

THE HONORABLE KYMBERLY K. EVANSON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

XUAN PHAT DUONG,

Petitioner,

v.

PAMELA BONDI, Attorney General of  
the United States, et al.,

Respondents.

No. CV25-02095-KKE

**PETITIONER'S RESPONSE  
MEMORANDUM**

Noted on Motion Calendar:  
November 28, 2025

**I. INTRODUCTION AND FACTUAL BACKGROUND**

Xuan Phat Duong is detained at the Northwest ICE Processing Center (NWIPC). Mr. Duong came to the United States with his mother in 1982, when he was 14 years old. He is married, has five children, and lives near his mother in Seattle. He has no family in Vietnam or remaining connections to that country. Since being subject to an order of removal in 2003, he has reported to ICE as required, but was detained by ICE on May 28, 2025. At that time, ICE agents told him he was being arrested because of “a change in policy” and asked if he would agree to be deported to Sudan.

Mr. Duong has been held in immigration custody for almost six months, after having previously been detained and eventually released pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001). On information and belief, Mr. Duong was held in ICE custody from on or about December 30, 2002, when an Order of Removal was entered against him, until on or about March 24, 2003. Dkt. 11 (Strzelczyk declaration) at ¶¶ 5–6.

1 On October 27, 2025, Mr. Duong filed a petition pursuant to 28 U.S.C. § 2241  
2 requesting the Court order his release from unconstitutional and unlawful detention.  
3 Dkt. 1.

4 **II. THE COURT SHOULD ORDER MR. DUONG RELEASED ON**  
5 **CONDITIONS BECAUSE THE GOVERNMENT HAS OFFERED NO**  
6 **CREDIBLE EVIDENCE THAT HIS REMOVAL IS SIGNIFICANTLY**  
7 **LIKELY IN THE REASONABLY FORESEEABLE FUTURE.**

7 **A. Applicable law**

8 In *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court held that the  
9 Government does not have unrestricted authority to indefinitely detain people who have  
10 been ordered deported. Because indefinite detention of a noncitizen in immigration  
11 custody raises “a serious constitutional problem,” *id.* at 690, it is “presumptively  
12 reasonable” to detain an individual following a removal order for six months. *Id.* at 701.  
13 After that, if removal is not “significantly likely in the reasonably foreseeable future,”  
14 the Government must release the Petitioner. *Id.*

15 Mr. Duong bears an initial burden of showing that there is no significant  
16 likelihood of removal in the reasonably foreseeable future. To meet that initial burden,  
17 however, all he must show is that the presumptively reasonable six-month period has  
18 expired. *See Nguyen v. Scott*, No. CV25-1398-TMC, -- F.Supp.3d --, 2025 WL  
19 2419288, at \*13 (W.D. Wash. Aug. 21, 2025). The burden then shifts to the  
20 Government to establish that, based on “changed circumstances,” there is “a significant  
21 likelihood that the [noncitizen] may be removed in the reasonably foreseeable future,”  
22 8 C.F.R. § 241.13(i)(2); *see also, e.g., Hernandez-Escalante v. Noem, et al.*, No. CV25-  
23 182-MJT, 2025 WL 2206113, at \*3 (E.D. Tex. Aug. 2, 2025) (“These regulations  
24 clearly indicate, upon revocation of supervised release, it is the [Government’s] burden  
25 to show a significant likelihood that the [noncitizen] may be removed.”) (collecting  
26 cases).

1           **B. Mr. Duong’s period of detention**

2           Mr. Duong has already been ICE detention for more than six months, with  
3 approximately three months spent in detention following an order of removal in  
4 December 2002, and almost six additional months in custody since May 28 of this year.

5           The Government does not concede “that Petitioner’s presumptively reasonable  
6 period [of detention] has ended,” dkt. 10 at 7, but any contrary contention would be  
7 incorrect and misconstrue *Zadvydas*. Apart from the fact that he has spent more than six  
8 months in ICE detention, the six-month grace period is pegged to the start of the  
9 removal period. *See Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (“[I]n *Zadvydas*, the  
10 Supreme Court read the statute to permit a ‘presumptively reasonable’ detention period  
11 of *six months* after a final order of removal—that is, *three months* after the statutory  
12 removal period has ended.”); *Rodriguez v. Hayes*, 591 F.3d 1105, 1115 (9th Cir. 2010),  
13 *overruled in other part by Jennings v. Rodriguez*, 583 U.S. 281 (2018) (“The  
14 [*Zadvydas*] Court determined that for six months following the beginning of the  
15 removal period [a noncitizen’s] detention was presumptively authorized.”).  
16 Accordingly, the grace period is not calculated based on the length of detention. *See*  
17 *also, e.g., Bailey v. Lynch*, No. 16-2600-JLL, 2016 WL 5791407, at \*2 (D.N.J. Oct. 3,  
18 2016). And, having had more than two decades to remove Mr. Duong, there is no  
19 principled reason to give ICE an additional grace period.

20           **C. The Government has failed to meet its burden of establishing that**  
21           **Mr. Duong’s removal is likely in the reasonably foreseeable future.**

22           The Government maintains that “Petitioner’s removal will likely occur in the  
23 reasonably foreseeable future,” dkt. 10 at 8, ll. 3–4. The facts show otherwise.

24           According to the declaration of ICE Deportation Officer Daniel Strzelczyk,  
25 “removal documents were prepared in order to seek a travel document” for Mr. Duong  
26 from Vietnam. Dkt. 11 at ¶ 8. Setting aside the fact that ICE had more than two decades  
to prepare these documents following the 2002 order of removal, ICE did not start

1 translating the documents as required for submission to Vietnam until November 4, and  
2 the Government does not indicate when even this preliminary step will be completed.

3 *Id.* at ¶ 9.

4 Moreover, ICE has not obtained documentation of Mr. Duong’s citizenship, nor  
5 has it requested an interview with Vietnamese officials to establish citizenship as  
6 required when documentation is unavailable. *Id.* at ¶ 11. While the government asserts  
7 it “has every reason to believe that the government of Vietnam will *ultimately* issue”  
8 travel documents for Mr. Duong (*id.* at ¶ 17), its dilatory pursuit of travel documents,  
9 the fact that no documentation has yet been translated or submitted, and the uncertainty  
10 surrounding proof of Mr. Duong’s citizenship render the assertion that removal will  
11 occur in the reasonably foreseeable future unpersuasive.

12 It is also worth noting that the Government’s representations about how long  
13 Vietnam takes to respond to travel requests once they’re finally submitted has shifted.  
14 In declarations the Government submitted in other habeas cases until now, it repeatedly  
15 assured the Court that Vietnam responds to travel requests within 30 days. *See, e.g.,*  
16 *United States v. Pham*, CV25-01835-JRC, dkt. 12 at 6. That has never been accurate,  
17 and it now states “the time that a request for travel documents is made until the issuance  
18 of travel documents is *typically* within *1-3 months*.” Dkt. 11 at ¶ 16.

19 In fact, as stated in the accompanying declaration of Assistant Federal Public  
20 Defender Katie Hurrelbrink, which was submitted in *Nguyen v. Bondi, et al.*,  
21 No. CV25-1833-JNW (W.D. Wash.), many Vietnamese immigrants “have been in  
22 detention for months without receiving a travel document,” and she has “never seen  
23 Vietnam respond to a travel document request within 30 days.” Ex. 1 at 3, ¶¶ 5, 7.  
24 Likewise, the accompanying declaration of immigration specialist Tin Thanh Nguyen,  
25 which was filed in *Nguyen v. Scott, et al.*, No. CV25-13980TMC-SKV (W.D. Wash.),  
26 further belies the Government’s representations. Ex. 2. Tin Nguyen explains that, this

1 year alone, he has worked on or assisted with nearly a hundred cases of pre-1995  
2 immigrants “for whom ICE has requested travel documents from Vietnam.” *Id.* at 4,  
3 ¶ 12. Across these cases, Mr. Nguyen has “yet to see Vietnam issue a travel document  
4 within 30 days or less” for a pre-1995 arrival. *Id.* Rather, in his experience, “it can take  
5 many months to get any answer from Vietnam about whether it will issue a travel  
6 document.” *Id.*

7 This is because, according to testimony Judge Cartwright credited in *Nguyen v.*  
8 *Scott*, “the process for procuring travel documents from Vietnam for pre-1995  
9 immigrants continues to be uncertain and protracted.” 2025 WL 2419288, at \*15. In  
10 fact, “[t]he process [for requesting travel documents] is highly dependent on the  
11 individualized facts of each case, including whether the individual has any family  
12 remaining in Vietnam, whether their Vietnamese identity can be verified, their criminal  
13 records, and the manner in which they left Vietnam and came to the United States,  
14 among many other factors.” *Id.*

15 Here, Mr. Duong does not have a passport, Vietnamese birth certificate, or  
16 identification documents from Vietnam. All of his family resides in the U.S., he has no  
17 remaining relatives or even contacts in Vietnam, and he has no place to live or means of  
18 supporting himself there.

19 While the Government and Vietnam have a memorandum of understanding  
20 (MOU) that sets forth Vietnam’s criteria for repatriation, the Government has not  
21 provided a copy of the MOU to the Court or disclosed the criteria. *See Nguyen v. Scott*,  
22 2025 WL 2419288, at \*14 (“The Court does not know what factors the Vietnamese  
23 government considers in deciding to repatriate a pre-1995 immigrant.... This  
24 information has been redacted from the publicly available version of the 2020 MOU,  
25 and Respondents have not offered it.”).

1 Finally, Respondents cannot meet their burden by offering evidence of some  
2 increased deportations to Vietnam. *See, e.g., Hoac v. Becerra*, No. CV25-1740-DC-  
3 JDP, 2025 WL 1993771, at \*5 (E.D. Cal. July 16, 2025) (“Respondents’ contention that  
4 Petitioner’s removal is reasonably foreseeable because removals to Vietnam are in fact  
5 occurring is unpersuasive.”); *Nguyen v. Hyde*, No. CV25-11470-MJJ, 2025 WL  
6 1725791, at \*4 (D. Mass. June 20, 2025) (generalized evidence of removals to Vietnam  
7 insufficient).

8 Given these facts, and the lack of credible evidence to the contrary, the  
9 Government has not met its burden of showing that Mr. Duong’s removal from the  
10 United States is “substantially likely” in the “reasonably foreseeable future,” and the  
11 Court should order his release on conditions.

12 Finally, the government offers no evidence that Mr. Duong’s detention is  
13 warranted because he poses a flight risk or poses a danger to the community. As ICE  
14 agents told Mr. Duong when he was re-detained, his detention is due to policy changes  
15 rather than any individualized change of circumstances. On January 20, 2025, President  
16 Trump directed the Respondent Secretary of Homeland Security to “promptly take  
17 action to use all other provisions of the immigration laws or any other federal law. . . to  
18 ensure the efficient and expedited removal of aliens from the United States.” Executive  
19 Order “Protecting the American People Against Invasion,” Exec. Order No. 14159, 90  
20 Fed. Reg. 8443–48 (Jan. 20, 2025), at § 9. On May 5, 2025, Secretary Noem issued a  
21 press release claiming “Secretary Noem is fulfilling President Trump’s promise to carry  
22 out mass deportations.” U.S. Dep’t of Homeland Security, *100 Days of Secretary*  
23 *Noem: Making America Safe Again* (May 5, 2025).<sup>1</sup> News outlets have reported that  
24 during a May 21, 2025, meeting at the White House with ICE officials, Stephen Miller,  
25

26 <sup>1</sup> <https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-making-america-safe-again> [<https://perma.cc/MGG8-H7TJ>].

1 White House Deputy Chief of Staff, and Respondent Noem “expressed their  
2 frustrations with the current level of arrests to ICE leadership” and “reportedly  
3 demanded that ICE triple daily arrest totals to 3,000 per day.” Victor Nava, *ICE shakes*  
4 *up leadership amid push for 3,000 migrant arrests per day*, N.Y. Post (May 29, 2025).<sup>2</sup>  
5 Miller himself repeated the call for “a minimum” of 3,000 immigration arrests a day on  
6 Fox News on May 29, 2025. Fox News, *Stephen Miller reveals Trump admin’s ‘daily*  
7 *goal’ for illegal migrant arrests*, at 00:20 (YouTube, May 29, 2025).<sup>3</sup>

8 Respondents have implemented the Administration’s demand to increase arrests  
9 by detaining people who complied with their supervision requirements when they  
10 appeared for their court hearings or periodic check-ins. Although Respondents have not  
11 disclosed the number of people re-arrested pursuant to this change in policy, district  
12 courts have ordered the release of people rearrested without cause at least 29 times  
13 since May.<sup>4</sup> Despite these dozens of orders, Respondents have not voluntarily released

14 <sup>2</sup> [https://nypost.com/2025/05/29/us-news/ice-shakes-up-leadership-amid-push-for-](https://nypost.com/2025/05/29/us-news/ice-shakes-up-leadership-amid-push-for-3000-migrant-arrests-per-day)  
15 [3000-migrant-arrests-per-day](https://perma.cc/Y9Z2-AKW7) [<https://perma.cc/Y9Z2-AKW7>].

16 <sup>3</sup> <https://www.youtube.com/watch?v=MJNXsOqFSZs>.

17 <sup>4</sup> *Nguyen v. Scott*, 2025 WL 2419288, at \*1 (granting preliminary injunction to  
18 Vietnamese refugee on *Zadvydas*/due process grounds); *Nguyen v. Hyde*, No. CV25-  
19 11470-MJJ, 2025 WL 1725791, at \*4 (D. Mass. June 20, 2025) (same; evidence of  
20 increased removals to Vietnam insufficient to justify detention); *E.A. T.-B. v. Wamsley*,  
21 No. CV25-1192-KKE, 2025 WL 2402130, at \*1 (W.D. Wash. Aug. 19, 2025) (re-arrest  
22 violated due process); *Calderon v. Kaiser*, No. CV25-06695-AMO, 2025 WL 2430609,  
23 at \*3 (N.D. Cal. Aug. 22, 2025) (same); *Arias Gudino v. Lowe*, -- F.Supp.3d --, 2025  
24 WL 1162488 (M.D. Pa. Apr. 21, 2025) (same); *Arzate v. Andrews*, No. CV25-942-  
25 KES-SKO (HC), 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025); *Lopez Benitez v.*  
26 *Francis*, No. CV25-5937-DEH, 2025 WL 2371588, at \*1 (S.D.N.Y. Aug. 13, 2025)  
(same); *Ceesay v. Kurzdorfer*, -- F.Supp.3d --, 2025 WL 1284720 (W.D.N.Y. May 2,  
2025) (same); *Chipantiza-Sisalema v. Francis*, No. CV25-5528, 2025 WL 1927931  
(S.D.N.Y. July 13, 2025) (same); *Domingo v. Kaiser*, No. CV25-05893-RFL, 2025 WL  
1940179 (N.D. Cal. July 14, 2025) (same); *Dos Santos v. Noem*, No. CV25-12052,  
2025 WL 2370988 (D. Mass. Aug. 14, 2025) (same); *Garcia v. Andrews*, No. CV25-  
1884-TLN-SCR, 2025 WL 1927596 (E.D. Cal. July 14, 2025) (same); *Gomes v. Hyde*,

1 similarly situated respondents or abated the practice of arresting—without notice—  
2 people who pose no risk of flight or danger, such as Mr. Duong.

3 **III. MR. DUONG’S ARREST WAS ILLEGAL.**

4 According to the Government, Mr. Duong’s order of supervision was revoked  
5 and he was arrested on May 28 because ICE “determined that there was now a  
6 significant likelihood of [his] removal in the foreseeable future.” Dkt. 11 at ¶ 7. There is  
7 no allegation that he failed to report to ICE as required; his criminal history is minimal  
8 and more than two decades old (dkt. 11 at ¶ 4); and he was given no notice of the  
9 revocation or opportunity to challenge it. Nor is there any evidence that he poses a  
10 flight risk or danger to the community. Thus, contrary to the Government’s bald  
11 assertion that “there is no question that ICE was within its authority to arrest him”  
12 (dkt. 10 at 9, ll. 2–3), his arrest was illegal and, even if his removal were reasonably  
13 foreseeable, the Court should order his release now.

14  
15  
16 No. CV25-11571-JEK, 2025 WL 1869299, at \*5 (D. Mass. July 7, 2025) (Respondents  
17 violated Administrative Procedures Act); *Guillermo M. R. v. Kaiser*, 2025 WL 1983677  
18 (N.D. Cal. July 17, 2025) (Respondents violated due process); *Maldonado v. Olson, et*  
19 *al.*, No. CV25-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (same); *M’Bagoyi v.*  
20 *Barr*, 423 F.Supp.3d 99 (M.D. Penn. 2019); *Maklad v. Murray*, No. CV25-00946-JLT-  
21 *SAB*, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025); *Martinez v. Hyde*, No. CV25-11613,  
22 2025 WL 2084238 (D. Mass. July 24, 2025); *Mata Velasquez v. Kurzdorfer*, No. CV25-  
23 493-LJV, 2025 WL 1953796 (W.D.N.Y. July 16, 2025); *Morales Jimenez v. Bostock*,  
24 No. CV25-00570-MTK (D. Or. May 13, 2025); *OJM v. Bostock*, No. CV25-00944-AB  
25 (D. Or. July 14, 2025); *Ortega v. Kaiser*, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025);  
26 *Pablo Sequen v. Kaiser*, -- F.Supp.3d --, 2025 WL 2203419 (N.D. Cal. Aug. 1, 2025);  
*Pinchi v. Noem*, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Ramirez-Clavijo v.*  
*Kaiser*, No. CV25-6248-BLF, 2025 WL 2097467 (N.D. Cal. July 25, 2025); *Rosado v.*  
*Figueroa*, No. CV25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Singh v.*  
*Andrews*, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Valdez v. Joyce*, No. CV25-  
4627-GBD, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (granted habeas on due  
process grounds); *Y-Z-L-H v. Bostock*, -- F. Supp. --, 2025 WL 1898025 (D. Or. July 7,  
2025) (re-arrest violates APA).

1 More specifically, the revocation of a noncitizen's release is governed by  
2 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release under  
3 § 1231 for purposes of removal or for violation of conditions of release. The  
4 government may revoke a noncitizen's release and return them to ICE custody due to  
5 failure to comply with any of the conditions of release, 8 C.F.R. § 241.13(i)(1), or if,  
6 "on account of changed circumstances, the [Immigration] Service determines that there  
7 is a significant likelihood that the [noncitizen] may be removed in the reasonably  
8 foreseeable future," *id.* § 241.13(i)(2).

9 Such revocation of release, even if justified by one of the reasons recognized by  
10 regulation, requires notice and an opportunity for the noncitizen to be heard. Upon a  
11 determination by the government (namely ICE) to re-detain a person previously  
12 released following a removal order:

13 the [noncitizen] will be notified of the reasons for revocation of his or her  
14 release. [ICE] will conduct an initial informal interview promptly after his  
15 or her return to [ICE] custody to afford the [noncitizen] an opportunity to  
16 respond to the reasons for revocation stated in the notification. The  
17 [noncitizen] may submit any evidence or information that he or she  
18 believes shows there is no significant likelihood he or she be removed in  
19 the reasonably foreseeable future, or that he or she has not violated the  
20 order of supervision. The revocation custody review will include an  
21 evaluation of any contested facts relevant to the revocation and a  
22 determination whether the facts as determined warrant revocation and  
23 further denial of release.

24 *Id.* § 241.13(i)(3).

25 ICE's decision to re-detain also cannot be arbitrary, but instead is governed by  
26 the factors laid out in 8 C.F.R. § 241.13(f), including:

the history of the [noncitizen's] efforts to comply with the order of  
removal, the history of [ICE's] efforts to remove [noncitizens] to the  
country in question or to third countries, including the ongoing nature of  
[ICE's] efforts to remove [the noncitizen] and the [noncitizen's]  
assistance with those efforts, the reasonably foreseeable results of those

1 efforts, and the views of the Department of State regarding the prospects  
2 for removal of [noncitizens] to the country or countries in question.

3 *Id.* See also *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at \*3  
4 (E.D. Cal. July 16, 2025). While courts do not make these determinations in the first  
5 instance, they may review them for compliance with the regulation. See *id.*; *Nguyen v.*  
6 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at \*3 (D. Mass. June 20, 2025) (citing  
7 *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

8 In addition, “substantive due process prevents the government from engaging in  
9 conduct that shocks the conscience, or interferes with rights implicit in the concept of  
10 ordered liberty.” *United States v. Salerno*, 481 U.S. 739, 746 (1987). “Freedom from  
11 bodily restraint has always been at the core of the liberty protected by the Due Process  
12 Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80, 112  
13 S.Ct. 1780, 118 L.Ed.2d 437 (1992); see also *Zadvydas*, 533 U.S. at 696, 121 S.Ct.  
14 2491 (finding that a noncitizen has a liberty interest “strong enough” to challenge  
15 “indefinite and potentially permanent” immigration detention). “Individuals who have  
16 been released from custody, even where such release is conditional, have a liberty  
17 interest in their continued liberty.” *Doe v. Becerra*, -- F.Supp.3d --, No. CV25-647-  
18 DJC-DMC, 2025 WL 691664, at \*5 (E.D. Cal. Mar. 3, 2025) (citing *Morrissey v.*  
19 *Brewer*, 408 U.S. 471, 482 (1972); *Young v. Harper*, 520 U.S. 143, 150 (1997); *Gagnon*  
20 *v. Scarpelli*, 411 U.S. 778, 782 (1973)).

21 “A due process violation occurs when detention becomes punitive rather than  
22 regulatory, meaning there is no regulatory purpose that can rationally be assigned to the  
23 detention or the detention appears excessive in relation to its regulatory purpose.”  
24 *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021); accord *Padilla v. U.S.*  
25 *Immigr. & Customs Enf’t.*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023) (“Due  
26 process protects against immigration detention that is not reasonably related to the  
legitimate purpose of effectuating removal or protecting against danger and flight

1 risk.”). The regulatory purpose of immigration detention is to hold a person that is a  
2 flight risk or a danger to the community. *In re Guerra*, 24 I.&N. Dec. 37 (B.I.A. 2006).  
3 Regulations governing parole identify only those two factors for consideration in the  
4 release decision. 8 C.F.R. § 236.1(c)(8). For people who have been ordered deported,  
5 8 C.F.R. § 241.13(i)(2) also authorizes re-detention for purposes of removal, so long as  
6 respondents can prove that “there is a significant likelihood that the [noncitizen] may be  
7 removed in the reasonably foreseeable future.”

8 Thus, if a re-arrest and detention is punitive or exceeds the justifications  
9 permitted by regulation, it violates the individual’s substantive right to due process.

10 **IV. CONCLUSION**

11 There is no credible evidence that Mr. Duong will be removed to Vietnam in the  
12 reasonably foreseeable future and “nothing in the current record to suggest that  
13 releasing Petitioner would impede Respondents’ ability to remove him to Vietnam if  
14 the necessary travel document is obtained.” *Hoac v. Becerra*, No. CV25-1740-DC-JDP,  
15 2025 WL 1993771, at \*6 (E.D. Cal. July 16, 2025). Accordingly, the Court should  
16 order his release.

17 DATED this 26th day of November 2025.

18 Respectfully submitted,

19  
20 *s/ Colin Fieman*  
21 Attorney for Vinh Duong  
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