

District Judge Richard A. Jones  
Magistrate Judge Brian A. Tsuchida

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOSE LUIS GONZALEZ-ATENCIO,

Petitioner,

v.

IMMIGRATION AND CUSTOMS  
ENFORCEMENT FIELD OFFICE  
DIRECTOR,

Respondent.

Case No. 2:25-cv-00245-RAJ-BAT

RESPONDENT'S RETURN  
MEMORANDUM AND  
MOTION TO DISMISS

Noted for consideration on:  
April 25, 2025

**I. INTRODUCTION**

This Court should dismiss Petitioner Jose Luis Gonzalez-Atencio's Petition for Writ of Habeas Corpus. Dkt. No. 4 ("Pet."). Gonzalez-Atencio challenges his post-order detention at the Northwest ICE Processing Center ("NWIPC") as unconstitutional and unlawful while he awaits removal from the United States. He alleges that "the country of Venezuela is currently not cooperating with the U.S. Government to deport its citizens and its likely [to] continue because of the current president of Venezuela." Pet., at ECF 12. However, this Court should deny Gonzalez-Atencio's request for release from U.S. Immigration and Customs Enforcement ("ICE") custody.

RESPONDENT'S RETURN MEMORANDUM  
AND MOTION TO DISMISS  
[Case No. 2:25-cv-00245-RAJ-BAT] - 1

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Dismissal is appropriate here because Gonzalez-Atencio, a noncitizen subject to an administratively final order of removal, is lawfully detained pursuant to Section 241 of the Immigration and Nationality Act (“INA”). *See* 8 U.S.C. § 1231. His approximate six-month detention since the issuance of his final order of removal is not unconstitutionally indefinite. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). ICE attests that it is actively working on removing Venezuelan nationals from the United States.

Accordingly, Respondent respectfully requests that the Court deny the Petition and grant the Motion to Dismiss. This motion is supported by the pleadings and documents on file in this case, the Declaration of Deputy Assistant Director John A. Schultz, Jr. (“Shultz Decl.”), and the Declaration of Michelle R. Lambert (“Lambert Decl.”) with exhibits attached thereto. Respondent does not believe that an evidentiary hearing is necessary.

## II. FACTUAL AND PROCEDURAL BACKGROUND

### A. Detention Authorities and Removal Procedures

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general detention periods are generally referred to as “pre-order” (meaning before the entry of a final order of removal) and, relevant here, “post-order” (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

When a final order of removal has been entered, a noncitizen enters a 90-day “removal period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for removal and to protect the community from dangerous noncitizens while removal is being effectuated, Congress mandated detention:

1 During the removal period, the [Secretary of Homeland Security]<sup>1</sup> shall detain the  
2 [noncitizen]. Under no circumstance during the removal period shall the  
3 [Secretary] release [a noncitizen] who has been found inadmissible under section  
4 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or  
5 1227(a)(4)(B) of this title.

6 8 U.S.C. § 1231(a)(2).

7 Section 1231(a)(6) authorizes DHS to continue detention of noncitizens after the  
8 expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not  
9 mandate detention and does not place any temporal limit on the length of detention under that  
10 provision:

11 [A noncitizen] ordered removed who is inadmissible under section 1182,  
12 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or  
13 who has been determined by the [the Secretary of Homeland Security] to be a risk  
14 to the community or unlikely to comply with the order of removal, *may* be  
15 detained *beyond the removal period* and, if released, shall be subject to the terms  
16 of supervision in paragraph (3).

17 8 U.S.C. § 1231(a)(6) (emphasis added).

18 During the removal period, ICE<sup>2</sup> is charged with attempting to effect removal of a  
19 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time  
20 limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen  
21 may be detained only “for a period reasonably necessary to bring about that [noncitizen’s]  
22 removal from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further  
23 identified six months as a presumptively reasonable time to bring about a noncitizen’s removal.  
24 *Id.*, at 701.

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<sup>1</sup> Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining noncitizens, the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this authority to the Secretary of the Department of Homeland Security (“DHS”). *See also* 6 U.S.C. § 251.

<sup>2</sup> Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to execute removal orders.

1 In this case, Gonzalez-Atencio is the subject of an administrative order of removal that  
2 became final on September 5, 2024. Accordingly, the removal period expired on December 4,  
3 2024. 8 U.S.C. § 1231(a)(1)(B)(i). The “presumptively reasonable” six-month period recently  
4 expired on March 5, 2025. *Zadvydas*, 533 U.S. at 701. Prior to the expiration of the  
5 presumptively reasonable period, Gonzalez-Atencio commenced this habeas action on February  
6 6, 2025. Dkt. No. 1.

7 **B. Petitioner Gonzalez-Atencio**

8 Gonzalez-Atencio is a native and citizen of Venezuela. Pet., at ECF 11; Lambert Decl.,  
9 Ex. A (Form I-213). He unlawfully entered the United States in April of 2021 without having  
10 been admitted or inspected by an immigration officer. Pet., at ECF 11; Schultz Decl., ¶ 7;  
11 Lambert Decl., Ex. A (Form I-213).

12 Border Patrol arrested Gonzalez-Atencio and his family near Del Rio, Texas, on April 2,  
13 2021. Lambert Decl., Ex. B (Warrant for Arrest of Alien); Lambert Decl., Ex. C (Notice of  
14 Custody Determination). DHS issued a Notice to Appear (“NTA”) charging Gonzalez-Atencio  
15 as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Lambert Decl., Ex. D (NTA). This NTA  
16 was later superseded in November 2021. Lambert Decl., Ex. E (Superseding NTA).

17 Days after his arrest, DHS released Gonzalez-Atencio from detention on an Order of  
18 Release on Recognizance (“OREC”). Lambert Decl., Ex. F (OREC). The OREC required that  
19 Gonzalez Atencio not violate any local, state, or federal laws, and warned that failure to comply  
20 with the conditions may result in the revocation of his release. *Id.*

21 While out on release from immigration detention, Gonzalez-Atencio pled guilty to  
22 Assault in the Fourth Degree – Constituting Domestic Violence, in the Circuit Court of the State  
23 of Oregon in Washington County. Lambert Decl., Ex. G (Criminal Records). He was sentenced  
24 to two years of probation. *Id.* As a result of this conviction, DHS cancelled the OREC on May

1 8, 2024. Lambert Decl., Ex. H (Cancelled OREC). ICE took Gonzalez-Atencio back into  
2 custody. Lambert Decl., Ex. I (Warrant for Arrest of Alien); Lambert Decl., Ex. J (Notice of  
3 Custody Determination).

4 On September 5, 2024, an Immigration Judge ("IJ") ordered Gonzalez-Atencio be  
5 removed to Venezuela. Lambert Decl., Ex. K (Order of the IJ). This order became  
6 administratively final on the same day because Gonzalez-Atencio waived his right to appeal the  
7 order. *Id.*, at L115.

8 Later that month, ICE notified Gonzalez-Atencio that his case would be reviewed for  
9 consideration of release if he had not been removed from the United States within the removal  
10 period. Lambert Decl., Ex. L (File Custody Review Notice). The notice informed him that he  
11 could submit documentation in support of his release. *Id.* Based on this custody review,  
12 including review of the information submitted by Gonzalez-Atencio, ICE determined that his  
13 detention would continue because he had not demonstrated that, if released, he would not pose a  
14 danger to the community or a significant flight risk pending his removal. Lambert Decl., Ex. M  
15 (Decision to Continue Detention).

16 ICE is in the process of scheduling the removal of 180 Venezuelan nationals. Schultz  
17 Decl., ¶ 8. Due to timing of the flights, Gonzalez-Atencio is not included in this group. *Id.*  
18 However, ICE anticipates that a charter cadence will be established and regular removal flights  
19 to Venezuela will be ongoing, allowing for Gonzalez-Atencio's removal. *Id.*

### 20 III. ARGUMENT

#### 21 A. Gonzalez-Atencio has failed to name the proper respondent.

22 This Court should dismiss this Petition because Gonzalez-Atencio fails to name the sole  
23 proper Respondent for his habeas action to proceed. *See* 28 U.S.C. § 2242 (habeas petitioners  
24 "shall allege the facts concerning the applicant's commitment or detention, the name of the

1 person who has custody over him and by virtue of what claim or authority, if known.”); *Doe v.*  
2 *Garland*, 109 F.4th 1188, 1195 (9th Cir. 2024) (“The plain text of the federal habeas  
3 implementation provision delineates that petitions must include the name of ‘the’ person  
4 maintaining custody over the petitioner.”). In this case, the only proper Respondent is the  
5 Facility Administrator (and de facto warden) of the NWIPC. Pet., at ECF 1; *see Doe*, 109 F.4th  
6 at 1194-95 (holding that the Facility Administrator, “who was the de facto warden,” not the ICE  
7 Field Office Director, was sole proper Respondent when a noncitizen brings a 28 U.S.C. § 2241  
8 habeas petition).

9 **B. Gonzalez-Atencio’s detention is not indefinite.**

10 Gonzalez-Atencio cannot demonstrate that his detention has become “indefinite” or  
11 unconstitutional. In *Zadvydas*, the Supreme Court analyzed whether the potentially open-ended  
12 duration of detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an  
13 implicit limitation of post-removal detention “to a period reasonably necessary to bring about  
14 that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. It was further specified  
15 that Section 1231(a)(6) does not permit indefinite detention. *Id.* Thus, “once removal is no  
16 longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.*, at  
17 699.

18 The *Zadvydas* Court recognized that as the length of post-order detention grows, a sliding  
19 scale of burdens is applied to assess the continuing lawfulness of a noncitizen’s post-order  
20 detention. *Id.*, at 701 (stating that “for detention to remain reasonable, as the period of post-  
21 removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely  
22 would have to shrink”). However, the Supreme Court determined that it is “presumptively  
23 reasonable” for the Government to detain a noncitizen for six months following entry of a final  
24 removal order, while it worked to remove the noncitizen from the United States. *Id.*, at 701.

1 Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a  
2 noncitizens' detention could raise constitutional issues. *Id.* Moreover, as the Supreme Court has  
3 noted, the six-month presumption "does not mean that every alien not removed must be released  
4 after six months. To the contrary, an alien may be held in confinement until it has been  
5 determined that there is no significant likelihood of removal in the reasonably foreseeable  
6 future." *Id.*

7 Here, ICE has detained Gonzalez-Atencio for approximately six months since his order  
8 of removal became administratively final. ICE attests that it is actively working on removing  
9 Venezuelan nationals from the United States. Shultz Decl., ¶ 8. The fact that Gonzalez-Atencio  
10 does not yet have a specific date of anticipated removal does not make his detention indefinite.  
11 *Diouf v. Mukasey* ("*Diouf I*"), 542 F. 3d 1222, 1233 (9th Cir. 2008).

12 Gonzalez-Atencio's allegation that Venezuela is not cooperating with the United States's  
13 efforts to remove Venezuelan nationals does not, by itself, demonstrate that his removal in the  
14 foreseeable future is unlikely. The *Zadvydas* Court considered the continued detention of  
15 Cambodian national Kim Ho Ma. *Zadvydas*, 533 U.S. at 685-86. Analogous to Gonzalez-  
16 Atencio's allegations, Cambodia lacked a repatriation treaty with the United States at that time.  
17 *Id.* The Ninth Circuit affirmed Ma's release from detention resulting from a district court's order  
18 forbidding post-removal detention where there was no realistic chance of removal to Cambodia.  
19 *Id.* Yet the *Zadvydas* Court did not find that the absence of an "extant or pending" repatriation  
20 agreement alone was enough to determine the reasonable likelihood of Ma's removal in the  
21 foreseeable future. *Id.*, at 702. Instead, the Court remanded Ma's case for the lower court to  
22 determine whether it had given "due weight to the likelihood of successful future negotiations."  
23 *Id.* Here, ICE attests that it is actively working on removing Venezuelan nationals from the  
24 United States. Schultz Decl., ¶ 8.

Furthermore, Gonzalez-Atencio's detention is reasonable considering the Secretary's authority to detain noncitizens determined "to be a risk to the community or unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6). ICE recently conducted a review of his custody status to ensure his detention meets this standard. Lambert Decl., Ex. M.

Accordingly, Gonzalez-Atencio's detention has not become "indefinite," and this Court should not order that he be released.

#### IV. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court deny the Petition and dismiss this matter.

DATED this 21st day of March, 2025.

Respectfully submitted,

TEAL LUTHY MILLER  
Acting United States Attorney

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*Attorneys for Respondent*

*I certify that this memorandum contains 2,020 words, in compliance with the Local Civil Rules.*




CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers.

I further certify on this date, I electronically filed the foregoing, Declaration of John A. Schultz and the Declaration of Michelle R. Lambert with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify on this date, I arranged for service of the foregoing on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, addressed as follows:

Jose Luis Gonzalez-Atencio, *Pro Se Petitioner*  
A# XXX-X   
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DATED this 21st day of March, 2025.

s/ Stephanie Huerta-Ramirez  
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