

1 The Honorable Jamal N. Whitehead  
2 The Honorable S. Kate Vaughan  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 EDUARDO MENDOZA,

10 Petitioner,

11 v.

12 PAMELA BONDI, Attorney General of the  
13 United States; KRISTI NOEM, Secretary,  
14 United States Department of Homeland  
15 Security; DREW BOSTOCK, Seattle Field  
16 Office Director, United States Citizen and  
Immigration Services; WARDEN of  
Immigration Detention Facility; and the United  
States Immigration and Customs Enforcement,

17 Respondents.

Case No. 2:25-cv-00526-JNW-SKV

FEDERAL RESPONDENTS'  
RETURN MEMORANDUM  
AND MOTION TO DISMISS

Noted for consideration on:  
May 27, 2025

18  
19 I. INTRODUCTION

20 This Court should dismiss Petitioner Eduardo Mendoza's Petition for Writ of Habeas

21 Corpus. Dkt. 1. Mendoza challenges his post-order detention at the Northwest ICE Processing  
22 Center (NWIPC) as unconstitutional and unlawful while he awaits removal from the United States.

23 Dismissal is appropriate here because Mendoza, a noncitizen subject to an administratively final

1 order of removal, is lawfully detained pursuant to Section 241 of the Immigration and Nationality  
 2 Act (INA). *See* 8 U.S.C. § 1231.

3 Furthermore, Mendoza has failed to demonstrate that his continued post-order detention by  
 4 U.S. Immigration and Customs Enforcement (ICE) has become indefinite since he was ordered  
 5 removed on September 19, 2024. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Nor has he met  
 6 his burden of demonstrating good reason to believe that there is no significant likelihood of his  
 7 removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. ICE is actively working  
 8 to obtain his travel document (TD) from Nicaragua. While this process may be slow, it “does not  
 9 undermine the conclusion that removal remains foreseeable.” *Atikurraheman v. Garland*, No. 24-  
 10 cv-262-JHC-SKV, 2024 WL 2819242 (W.D. Wash. May 10, 2024), *report and recommendation*  
 11 *adopted*, No. 24-cv-00262-JHC-SKV, 2024 WL 2818574 (W.D. Wash. June 3, 2024).

12 Accordingly, the Government respectfully requests that the Court deny the Petition and  
 13 grant the Government’s Motion to Dismiss. This motion is supported by the pleadings and  
 14 documents on file in this case, the Declaration of Deportation Officer Javier Delgado (Delgado  
 15 Decl.), and the Declaration of Kristin B. Johnson (Johnson Decl.) with exhibits attached thereto.  
 16 The Government does not believe that an evidentiary hearing is necessary.

17 **II. FACTUAL AND PROCEDURAL BACKGROUND**

18 **A. Detention Authorities and Removal Procedures**

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

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

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

10      8 U.S.C. § 1231(a)(2).

11      Section 1231(a)(6) authorizes the Department of Homeland Security (DHS) to continue  
 12 detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2),  
 13 Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length  
 14 of detention under that provision:

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

21      8 U.S.C. § 1231(a)(6) (emphasis added).

22      During the removal period, ICE<sup>2</sup> is charged with attempting to effect removal of a  
 23 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit  
 24 on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be

25      <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. *See also* 6 U.S.C. § 251.

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

1 detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal from  
 2 the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six  
 3 months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.* at 701.

4 In this case, Mendoza is the subject of an administrative order of removal that became final  
 5 on September 19, 2024. Accordingly, the removal period expired on or about December 19, 2024.  
 6 8 U.S.C. § 1231(a)(1)(B)(i). Section 1231(a)(6) authorizes Mendoza’s detention beyond the  
 7 removal period because he was found inadmissible under 8 U.S.C. § 1182. 8 U.S.C. § 1231(a)(6).  
 8 The “presumptively reasonable” six-month period expired on or about March 19, 2025, one week  
 9 before Mendoza filed this habeas petition. *Zadvydas*, 533 U.S. at 701.

10 **B. Petitioner Eduardo Mendoza**

11 Mendoza is a native and citizen of Nicaragua who was admitted to the United States on  
 12 September 23, 2010, as a Lawful Permanent Resident before the age of 18. Delgado Decl., ¶ 3.  
 13 Johnson Decl., Ex. A, pg. 1. Mendoza did not naturalize or submit any petitions or applications to  
 14 the Government to obtain lawful status. Johnson Decl., Ex. A, pg. 1.

15 In 2022, Mendoza was convicted of 25 counts of child abuse in violation of Florida  
 16 Statute 827.03, as well as a convicted for voyeurism. Mendoza was sentenced to two years in  
 17 prison and participated in a Mental Disordered Sexual Offender Treatment program and eight years  
 18 of probation. Delgado Decl., ¶ 4; Johnson Decl., Ex. A, pgs. 1-3; Ex. B, pgs. 1-42. Following his  
 19 convictions and prison time, Mendoza was targeted by ICE’s Enforcement Criminal Prosecutions  
 20 officers as a criminal alien. Johnson Decl., Ex. A, pg. 2. He was encountered at the Miami Gardens  
 21 Office of Probation and Parole. Johnson Decl., Ex. A, pg. 2.

22 On June 20, 2024, ICE’s Office of Enforcement and Removal Operations (ERO) detained  
 23 Mendoza and issued a Notice to Appear, charging him with removal under INA § 237(a)(2)(E)(i),  
 24 for a crime of child abuse because he is an alien who at any time after entry has been convicted of

1 a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child  
2 abandonment. Delgado Decl., ¶ 4; Johnson Decl., Ex. A; Ex. C, pgs. 1-4.

3 Mendoza was initially detained at the Krome North Service Processing Center in Miami,  
4 Florida, for his immigration proceedings. Delgado Decl., ¶ 5; Johnson Decl., Exs. A, D. He was  
5 transferred and arrived at NWIPC on August 27, 2024. Delgado Decl., ¶ 5.

6 An Immigration Judge ordered Mendoza removed to Nicaragua on September 19, 2024.  
7 Delgado Decl., ¶ 6; Johnson Decl., Ex. E. All parties waived appeal and the removal order became  
8 final at that time. Delgado Decl., ¶ 6; Johnson Decl., Exs. E, F.

9 ICE then began the process of effecting Mendoza's removal to Nicaragua. Delgado Decl.,  
10 ¶¶ 7-12. On December 4, 2024, ERO submitted a request for a TD to the Nicaraguan Consulate.  
11 Delgado Decl., ¶ 7. On the same date, December 4, 2024, the Consulate denied the TD request.  
12 Delgado Decl., ¶ 7. On January 22, 2025, ERO submitted a second TD request to the Nicaraguan  
13 Consulate. Delgado Decl., ¶ 8. On the same date, January 22, 2025, the Consulate denied the TD  
14 request. Delgado Decl., ¶ 8. No explanation has been provided by the Nicaraguan Consulate to  
15 ERO regarding the denials following the requests submitted on December 4, 2024, and January 22,  
16 2025. Delgado Decl., ¶ 9. However, ERO has recently received information that the first two  
17 applications may have had a technical problem with the photograph that was submitted.

18 ERO is in possession of identity documents from Nicaragua that establish Mendoza's  
19 citizenship and is actively engaged in efforts to secure a TD for his return to Nicaragua. Delgado  
20 Decl., ¶ 10. To that end, on April 25, 2025, ERO submitted a TD packet to ERO Headquarters  
21 (HQ) and is working with HQ to secure a TD from the Nicaraguan Consulate. Delgado Decl., ¶ 10.  
22 Today, on April 28, 2025, ERO submitted a third TD request to the Nicaraguan Consulate, Delgado  
23 Decl., ¶ 11, and ERO has corrected what they believe to be the photograph issue.

1 While ERO does not currently have a TD to remove Mendoza to Nicaragua, the  
2 government of Nicaragua has continued to process TDs for their citizens. Delgado Decl., ¶ 12. As  
3 such, DHS has every reason to believe that the government of Nicaragua will ultimately issue a  
4 TD for Mendoza and he will be removed to Nicaragua in the normal course. Delgado Decl., ¶ 12.

### III. ARGUMENT

A. A noncitizen's interest in liberty does not raise a serious constitutional question until his detention has become indefinite or permanent.

8 Mendoza cannot demonstrate that his detention has become “indefinite” or  
9 unconstitutional. In *Zadvydas*, the Supreme Court found that post-order detention could potentially  
10 become indefinite as authorized under the open-ended terms of Section 1231(a)(6). Finding the  
11 possibility of indefinite detention troublesome, the Supreme Court clarified that there is a point at  
12 which Congress’s interest in detaining a noncitizen to facilitate his removal may eventually give  
13 way to the noncitizen’s liberty interest. *Zadvydas*, 533 at 690 (“A statute permitting indefinite  
14 detention of [a noncitizen] would raise a serious constitutional problem.”). Detention becomes  
15 indefinite if, for example, the country designated in the removal order refuses to accept the  
16 noncitizen, or if removal is barred by the laws of this country. *Diouf v. Mukasey* (“*Diouf I*”),  
17 542 F.3d 1222, 1233 (9th Cir. 2008).

18        The Supreme Court in *Zadvydas* recognized that as detention becomes prolonged, a  
19        noncitizen's liberty interest grows and may eventually outweigh Congress's interest in detaining  
20        a noncitizen to facilitate his removal. The six-month period established in *Zadvydas* reflects the  
21        earliest moment at which these conflicting interests might raise serious constitutional issues. *See*  
22        *Zadvydas*, 533 U.S. at 701. As the length of detention grows, a sliding scale of burdens is applied  
23        to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.* (stating that "for  
24        detention to remain reasonable, as the period of post-removal confinement grows, what counts as

1 the ‘reasonably foreseeable future’ conversely would have to shrink”). But as the Supreme Court  
 2 has noted, the six-month presumption “does not mean that every [noncitizen] not removed must  
 3 be released after six months. To the contrary, [a noncitizen] may be held in confinement until it  
 4 has been determined that there is no significant likelihood of removal in the reasonably foreseeable  
 5 future.” *Id.*

6 Here, Mendoza’s detention is neither indefinite nor permanent. The fact that Mendoza does  
 7 not yet have a specific date of anticipated removal does not make his detention indefinite. *Diouf I*,  
 8 542 F. 3d at 1233. While ERO does not currently have a TD to remove Mendoza to Nicaragua, the  
 9 government of Nicaragua has continued to process TDs for their citizens. Delgado Decl., ¶ 12.  
 10 And ERO is in possession of identity documents from Nicaragua that establish Mendoza’s  
 11 citizenship and is actively engaged in efforts to secure a TD for his return to Nicaragua. Delgado  
 12 Decl., ¶ 10. Based on their experience working with the Nicaraguan consulate, DHS has every  
 13 reason to believe that the government of Nicaragua will ultimately issue a TD for Mendoza and he  
 14 will be removed to Nicaragua in the normal course. Delgado Decl., ¶ 12.

15 Accordingly, Mendoza’s detention has not become “indefinite,” and this Court should not  
 16 order that he be released.

17 **B. Mendoza has not overcome the presumption that his post-order detention is reasonable.**

18 Mendoza has not met his required burden here. If a noncitizen remains in post-order  
 19 detention after six months, the noncitizen has the burden to demonstrate a good reason to believe  
 20 that there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*,  
 21 533 U.S. at 701. The Government “must respond with evidence sufficient to rebut that showing.”  
 22 *Id.* If the Government fails to rebut the noncitizen’s showing, the noncitizen is entitled to habeas  
 23 relief. *Id.*

1 Mendoza states that a deportation officer informed him that Nicaragua has refused to issue  
 2 a TD and speculates that “ICE’s communications with my country establish no reason to believe I  
 3 will be deported in the reasonably foreseeable future. . . .” Pet., ¶¶ D; E. However, the facts do not  
 4 support Mendoza’s assertion. As DO Delgado discussed in his declaration, the government of  
 5 Nicaragua has continued to process TDs for their citizens and ERO is in possession of identity  
 6 documents from Nicaragua that establish Mendoza’s citizenship Delgado Decl., ¶¶ 10-12. ERO is  
 7 working with HQ and is actively engaged in efforts to secure a TD. Delgado Decl., ¶ 10. Based on  
 8 their experience working with the Nicaraguan consulate, DHS has every reason to believe that the  
 9 government of Nicaragua will ultimately issue a TD for Mendoza and he will be removed to  
 10 Nicaragua in the normal course. Delgado Decl., ¶ 12.

11 Implicit in the removal process, ICE must take steps, along with the noncitizen’s efforts,  
 12 to effectuate removal, including working with the appropriate foreign countries. In deciding the  
 13 Petition, this Court should consider ICE’s ongoing efforts to remove Mendoza thus far. *See*  
 14 *Hmaidan v. Ashcroft*, 258 F. Supp. 2d 832, 838 (N.D. Ill. 2003) (“A court can consider ongoing  
 15 efforts by [the Government] or others to repatriate an individual in reviewing the question of  
 16 whether removal is likely in the reasonably foreseeable future.”).

17 Here, ICE has detained Mendoza for approximately seven months since his order of  
 18 removal became administratively final. He is only just beyond the “presumptively reasonable” six-  
 19 month detention period. And during the time he has been detained, ICE has been actively working  
 20 to obtain a valid TD to effectuate his removal and working with ERO HQ to accomplish this.  
 21 Because ICE is pursuing Mendoza’s removal, and his detention furthers Congress’s goal of  
 22 ensuring his presence for removal, Mendoza has failed to meet his burden and his petition should  
 23 be denied.

24 //

#### IV. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition and dismiss this matter.

DATED this 28th day of April, 2025.

Respectfully submitted,

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*s/Kristin B. Johnson*

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I certify that this memorandum contains 2,326 words, in compliance with the Local Civil Rules.