 25 different officials. The current election districts drawn after the 2020 census were used to elect all five of the current members of the County’s Board of Supervisors, all five of the County’s current Justice Court judges, all five of the County’s current Constables, two of the County’s current Election Commissioners, and one of the County’s current School Board members. All 18 of these individuals were elected in November 2023, with their respective four-year terms running from January 1, 2024, through December 31, 2027.⁴ The next regularly scheduled elections for these 18 offices are in November 2027, with terms beginning on January 1, 2028.⁵ As far as the elections scheduled for 2026, there will be an election for only one of the 25 offices governed by the current district lines, a seat on the DeSoto County Board of Education.⁶ *Compare Allen*, 2025 WL 2835140, at *2 (denying stay request where plaintiffs had already prevailed on their Section 2 claim and they maintained that a stay would “effectively deny them

but a close reading of *Allen* reveals the *Allen* Court was simply repeating a contention in the *Allen* Plaintiffs’ opposition to the stay request in that case. *Allen*, 2025 WL 2835140 at *2 (citing Plaintiffs’ Opp’n to Defendants’ Mot. to Stay Remedial Proceedings at 7, Doc. No. 286 in Case No. 2:21-cv-1531-AMM).

⁴ *See generally* Summary Results Report, General Election, Nov. 7, 2023, available at <https://www.desotocountymms.gov/823/Election-Results> (last visited Oct. 20, 2025).

⁵ *See id.*

⁶ *See generally* Mississippi Secretary of State, Election Calendar, available at <https://www.sos.ms.gov/content/documents/elections/eleChart-2000-12.pdf> (last visited Oct. 20, 2025) (noting 2026 Board of Education election). Plaintiffs relied on this same election calendar in asking this Court to expedite trial. *See* [75] Mem. at 4, n.2.

relief for the 2026 elections (one of two state Senate elections remaining this census cycle)”). Given the unique timing of a majority of the elections in DeSoto County governed by the challenged lines, *Allen* should not control here.

Plaintiffs’ reliance on *Nairne v. Landry* is equally unpersuasive. *See* [282] Opp’n at 5-7. Plaintiffs emphasize—and as Defendants’ noted in their [200] Memorandum—that the Fifth Circuit denied the *Nairne* Appellants’ motion to stay proceedings pending a decision in *Callais*. Plaintiffs, however, gloss over the fact that the Fifth Circuit did so only after it withheld issuance of its mandate in *Nairne* 11 days earlier. *See* Case No. 24-30115 General Docket, attached as **Exhibit A**. By withholding its mandate, the Fifth Circuit has essentially suspended proceedings at the district court level until the *Nairne* Appellants’ forthcoming rehearing petition is considered and decided.⁷ *See* Fed. R. App. P. 41.

Similarly, Plaintiffs’ reliance on *White v. State Board of Election Commissioners* is unhelpful to their position. No. 4:22-cv-62-SA (N.D. Miss.). Plaintiffs point to the fact that the *White* Court issued its “post-trial liability decision” weeks after the Supreme Court issued its briefing order in *Callais* and claim that “district court proceedings continue apace” in *White*. [282] Opp’n at 6. As Plaintiffs note, the *White* Court recently ordered briefing on the remedial process, but the briefing makes clear that the parties are actively disputing whether *White* should be stayed for reasons that include the Supreme Court’s pending decision in *Callais* and consolidated cases. *Compare* [273] Brief at 8-11 with [274] Brief at 3-4 (Case No. 4:22-cv-62-SA (N.D. Miss.)). Of course, the *White* Defendants appealed the liability finding and the Fifth Circuit expressly stayed proceedings on appeal “pending resolution in *SBEC v. Mississippi NAACP* (S. Ct. No. 25-234),

⁷ The Fifth Circuit also granted the *Nairne* Appellants’ alternative request for additional time to file a rehearing petition. *Id.*

Louisiana v. Callais (S. Ct. No. 24-109), *Nairne v. Louisiana* (CA5 No. 24-30115), and related cases” Sept. 29, 2025, Order, Case No. 25-60506, attached as **Exhibit B**.

At bottom, Defendants’ stay request rests on firm grounds. Just as in *Clark v. Landry*, a decision on which Defendants relied in their [200] Memorandum, there has not been a trial concerning the alleged Section 2 violation in this case and there has not been a Section 2 violation established. *See* Order, Dkt. No. 752, Case No. 3:86-cv-435 (M.D. La. July 17, 2025). These two facts unique to this case distinguish it from cases where those findings were made prior to a stay request being made and give rise to one of two paths the Court can take in determining whether to stay proceedings in this case or proceed to trial as scheduled in January 2026.

On the one hand, the Court can “proceed apace” with trial as Plaintiffs phrase it, so that a decision may be in place prior to the 2026 elections but without the benefit of a decision in *Callais*. Should the Court take this path, there is significant risk of waste in terms of both judicial resources and the parties’ resources given that trial and any remedial proceedings may have to be repeated once the Supreme Court issues its decision in *Callais*. Also weighing against this path is the fact that the regularly scheduled 2026 elections only include one of the 25 offices elected from the challenged district lines, a fact that also potentially triggers special elections for as many as 24 offices in 2026, with 18 of the winners whose offices are regularly scheduled for elections in 2027 serving merely one year, during which they would need to campaign all over again for the 2027 elections.⁸

On the other hand, the Court can stay this case to allow both the Court and the parties the benefit of the Supreme Court’s decision in *Callais*, a move which protects against the potential

⁸ This arises from the fact Plaintiffs seek to have the Court order special elections should they prevail, *see* [1] Complaint ¶ 27.c.; p. 36 ¶ E. Plaintiffs want these special elections occur in November 2026. *See* [75] Mem. in Supp. of Mot. to Expedite Trial 2.

waste of judicial and party resources should trial proceed in January 2026 as scheduled but a retrial after *Callais* be necessary. Should the Court take this path, there would still be time to allow for Plaintiffs' Section 2 claim to be resolved prior to the regularly scheduled elections in 2027, where 18 of the 25 offices will be elected. Of course, this path may necessitate as many as seven special elections for those offices not regularly scheduled in 2027.

Against this backdrop, Defendants believe that the prudent, reasonable path is clear. This matter should be stayed pending the Supreme Court's decision in *Callais*.

B. Plaintiffs' reliance on *Allen v. Milligan* to argue against a stay is misplaced.

Plaintiffs' reliance on the Supreme Court's 2023 decision in *Allen v. Milligan*, 599 U.S. 1 (2023), is misplaced. *See* [282] Opp'n at 10-12. Justice Thomas' dissenting opinion to the Supreme Court's decision setting *Callais* for rehearing (rather than reaching a decision in June 2025) makes clear that *Milligan* is central to the rehearing in *Callais*. *Louisiana v. Callais*, 145 S. Ct. 2608, 2610 (2025) (Thomas, J., dissenting). Justice Thomas described *Milligan* as having "placed the VRA in direct conflict with the Constitution." *Id.* (emphasis added). He added that *Milligan* requires state and local governments to engage in "racialized redistricting"⁹ based on conditions that "are utterly divorced from the sort of 'specific identified instances of past discrimination' that th[e Supreme] Court demands to justify a race-based remedy." *Id.* at 2611 (Thomas, J., dissenting) (quoting *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181, 207 (2023)). In concluding his dissent, Justice Thomas illustrates the importance of the issues to be decided in *Callais* on rehearing: *Callais* and the cases consolidated with it "put the [Supreme] Court to a choice: It may permit patent racial gerrymandering under the auspices of § 2 compliance,

⁹ Justice Thomas' use of the phrase "racialized redistricting" refers to creation of majority-minority districts. *See Callais*, 145 S. Ct. at 2611. As shown below, this is precisely what Plaintiffs seek to do through this lawsuit against DeSoto County. *See*[1] Complaint at ¶¶ 89-95; 233; ¶ D., p. 36.

or it may admit that, as the Court has construed the statute, a violation of § 2 is insufficient to justify a race-based remedy.” *Id.* at 2612 (Thomas, J., dissenting).

Plaintiffs oppose a stay pending the decision in *Callais* on rehearing, arguing that even if the Supreme Court finds that Section 2 violations cannot be remedied by using race as the predominant factor, that result will not have any bearing on this case because a “Section 2 violation does not necessarily require the intentional creation of a majority-minority district.” *See* [282] Opp’n at 11-12. While this may be true generally, Plaintiffs overlook the nature of the specific relief they seek in this case and contradict themselves. Namely, Plaintiffs unambiguously seek creation of a majority-minority district in DeSoto County, *see* [1] Compl. at ¶¶ 35, 36, 39, 40, 44, 45, 49, 50, 89-95; 233; ¶ D., p. 36, and have used their purported experts to further this goal. If there were any doubt about what Plaintiffs seek in this case, their declaration that “[t]he Section 2 claim in this case directly tracks the *Milligan* claim[.]” obliterates that doubt: Creation of a second majority-minority district in the State of Alabama was central to and the result of the *Milligan* Plaintiffs’ Section 2 claim. *See Milligan*, 599 U.S. at 19-20 (noting plaintiffs’ illustrative maps demonstrated a second majority-black district could be created in Alabama and that the district court correctly found a second majority-minority district could be drawn in Alabama).

Thus, Plaintiffs’ contention that the “Section 2 claim in this case directly tracks the *Milligan* claim” only underscores the wisdom and prudence of staying proceedings here. Staying this case pending the Supreme Court’s decision in *Callais* allows the parties and the Court to have the benefit of that decision—and any impact it may have on *Milligan*—prior to trial and any post-trial remedial proceedings.

C. Defendants are not requesting an “indefinite” stay.

In criticizing Defendants’ reliance on a stay order entered on August 11, 2025, in *LULAC v. Abbott*, No. 3:21-cv-259 (W.D. Tex.) (Dkt No. 1126), Plaintiffs claim Defendants request a stay that is “indefinite.” [282] Opp’n at 9. This is incorrect. As Defendants’ opening brief points out, *see* [200] Mem. at 9-10, the Supreme Court typically “issue[s] all decisions before the start of its summer recess in June.” *Id.* (quoting *McGregory v. 21st Cent. Ins. & Fin. Servs., Inc.*, 2016 WL 11643678, at *3 (N.D. Miss. Feb. 2, 2016)). Nothing about *Callais*’ recent progress on rehearing suggests otherwise: the Supreme Court ordered expedited briefing by October 3 (which is complete) and set oral argument for October 15 (which took place). Put simply, *Callais* is on track for a decision to be issued by June 2026, and Plaintiffs’ opposition does not create any doubt about this fact.

II. Good cause exists to grant Defendants’ alternative request to continue trial, and Plaintiffs essentially concede this point by failing to address Defendants’ argument on this point.

Noticeability absent from Plaintiffs’ opposition brief is any attempt to address Defendants’ alternative argument that good cause exists to continue trial until after the Supreme Court issues a decision in *Callais*. *See generally* [282] Opp’n at 1-14. By failing to address this alternative, Plaintiffs have conceded it. *See, e.g., Yarbrough v. Hunt S. Grp., LLC*, No. 1:18-cv-51-LG-RHW, 2019 WL 4345990, at *8 (S.D. Miss. Sept. 12, 2019) (Guirola, J.) (finding plaintiffs conceded argument in defendants’ motion to dismiss by “by failing to address th[e] argument”) *aff’d sub nom.* 836 F. App’x 238 (5th Cir. 2020); *Jones v. Jefferson Par.*, No. CIV.A. 12-2191, 2013 WL 871539, at *3 (E.D. La. Mar. 8, 2013) (“[F]ailure to brief [an] issue waives any argument [a party] might have in opposition to it.”) (citing cases) (Wilkinson, Jr., Mag. J.); *Est. of Pernell v. City of Columbus*, No. 1:08-cv-40-DD, 2010 WL 1737639, at *9 (N.D. Miss. Apr. 28, 2010) (Davidson,

J.) (finding plaintiff “waived any claim under agency theory or respondeat superior” where plaintiff “failed to address [d]efendants’ argument” directed toward those theories).

Aside from Plaintiffs’ concession, the argument has merit. Good cause is determined through four considerations: “(1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in the amendment; and (4) the availability of a continuance to cure such prejudice.” *S&W Enters. v. SouthTrust Bank of Am., NA*, 315 F.3d 533, 536 (5th Cir. 2003) (cleaned up). As made clear through Defendants’ opening brief, *see* [200] Mem. at 12-14, at least three of these four factors militate in favor of continuing the trial date until the Supreme Court issues its decision in *Callais*.

A. Defendants did not fail to timely move for leave to amend.

As to the first factor, Plaintiffs’ opposition does nothing to show any meaningful delay—much less a legally-cognizable delay—by Defendants in seeking to amend the scheduling order as it relates to the trial date and related pretrial deadlines. Currently, trial is set to begin January 26, 2026, and the pretrial conference on which various pretrial deadlines are based is set for December 17, 2025. *See* [91] [92] Notices. Defendants filed their motion to amend the scheduling order on September 3, 2025, which is 145 days prior to the first day of trial and 105 days prior to the pretrial conference. Nothing about this timing underlying Defendants’ request to amend the scheduling order even remotely suggests a failure to timely move for leave to amend.

Recognizing this reality, Plaintiffs repeatedly suggest Defendants waited too long after the Supreme Court’s August 1, 2025, order expediting briefing and setting oral argument to file their [199] Motion. *See* [282] Opp’n at 2. This argument is a nonstarter. First, it overlooks that during the 22 working days that passed between August 1, 2025, and Defendants’ September 3, 2025, motion, Defendants were engaged in preparing and serving supplemental discovery responses, *see*

[156] [166] Notices of Service, coordinating, scheduling, and preparing for numerous fact and expert witness depositions, *see* [164]-[175], [183]-[197]. Notices, and taking two depositions during the week of August 25-29. Second, it ignores the fact that the [199] Motion needed to be researched and drafted during this same time. Third, and most ironically, Plaintiffs' argument ignores the fact that they took more time—28 working days—to prepare their response in opposition to the [199] Motion.

The first good cause factor weighs in favor of amending the scheduling order to postpone trial until after the Supreme Court issues its decision in *Callais*.

B. Amending the scheduling order to continue trial after the Supreme Court's decision in *Callais* is of vital importance to the parties and the Court.

The importance of amending the scheduling order to reschedule trial until after the Supreme Court's decision in *Callais* is issued arises from the fact that the legal issues and resulting decision in *Callais* relate directly to the legal issues underlying Plaintiffs' Section 2 claim here. Similarly, *Callais* relates directly to the remedial relief Plaintiffs seek should they be able to prevail on their Section 2 claim. For Defendants, an amendment to the scheduling order to reschedule trial until after the *Callais* decision is issued has the added importance of protecting Defendants from the risk of being compelled to engage in remedial efforts that include redrawing district lines and holding special elections only for those efforts to be rendered null and void should *Callais* result in changes to the law underlying Plaintiffs' Section 2 claim or the remedial relief Plaintiffs' seek.

The second good cause factor weighs in favor of amending the scheduling order to postpone trial until after the Supreme Court issues its decision in *Callais*.

C. Any potential prejudice that Plaintiffs perceive is minimal and far outweighed by the prejudice to Defendants should this case proceed to trial and the post-trial remedial phase without the benefit of the Supreme Court's decision in *Callais*.

Against this backdrop, there is minimal prejudice to Plaintiffs occasioned by a brief continuance of trial until after the Supreme Court issues its decision in *Callais*. [200] Mem. at 12-13. Having the benefit of any modifications that the Supreme Court makes to Section 2 helps not only Defendants but also Plaintiffs as well as the Court. The Supreme Court's decision is anticipated to be issued by June 2026. The Court can postpone trial for a finite period of time after the date that the Supreme Court issues its decision to allow the parties sufficient time to review and consider the implications of the decision, conduct any pretrial proceedings necessitated by those implications, and proceed to trial with the law on which that very trial would be based having been settled through *Callais*. Further underscoring the minimal prejudice caused to Plaintiffs, this trial and any remedial proceedings could be completed well before the next regularly scheduled elections in DeSoto County in 2027, at which 18 of the 25 offices elected from the challenged district lines are already scheduled for election.

Defendants, by contrast, stand to suffer more significant prejudice should trial not be postponed. If trial proceeds as scheduled and Plaintiffs prevail in the liability phase of their Section 2 claim and succeed in having the County ordered to conduct special elections in 2026 under new district maps, the result would throw 18 of the 25 County offices elected from the district lines into a year of political turmoil, with those 18 offices serving one year terms during which each of the 18 officials would need to repeat the primary and general election campaign cycle to keep their respective offices.¹⁰

This translates to significant prejudice to DeSoto County should the Court decline to continue trial until after the Supreme Court issues its decision in *Callais*. This prejudice includes enduring this outcome—and the expense in terms of time and resources that it would cause DeSoto

¹⁰ See *supra* n.6 and accompanying text.

County, the impacted elected officials, the political candidates for those same offices, and DeSoto County's citizens—based entirely on law that the Supreme Court is actively considering whether to uphold, modify, or strike down as unconstitutional. Any modification to the law short of it being held unconstitutional through *Callais* would likely necessitate a new trial or remedial proceedings. The only viable option for the County to avoid this highly prejudicial outcome would be either further post-trial motion practice in this Court or an appeal to the Fifth Circuit, with either move only further exacerbating the considerable cost and expense imposed on the County through this lawsuit in terms of time, money, and other resources.

The third good cause factor weighs in favor of amending the scheduling order to postpone trial until after the Supreme Court issues its decision in *Callais*.

CONCLUSION

Voting Rights cases are hard. But this particular issue is not. It would behoove everyone involved in this case—the litigants, the citizens, and this Court—to have clarity on the controlling law. Without it, this case is in danger of having to be litigated twice. That benefits no one. A stay should be granted.

Dated: October 20, 2025.

Respectfully submitted,

PHELPS DUNBAR LLP

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CERTIFICATE OF SERVICE

I certify that on October 20, 2025, I electronically filed these papers with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record in this action.

/s/ Nicholas F. Morisani
Nicholas F. Morisani

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