

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Antonio Alejandro Garcia Morao
(b) County of Residence of First Listed Plaintiff Utah
(c) Attorneys (Firm Name, Address, and Telephone Number)
Alec S. Bracken, Contigo Law, PO Box 249, Utah 84047, 801-980-9430

DEFENDANTS
Kristi Noem Et. Al.
County of Residence of First Listed Defendant Prince George
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in one Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
8 U.S.C. § 2241
Brief description of cause:
Petitioner is detained in violation of his due process rights.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 12/23/2025 SIGNATURE OF ATTORNEY OF RECORD /s/ Alec S. Bracken

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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Midvale, Utah 84047
Phone: 801-980-9430
Email: alec@contigo.law
Attorney for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Antonio Alejandro Garcia Morao,

Petitioner

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement,

MARCOS CHARLES, in his official capacity
as ICE Field Officer Director,

JOHN MATTOS, in his official capacity as the
warden of the Nevada Southern Detention
Facility,

PAMALA BONDI, in her official capacity as
the United States Attorney General,

The Executive Office for Immigration Review

United States Immigration and Customs
Enforcement.

United States Citizenship and Immigration
Services

Respondents

Civil No.: 2:25-cv-2588

VERIFIED PETITION FOR HABEAS
CORPUS AND MANDAMUS ACTION

IMMIGRATION HABEAS CASE

INTRODUCTION

1
2 1. Antonio Alejandro Garcia Morao (Petitioner), by and through his undersigned counsel,
3 hereby files this petition for a writ of habeas corpus. Petitioner entered the United States on May 23,
4 2023 after having been admitted under the Venezuelan Humanitarian Parole Program. Ex. 1. On
5 September 23, 2025, Petitioner was arrested by ICE after being released from the Utah County jail on
6 criminal charges. Ex. 2. On September 24, 2025, removal proceedings were commenced by DHS by
7 the filing of a notice to appear with the Las Vegas Immigration Court. Ex. 1.

9 2. Petitioner is married to a United States' Citizen and, an I-130 has been approved and his I-
10 485 remains pending. Exs. 3-4. Petitioner entered the United States under parole and has no
11 disqualifying criminal convictions, as such, he is prima facie eligible for adjustment of status. 8 U.S.C.
12 1255(a). On November 17, 2025, Petitioner filed a motion to terminate proceedings with the
13 immigration court based on prima facie eligibility to adjust status pursuant to 8 CFR
14 §1003.18(d)(1)(ii)(B). Ex. 5. The Immigration Judge denied the motion November 18, 2025, providing
15 no meaningful analysis into the denial. Ex. 6.

17 3. Any individual who presents himself at the border without express consent to be admitted is
18 considered to be an arriving alien. 8 C.F.R. § 1.2. An arriving alien remains an arriving alien even if
19 paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) (humanitarian parole). *Id.*

21 4. Per regulation, USCIS retains exclusive jurisdiction to adjudicate adjustment of status
22 applications for arriving aliens. 8 C.F.R. § 1245.2(a)(1)(ii); 8 C.F.R. § 245.2(a)(1). Therefore, an
23 arriving alien cannot apply for adjustment of status with an immigration judge and must seek
24 adjustment of status with USCIS.

26 5. Continued detention is unlawful where it operates as a practical bar to the adjudication of
27 relief for which the detainee is otherwise prima facie eligible. Petitioner is eligible to apply for
28

1 adjustment of status under 8 U.S.C. § 1255(a) and USCIS has jurisdiction to adjudicate that application.
2 As a matter of agency practice and regulation, USCIS requires the applicant's personal appearance at
3 an adjustment interview. Petitioner's continued detention prevents him from attending that mandatory
4 interview, thereby rendering it impossible for USCIS to adjudicate—and approve—his application
5 despite his statutory eligibility. Detention that affirmatively forecloses access to a congressionally
6 authorized form of relief exceeds the permissible scope of civil immigration detention and violates due
7 process, because it is no longer reasonably related to the government's legitimate purposes of ensuring
8 appearance or effectuating removal. Release is therefore required so that Petitioner may attend his
9 USCIS interview and pursue adjudication of his adjustment application as contemplated by the INA.
10

11 JURISDICTION AND VENUE

12
13 6. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general
14 federal question jurisdiction; 5 U.S.C. §§ 701 et seq., the Due Process Clause of the United States
15 Constitution and the INA. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241
16 et. seq. and the All Writs Act, 28 U.S.C. § 1651.

17
18 7. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the
19 lawfulness or constitutionality of DHS conduct. Federal courts are not stripped of jurisdiction under 8
20 U.S.C. § 1252. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

21
22 8. Venue is proper pursuant to 28 U.S.C. § 1391(e) because Respondents are agencies of the
23 United States or officers or employees thereof acting in their official capacity or under color of legal
24 authority; Petitioner is in the custody of the Pahrump Detention Center, which is in the jurisdiction of
25 the Nevada District Court and there is no real property involved in this action.
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1 9. There is no requirement for exhaustion of administrative remedies in the present case as
2 neither the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INA require petitioners to
3 exhaust administrative remedies before filing petitions for habeas corpus.
4

5 **REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

6 10. The Court must grant the petition for writ of habeas corpus or issue an order to show cause
7 (OSC) to the Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.
8 If an OSC is issued, the Court must require Respondents to file a return “within three days unless for
9 good cause additional time, not exceeding twenty days, is allowed.” *Id.*
10

11 11. Courts have long recognized the significance of the habeas statute in protecting individuals
12 from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ
13 known to the constitutional law of England, affording as it does a swift and imperative remedy in all
14 cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).
15

16 12. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and
17 detained by Respondents.
18

19 **PARTIES**

20 **PETITIONER**

21 13. Petitioner is a Venezuelan citizen, who is currently in the custody of the Department of
22 Homeland Security in Pahrump, Nevada.
23

24 **RESPONDENTS**

25 14. Respondent Kristi Noem (Secretary Noem) is the Secretary of the Department of Homeland
26 Security, the parent agency of Immigration and Customs Enforcement which is currently detaining the
27 Petitioner. Respondent Kristi Noem is sued in her official capacity as an agent of the United States
28 Government.

1 15. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs
2 Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general.
3 Respondent Lyons is a legal custodian of Petitioner.

4 16. Respondent Marcos Charles is the Field Office Director of Immigration and Customs
5 Enforcement. He is in charge of the custody of all Immigration and Customs Enforcement Detainees
6 in the Nevada District Court.. Respondent Marcos Charles is sued in his official capacity as an agent
7 of the United States Government.
8

9 17. Respondent Pamela Bondi is the Attorney General of the United States, and as such has
10 authority over the Department of Justice and is charged with faithfully administering the immigration
11 laws of the United States. Pamela Bondi is sued in her official capacity as an agent of the United States.
12

13 18. Respondent Executive Office for Immigration Review is the federal agency responsible for
14 custody redeterminations relating to non-citizens charged with being removable from the United States.
15

16 19. Respondent John Mattos is the warden of the Nevada Southern Detention Center and thus
17 has custody over the Petitioner. Respondent John Mattos is sued in his official capacity as an agent of
18 the United States.

19 20. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for
20 custody decisions relating to non-citizens charged with being removable from the United States,
21 including the arrest, detention, and custody status of non-citizens.

22 21. Respondent U.S. Citizenship and Immigration Services is the federal agency responsible
23 for adjudicating adjustment of status applications and particularly has exclusive jurisdiction over
24 adjustment of status applications for arriving aliens.
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1 **LEGAL FRAMEWORK**

2 22. Any individual who presents himself at the border without express consent to be admitted
3 is considered to be an arriving alien. 8 C.F.R. § 1.2. An arriving alien remains an arriving alien even if
4 paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) (humanitarian parole). *Id.*

5 23. Per regulation, USCIS retains exclusive jurisdiction to adjudicate adjustment of status
6 applications for arriving aliens. 8 C.F.R. § 1245.2(a)(1)(ii); 8 C.F.R. § 245.2(a)(1). Therefore, an
7 arriving alien cannot apply for adjustment of status with an immigration judge and must seek
8 adjustment of status with USCIS.
9

10 24. Continued detention is unlawful where it operates as a practical bar to the adjudication of
11 relief for which the detainee is otherwise prima facie eligible. Petitioner is eligible to apply for
12 adjustment of status under 8 U.S.C. § 1255(a) and USCIS has jurisdiction to adjudicate that application.
13 As a matter of agency practice and regulation, USCIS requires the applicant's personal appearance at
14 an adjustment interview. Petitioner's continued detention prevents him from attending that mandatory
15 interview, thereby rendering it impossible for USCIS to adjudicate—and approve—his application
16 despite his statutory eligibility. Detention that affirmatively forecloses access to a congressionally
17 authorized form of relief exceeds the permissible scope of civil immigration detention and violates due
18 process, because it is no longer reasonably related to the government's legitimate purposes of ensuring
19 appearance or effectuating removal. Release is therefore required so that Petitioner may attend his
20 USCIS interview and pursue adjudication of his adjustment application as contemplated by the INA.
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23 **PROCEDURAL AND FACTUAL BACKGROUND**

24 25. Petitioner entered the United States on May 23, 2023 after having been admitted under the
25 Venezuelan Humanitarian Parole Program. Ex. 1. On September 23, 2025, Petitioner was arrested by
26 ICE after being released from the Utah County jail on criminal charges. Ex. 2. On September 24, 2025,
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1 removal proceedings were commenced by DHS by the filing of a notice to appear with the Las Vegas
2 Immigration Court. Ex. 1.

3 26. Petitioner is married to a United States' Citizen and, an I-130 has been approved and his I-
4 485 remains pending. Exs. 3-4. Petitioner entered the United States under parole and has no
5 disqualifying criminal convictions, as such, he is prima facie eligible for adjustment of status. 8 U.S.C.
6 1255(a). On November 17, 2025, Petitioner filed a motion to terminate proceedings with the
7 immigration court based on prima facie eligibility to adjust status pursuant to 8 CFR
8 §1003.18(d)(1)(ii)(B). Ex. 5. The Immigration Judge denied the motion November 18, 2025, providing
9 no meaningful analysis into the denial. Ex. 6.

10
11 **CAUSES OF ACTION**

12
13 **1. FIRST CAUSE OF ACTION:**
14 **Violation of Fifth Amendment Right to Due Process**

15 27. Petitioner incorporates and realleges the allegations above.

16 28. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the
17 federal government from depriving any person of "life, liberty, or property, without due process of
18 law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including
19 [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*,
20 533 U.S. at 693.57.

21 29. Here, the petitioner is being deprived of due process because DHS and DOJ refuse to allow
22 him to adjudicate his adjustment of status application, relief for which he is prima facie eligible.
23 Petitioner would, but for his continued detention be eligible to receive immediate relief from
24 deportation in the form of permanent residency status. DHS is refusing to release him for his interview,
25 and is refusing to send an officer to his detention facility to effectuate his interview, and is refusing to
26 adjudicate his application without an interview. Further, the Department of Justice is refusing to
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1 terminate proceedings, despite regulations permitting them to do so. Petitioner is being deprived of his
2 due process rights to have his application for adjustment of status heard because of barriers created by
3 the very agencies tasked with adjudicating his application. This is a deprivation of his due process
4 rights.

5
6 **2. SECOND CAUSE OF ACTION:**
7 **Violation of the Administrative Procedure Act**

8 30. Petitioner incorporates and realleges the allegations above.

9 31. Federal courts possess authority to compel agency action that has been unlawfully withheld
10 or unreasonably delayed, and to set aside agency action that is arbitrary, capricious, an abuse of
11 discretion, or otherwise not in accordance with law. *See* 5 U.S.C. §§ 706(1), 706(2)(A). Under the
12 Administrative Procedure Act, a reviewing court “shall compel agency action unlawfully withheld or
13 unreasonably delayed,” and shall hold unlawful agency conduct that lacks a rational connection to the
14 governing statute or that defeats the purpose of congressionally authorized relief. *Id.* Where an agency’s
15 action or failure to act operates to frustrate statutory rights or renders relief practically unavailable,
16 federal courts may order the agency to act so as to ensure compliance with the law and the Constitution.
17

18 32. Here, The executive branch’s actions are both arbitrary and capricious. One arm of DHS,
19 USCIS, is refusing to adjudicate his adjustment of status application unless he attends an interview.
20 Further, USCIS is refusing to allow him to attend his interview in detention. Meanwhile, another arm
21 of DHS, ICE, is refusing to release Petitioner for a short period to attend his interview. Finally, the
22 DOJ is refusing to terminate proceedings in order to allow Petitioner to attend an interview and adjust
23 status, despite regulations allowing DOJ to do so, and DOJ is refusing to halt removal proceedings any
24 further to allow this issue to be resolved.
25

26 33. The government here is acting by the definition of arbitrarily and capriciously. The
27 Government has the sole power to resolve the issue it has created, and yet refuses to do so. Petitioner
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1 is prima facie eligible for relief from deportation, but agencies tasked with determining if he is eligible
2 refuse to take the reasonable steps necessary to ensure his application is adjudicated. Therefore, the
3 respondents' actions are arbitrary and capricious.

4 **RESERVATION OF RIGHTS**

5 Petitioner reserves the right to add additional allegations of agency error and related causes
6 of action upon receiving the certified administrative record.
7

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Petitioner requests that this Court grant the following relief:

- 10 A. Assume jurisdiction over the matter;
- 11 B. Declare DHS's refusal to allow Petitioner's release to attend his interview, and their refusal in the
12 alternative to attend his interview in detention, to be in violation of Petitioner's due process rights and
13 to be arbitrary and capricious;
- 14 C. Order the Executive Office for Immigration Review to stay any and all proceedings until his
15 application for adjustment of status can be adjudicated;
- 16 D. Order USCIS to schedule an interview for his adjustment of status application;
- 17 E. Order ICE to produce Petitioner at his adjustment of status interview or, in the alternative, order
18 USCIS to produce an officer at Petitioner's detention facility for his interview;
- 19 F. Award Petitioner costs of suit and attorney's fees under the Equal Access to Justice Act, 42
20 U.S.C. § 1988 and any other applicable law;
- 21 G. Enter all necessary relief, injunctions, and orders as justice and equity as appropriate to
22 remedy the harms to Petitioner;
- 23 H. Grant such further relief as this Court deems just and proper.
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1
2 DATED: December 23, 2025
3
4

5 Respectfully submitted,

6
7 /S/ ALEC S. BRACKEN
8 Alec S. Bracken (UT SBN 17178)
9 Contigo Law
10 P.O. Box 249
11 Midvale, UT 84047
12 Tel. (801) 676-6548
13 Email: alec@contigo.law
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Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's Attorneys. I have discussed with Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: December 23, 2025

Respectfully submitted,

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Certificate of Service

I, Alec S. Bracken, certify that a true and complete copy of this Petition was served on Respondents via email to the United States Attorney's Office for the District of Nevada at:

Liam Pisan - Liam.Pisan@usdoj.gov

Virginia Tomova - Virginia.Tomova@usdoj.gov

Dated: December 23, 2025

Respectfully submitted,

/S/ ALEC S. BRACKEN
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