



War II, the United States recommends dismissal of the claims against defendant Caisse Des Dépôts et Consignations ("CDC") on any valid legal ground.<sup>2</sup>

## **BACKGROUND**

### **1. United States Policy on Holocaust Claims**

The policy of the United States Government with regard to claims for restitution or compensation by Holocaust survivors and other victims of the Nazi era is motivated by the twin concerns of justice and urgency. See Declaration of Stuart E. Eizenstat ("Eizenstat Decl."), attached as Exh. 1, ¶¶ 3, 30.<sup>3</sup> No price can be put on the suffering that the victims of Nazi atrocities endured. But the moral imperative remains to provide some measure of justice to the victims of the Holocaust, and to do so in their remaining lifetimes. Id. ¶ 3. Today, more than 60 years after the Holocaust, the survivors are elderly and are dying at an accelerated rate. Id. ¶ 30. The United States believes, therefore, that concerned parties, foreign governments, and non-governmental organizations should act to resolve matters of Holocaust-era restitution and compensation through dialogue, negotiation, and cooperation, rather than subject victims and their families to the prolonged uncertainty and delay that accompany litigation. Id. ¶ 3.

The framework now in place in France – a compensation commission and a memory foundation, both established by decrees of the French Government, and a supplemental fund created by the banks – is consistent with and in part the result of this United States policy. Id. ¶¶ 29-31. This Statement sets forth the history of the creation of these institutions, a description

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<sup>2</sup> This Statement of Interest addresses only the United States' interests with respect to the claims asserted against the CDC, and is being filed at this time because the United States understands that the CDC will be filing a motion to dismiss in the near future.

<sup>3</sup> The United States maintains this policy in the current administration.

of the operation of these institutions and the benefits available through them, and the basis for the United States' conclusion that it would be in the United States' interests for these institutions to be the exclusive remedy for all claims against defendant CDC arising from its activities in France during World War II.

## **2. Background to the U.S.-France Negotiations**

In 1995, President Jacques Chirac of France publicly recognized France's unremitting debt to the victims of the German occupation and the Vichy Regime in France, and pledged that the French Government would take efforts to address all remaining vestiges of that period. One of those efforts was the creation, in January 1997, of the Study Mission on the Spoliation of Jews in France, known as the "Mattéoli Mission," the aim of which was to study the conditions under which property belonging to Jews in France was confiscated by the occupying Nazi forces and Vichy authorities during the period 1940-1944. Eizenstat Decl. ¶ 6.

In April 2000, the Mattéoli Mission issued a 3,000 page report detailing various types of property spoliation that occurred and attempting to quantify the extent of such spoliation. See Summary of the Work by the Study Mission on the Spoliation of Jews in France ("Mattéoli Report"), available at [www.info-france-usa.org/wchea/matteoli.pdf](http://www.info-france-usa.org/wchea/matteoli.pdf). With respect to banking assets, the Mattéoli Mission found that approximately 56,400 people were deprived, either temporarily or permanently, of over seven billion francs in assets. Id. at 25. While it was able to determine that some of that amount was restituted, the fate of significant portions of the spoliated bank assets remains unknown. Eizenstat Decl. ¶ 6.

The Mattéoli Mission made several recommendations for addressing these deprivations, two of which are particularly relevant here. First, it recommended creation of a commission to hear claims by individuals who lost property or are heirs to those who lost property that was

never restituted.<sup>4</sup> That commission, the Commission for the Compensation of the Victims of Acts of Despoilment Committed Pursuant to Anti-Semitic Laws in Force During the Occupation (known by its French acronym "CIVS"), was established by a decree of the French Government in September, 1999. Second, it recommended the creation of a foundation to support Holocaust education and memory and to provide financial support to victims of persecution and their families. That foundation, the Foundation for Memory of the Shoah ("Foundation"), was established by a decree of the French Government in December 2000. *Id.* ¶ 7.

Simultaneously, from the Fall of 1998 through the Summer of 2000, former Deputy Secretary of the Treasury Stuart E. Eizenstat led an inter-agency United States Government team that facilitated negotiations leading to a resolution of class action lawsuits filed in U.S. courts against German companies arising from slave and forced labor and other wrongs by those companies during the Nazi era. Those negotiations resulted, in July 2000, in the creation of a German Foundation, "Remembrance, Responsibility, and the Future," to make payments to victims of slave and forced labor and all others who suffered at the hands of German companies during the Nazi era. Eizenstat Decl. ¶ 9.

While the German negotiations were proceeding, Eizenstat also led an inter-agency United States Government team facilitating similar talks revolving around the role of the Republic of Austria and Austrian companies in the Nazi era and World War II. In October, 2000, those talks resulted in the creation of an Austrian Fund ("Reconciliation, Peace, and Cooperation") to make payments to those who worked as slave and forced laborers on the

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<sup>4</sup> This recommendation was actually part of an earlier, interim report of the Mattéoli Mission. *See* Mattéoli Report at 6.

present day territory of the Republic of Austria. Id. ¶ 10.<sup>5</sup>

Subsequent to the conclusion of the German negotiations, Eizenstat was approached separately by the French Government and by attorneys representing individuals with similar claims against banks doing business in France during World War II. Each sought U.S. Government assistance in facilitating resolution of the then-pending class action litigation against French and other banks, drawing on precedents established in the German and Austrian negotiations. Id. ¶ 11. Attorneys representing the banks welcomed U.S. Government assistance as well.

### **3. The Negotiations and Resolution**

Negotiations among the Government of France, attorneys representing the banks, and attorneys representing claimants against the banks in these lawsuits commenced in November 2000 with a set of meetings in Washington, D.C. Subsequent meetings were held in December in Washington, and in January 2001 in Paris, France, and in Washington. The participants also included representatives of the Simon Wiesenthal Center of Paris, the Conseil Représentatif des Institutions Juives de France ("CRIF"), an umbrella organization of French Jewish groups, and the Alliance Israelite Universelle. Through these participants and the plaintiffs' attorneys, the victims' interests were broadly and vigorously represented. Id. ¶ 12.

The negotiations centered on the question of whether the existing institutions created by the French – the CIVS and Foundation – could sufficiently ensure fair compensation for those who suffered losses relating to banking assets or property held by banks in France during the

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<sup>5</sup> Subsequently, in January 2001, agreement was reached on the creation of a second Austrian fund – the General Settlement Fund – to make payments to those who suffered loss of or damage to property during the Nazi era and World War II on the present day territory of the Republic of Austria.

Holocaust. At the outset, the parties were far apart on both this question, and on the amount of money necessary to provide such compensation. Id. ¶ 13.

One of the key issues for the attorneys representing the victims was to establish a mechanism for compensation to those people who, despite the impressive and exhaustive historical work of the Mattéoli Mission, could not point to specific evidence of the existence and/or disposition of their or their families' banking assets. Although the CIVS makes compensation awards to claimants on very relaxed standards of proof, the attorneys maintained that there could be no guarantee that all victims would receive some measure of justice. Id. ¶ 14.

At a negotiating session that lasted well into the night of January 8-9, 2001, the parties reached a major breakthrough. In addition to maintaining their commitment to pay all well-documented, banking-related claims decided by the CIVS, the banks agreed to create a supplemental fund (the "Fund"), which would make payments to people with little or no documentation of their claims. In return, the plaintiffs, through their attorneys, agreed that they would voluntarily dismiss with prejudice all lawsuits currently pending against the banks. Agreements on the details of these mechanisms, and the amounts of money necessary to fund them, were reached after an all-night session on January 17-18. Id. ¶ 15.

On January 18, 2001, the parties to the negotiations gathered in Washington to sign a Joint Statement concluding the negotiations, and expressing their support for the Fund, the CIVS, and the Foundation. See Eizenstat Decl. Exh. A.<sup>6</sup> On the same day, the United States and France signed an Executive Agreement, in which France committed that the operation of the Fund, the CIVS, and the Foundation would be governed by principles agreed by the parties to the

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<sup>6</sup> Plaintiffs' attorney Harriet Tamen was one of the attorneys who signed the Joint Statement.

negotiations, and the United States committed to take certain steps to assist the banks<sup>7</sup> in achieving "legal peace" in the United States for claims arising out of their activities in France during World War II. See Eizenstat Decl. Exh. B. The Executive Agreement entered into force upon an exchange of notes between the Governments of the United States and France on February 5, 2001. See Exh. 2.

The role played by the United States in this negotiation was that of a facilitator. The Executive Agreement is not a government-to-government claims settlement agreement, and the United States has not extinguished the claims of its nationals or anyone else. Instead, the intent of the United States' participation was to bring together the victims' constituencies on one side and the French Government and banks on the other, to bring expeditious justice to the widest possible population of survivors and heirs, and to help facilitate legal peace. Among these parties, the United States facilitated the essential arrangement by which the French side would establish the Fund, and make certain enhancements to the CIVS and Foundation, to compensate those who suffered losses relating to banking assets in France during World War II, and the class action representatives in then-pending United States litigation agreed to give up their claims. The United States further contributed its own commitment to advise U.S. courts of its foreign policy interests, described in detail below, in the Fund, the CIVS, and the Foundation being treated as the exclusive remedies for Holocaust-related claims against banks active in France during World War II, and, concomitantly, in then-current and future litigation being dismissed.

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<sup>7</sup> The term "Banks" in the context of the Agreement includes French and certain non-French banks. "Banks" is defined to include, among others, all banks that are members of the Association Française des Établissements de Crédit et des Entreprises d'Investissement, a French bank trade association, and "other financial institutions that receive deposits." See Executive Agreement (Eizenstat Decl. Exh. B), at Annex A.

#### **4. The French Institutions**

Taken together, the Fund, the CIVS, and the Foundation are intended to accomplish a complete disgorgement of assets never restituted to their rightful owners by the French Government, banks, and other financial institutions, and any resulting unjust enrichment, and have resulted in compensation to persons who suffered losses relating to banking assets in France during World War II. Eizenstat Decl. ¶ 18.

The CIVS operates as follows. It undertook a program to publicize world-wide its existence and the availability of its claims procedure and to make its forms and application procedures easily available to claimants at no cost to them. It has also cooperated with organizations representing victims to ensure that potential claimants have knowledge of and access to the CIVS. In addition, it has set up offices or contact centers in the United States and other countries to allow claimants to contact the CIVS and make their claims without travel to France. Id. ¶ 19.

The CIVS investigates and considers all claims by any person for compensation for assets held in any bank or financial institution doing business in France during World War II and, if such assets can be verified, determines the amount designed to compensate fully the claimants for any material damages. It does so based on relaxed standards of proof. It can recognize as sufficient to authorize payment any of various standards of evidence, including not only proof but also presumptions, indications, and even the "intimate conviction" of the Commission. Claimants can be represented by counsel or others at every stage of the process, and need not personally appear. Id. ¶ 20.

Once the CIVS determines an award should be made, it refers that award to the banks. There is no monetary limit on such awards. The banks have committed, in writing, to make full

and prompt payment of all banking-related awards recommended by the CIVS, at current value, regardless of the eventual total amount. As good faith evidence of that commitment, the banks agreed during the negotiations to establish an escrow account, initially capitalized at \$50 million and constantly replenished as needed, to be used to promptly pay all banking-related CIVS awards. Id. ¶ 21.

The CIVS has an appeals process. Claimants whose claims are decided by a panel of commission members are entitled to appeal to the full commission, while those whose claims are decided in the first instance by the full commission are entitled to seek reconsideration of such decisions, in each case on the basis of new facts, new evidence, or material error. These internal appeals are in addition to whatever administrative and judicial appeals may exist under French law. Id. ¶ 22.

The CIVS issues regular public reports that detail its activity as well as the criteria established through Commission decisions and the procedures for processing claims. The CIVS welcomes representatives of Holocaust victims and the United States Government for exchanges of information. Id. ¶ 23.

Individuals whose claims could not be substantiated by the CIVS, and whose names could not be matched to the list of 56,400 account holders prepared by the Mattéoli Mission, but who submitted credible evidence that suggests they or their antecedents may have had bank assets that were not restituted, were referred by the CIVS to the Fund. The Fund, capitalized at \$22.5 million contributed by the banks, made initial per capita payments of up to \$3,000 to all persons referred to it by the CIVS. The Fund also made supplemental payments to certain individuals who received awards from the CIVS that were lower than \$3,000. Through subsequent negotiations, the United States and plaintiffs' attorneys secured additional per capita

payments of \$1,000 from the interest that accrued on the Fund. In addition, interest on the bank escrow account was used to make supplemental payments of \$15,000 to Holocaust survivors with claims on the Fund and to make supplemental payments of up to \$10,000 to persons with bank claims that had been recognized by the Commission.

The Foundation serves as the primary mechanism to achieve full disgorgement by banks and other institutions of any remaining assets that were spoliated during World War II and not subject to restitution. The endowment of the Foundation, which was over 2.5 billion Francs (381 million Euros), or approximately \$480 million at current exchange rates, was set at the amount recommended by the Mattéoli Mission, and represents the contemporary value of the amount of assets that could not be conclusively shown to have been reactivated by the rightful owners. Approximately \$100 million of that was contributed by French banks. *Id.* ¶ 25.

The Foundation has among its objectives the development of research and dissemination of knowledge about the Holocaust and the victims of the Holocaust, as well as other genocides and crimes against humanity, and support for initiatives to give moral, technical, and financial support to those who have suffered from persecution and their families.

The Foundation is run by a 24 member Board of Directors, chaired by a Holocaust survivor, Simone Veil. Eight directors represent the French Government, ten represent Jewish groups in France, including the CRIF, and six (including the Chair, Ms. Veil) are eminent persons chosen by the other directors for their stature and experience in Holocaust-related matters. *Id.* ¶ 27. See also <<http://www.fondationshoah.info>>. They include Elie Wiesel, Israel Singer, the Secretary-General of the World Jewish Congress, Saul Friedlander, a professor of Holocaust Studies at the University of California Los Angeles, Claude Lanzmann, a French filmmaker known for the film "Shoah," and Samuel Pisar, an international lawyer and Auschwitz

survivor.

A key point regarding these institutions is that all victims who suffered injury at the hands of banks that had activities in France during World War II are eligible to apply for restitution. Indeed, during the negotiations, attorneys representing the victims vigorously represented not only the named plaintiffs in their cases, but also the interests of heirs and others who are similarly situated. Id. ¶ 28.

## **5. This Litigation**

The action before the Court asserts claims against the CDC based on its activities in France during World War II – namely, its receipt of stolen assets taken from Jews and others in the course of their arrest, imprisonment and deportation. Compl., ¶¶ 2, 7, 9, 19-23. The Complaint itself describes the CDC as the "national public depository of France," id. ¶ 9, and asserts that the stolen assets were deposited at the CDC. The United States has determined that the CDC is a "bank" as that term is used in the Executive Agreement, and that plaintiffs' claims against the CDC are thus covered by the Agreement.

## **DISCUSSION**

### **1. Dismissal of this Litigation Would Be in the United States' Foreign Policy Interests**

It would be in the foreign policy interests of the United States for the CIVS, the Fund, and the Foundation to be the exclusive fora and remedies for the resolution of all claims asserted against banks arising from their activities in France during World War II, including without limitation those relating to spoliation of assets confiscated from deportees and internees. See Eizenstat Decl. ¶ 29 and Exh. B at Art. 1(1). Accordingly, the United States believes that all claims asserted against the CDC should be pursued through the CIVS instead of the courts. The United States' interests in supporting the CIVS, the Fund, and the Foundation are explained

below.

First, it is an important policy objective of the United States to bring some measure of justice to Holocaust survivors and other victims of the Nazi era, who are elderly and are dying at an accelerated rate, in their lifetimes. Eizenstat Decl. ¶ 30. As of 2001, over one hundred thousand Holocaust survivors, including many who emigrated from France, lived in the United States. Id. As noted earlier, the United States believes the best way to accomplish this goal is through negotiation and cooperation.

The CIVS, the Fund, and the Foundation are an excellent example of how such cooperation can lead to a positive result. These fora have provided benefits to more victims, faster and with less uncertainty, than would litigation, with its attendant delays, uncertainty, and legal hurdles. Moreover, the CIVS and the Fund employ standards of proof that are far more relaxed than would be the case with litigation. Litigation, even if successful, could only benefit those able to make out a claim against a bank over which they could obtain jurisdiction in the United States. By contrast, the CIVS, the Fund, and the Foundation will benefit all those with claims against banks that were active in France during World War II, regardless of whether such banks are still in existence today. The creation of the Fund by the banks, the commitment by the banks to pay all awards recommended by the CIVS, and the participation in the Foundation not only by the banks but by the Government of France and other financial institutions, allow comprehensive relief for a broader class of victims than would be possible in United States judicial proceedings. Eizenstat Decl. ¶ 31. In addition, the Foundation is dedicated in part to important efforts to ensure that crimes like those perpetrated during the Nazi era never happen again. Id. ¶ 32.

Second, establishment of the Fund, and recognition of the CIVS and the Foundation,

helps further the close cooperation between the United States and its important European ally and economic partner, France. One of the reasons the United States took an active role in facilitating a resolution of the issues raised in this litigation is that the United States Government was asked by the French Government to work as a partner with it in helping to make its efforts a success. French-American cooperation on these issues has helped solidify the ties between our two countries, ties which are central to U.S. interests in Europe and the world. Id. ¶ 34.

France is our oldest ally, and remains a valuable partner. U.S.-French cooperation on a range of foreign and security policy challenges is now better than it has been in years. The U.S. and France are leading international efforts to end Syrian domination of Lebanon and are working in concert to address the Iranian nuclear threat. France plays a critical role in the stabilization of Afghanistan, where its forces have worked alongside the U.S. since 2002. Multilaterally, France cooperates actively with the U.S. in the United Nations, as a NATO ally, and through the European Union.

Third, dismissal of the claims against CDC would be in the foreign policy interests of the United States. The alternative would be years of litigation whose outcome would be uncertain at best, and which would last beyond the expected life span of the large majority of survivors. Id. ¶ 36. In addition, ongoing litigation could lead to conflict among survivors' organizations and between survivors and the banks, conflicts into which the United States and French Governments would inevitably be drawn.

Dismissal of all pending litigation in the United States in which Holocaust-related claims are asserted against banks relating to their activities in France during World War II was accepted by all as a precondition to allowing the Fund to make payments to victims. The United States strongly supports the CIVS and the Fund and the benefits those institutions have been able to

provide. Therefore, in the context of the Fund, it is in the enduring and high interest of the United States to vindicate that forum by supporting efforts to achieve dismissal of (i.e., "legal peace" for) all Holocaust-related claims against the banks. Id. ¶ 37. See also Executive Agreement (Eizenstat Decl. Exh. B) at Art. 1(1).

Fourth, and finally, the Fund, the CIVS, and the Foundation are a fulfillment of a half-century effort to complete the task of bringing justice to victims of the Nazi era. Since the liberation of France in 1944, France has made compensation and reconciliation for wrongs committed during the occupation and Vichy regime an important part of its political agenda. Although no amount of money will ever be enough to make up for all Nazi-era crimes, the French Government has over time created significant compensation and restitution programs for Nazi-era acts. The Fund and the Foundation added another \$400 million to that total, over and above the total amount of claims ultimately paid through the CIVS, and complement these prior programs. Id. ¶ 38.

The United States does not suggest that these policy interests described above in themselves provide an independent legal basis for dismissal. Moreover, in this Statement, the United States takes no position on the merits of the underlying legal claims or arguments advanced by plaintiffs or defendants. Because of the United States' strong interests in the success of the CIVS, the Foundation, and the Fund, however, the United States recommends dismissal on any valid legal ground.

**2. The Commission, the Fund, and the Foundation Provide a Fair Remedy For Those With Claims Against Banks Arising out of Their Activities in France During World War II**

The United States has reached the conclusion that the results of the negotiations as embodied in the CIVS, the Fund, and the Foundation are fair under all the circumstances. The

circumstances that lead the United States to this conclusion are described below.

Given the advancing age of potential plaintiffs, it was of the highest importance that their claims were resolved quickly, non-bureaucratically, and with minimum expenditures on litigation. As noted earlier, survivors are dying at an accelerated rate, and the CIVS, the Fund, and the Foundation offer the victims of Nazi wrongs who are represented in this case a measure of justice for their past suffering, without additional time-consuming litigation that could delay any recovery beyond many class members' remaining lifetimes. Judge Edward Korman reached the same conclusion in approving a settlement between Holocaust survivors and Swiss banks. See In re Holocaust Victim Assets Litigation, 105 F. Supp.2d 139, 149 (E.D.N.Y. 2000); see also In re Nazi Era Cases Against German Defendants, 2000 WL 1876641 at \*20 ("delay is particularly unconscionable when one considers that members of the putative class are aged and dying"). This is the very sort of outcome that U.S. policy seeks to achieve in matters of unresolved Holocaust-era claims.

Other criteria important in evaluating the CIVS, the Fund, and the Foundation include their level of funding and procedures for prompt resolution of claims. One of the remarkable aspects of the mechanism set up by the French Government is the commitment by the French Government and the banks that the banks will pay all awards directed to them by the CIVS, regardless of the total amount eventually required. See Executive Agreement (Eizenstat Decl. Exh. B) at Annex B ¶ I.D. It is therefore no exaggeration to say that the level of funding of this resolution is unlimited. In addition, the funding of the Foundation was designed to represent complete disgorgement not only of assets that were not returned to their rightful owners, but also of assets that may or may not have been returned, but about which there is simply insufficient information in the historical record.

Of course, whenever one evaluates the level of funding in a resolution such as this one, it is important to consider the words of a Holocaust survivor who spoke in favor of the Swiss Bank settlement, cited by Judge Korman in approving that settlement:

I have no quarrel with the settlement. I do not say it is fair, because fairness is a relative term. No amount of money can possibly be fair under those circumstances, but I'm quite sure it is the very best that could be done by the groups that negotiated for the settlement. The world is not perfect and the people that negotiated I'm sure tried their very best, and I think they deserve our cooperation and . . . that they be supported and the settlement be approved.

In re Holocaust Victim Assets Litigation, 105 F. Supp.2d at 141.

The United States also believes that the procedures adopted by the CIVS for prompt resolution of claims are fair. Claims are evaluated under relaxed standards of proof and paid expeditiously. See Executive Agreement (Eizenstat Decl. Exh. A) at Annex B ¶ I.B. Claimants are permitted to have representatives assist them, and are also assisted by the French Government if they live outside France and by victims' organizations with access to historical lists of unclaimed accounts. Id. at Annex B ¶¶ I.B, I.G, I.H. Claimants are entitled to appeal adverse decisions. Id. at Annex B ¶ I.K. And the Fund even made payments to individuals for whom there was no substantiation of lost bank assets, but who were able to provide "credible evidence that suggests there may have been such assets." Id. at Annex B ¶ I.F. With these agreements, the CIVS and Fund were able to make speedy, dignified payments to many deserving victims – indeed, as noted earlier, many more than could possibly recover through litigation. In addition, the CIVS issues regular public reports as part of its commitment to operate in a transparent manner. Id. at Annex B ¶ I.J.

In considering the fairness of the CIVS, the Fund, and the Foundation, it is also important to consider the numerous legal hurdles and difficulties of proof faced by plaintiffs and the

uncertainty of their litigation prospects. Although the United States takes no position here on the merits of the underlying legal claims advanced by the parties, it is beyond dispute that, because of the time elapsed since World War II and the variety of legal defenses to plaintiffs' claims, recovery in litigation is by no means assured. Cf. In re Holocaust Victim Assets Litigation, 105 F. Supp.2d at 148-49; In re Nazi Era Claims Against German Defendants Litigation, 2000 WL 1876641 at \*19.

### CONCLUSION

The creation of the CIVS, Fund, and Foundation not only furthers the foreign policy interests of the United States, but also provides benefits to the public interest that reach beyond the scope of any single litigation. The successful compromise reached in these negotiations, like the German Foundation Agreement, Austrian agreements, and Swiss Bank settlement, is an example of the advantages for all concerned when the legal and moral claims of Nazi-era victims are dealt with through dialogue, negotiation, and cooperation, instead of prolonged litigation and controversy.

Dated: June 29, 2006.

Respectfully submitted,

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I hereby certify that on this 29<sup>th</sup> day of June, 2006, the attached Statement of Interest of United States was served by first class mail on the following:

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