

1 District Judge Jamal N. Whitehead
2 Magistrate Judge Michelle L. Peterson
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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 JAVON RICARDO GORDON,
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11 v. Petitioner,
12 PAMELA BONDI, Attorney General of the
United States, *et al.*,
13 Respondents.
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Case No. 2:25-cv-00682-JNW-MLP

FEDERAL RESPONDENTS' RETURN
AND MOTION TO DISMISS THE
HABEAS CLAIM

Noted for Consideration:
June 26, 2025

15 This Court should dismiss Petitioner Javon Ricardo Gordon's (Gordon) Petition for Writ
16 of Habeas Corpus. Dkt. No. 1 (Pet.). Gordon challenges his post-order immigration detention at
17 the Northwest ICE Processing Center (NWIPC) as unconstitutional and unlawful while he awaits
18 removal from the United States. Dismissal is appropriate here because Gordon, a noncitizen
19 subject to an administratively final order of removal, is lawfully detained pursuant to Section 241
20 of the Immigration and Nationality Act (INA). *See* 8 U.S.C. § 1231(a). Gordon claims that he is
21 stateless, but Gordon is a citizen of Jamaica, the government has his expired Jamaican passport,
22 and because Jamaica has recently been designated as an Electronic Nationality Verification
23 country, U.S. Immigration and Customs Enforcement (ICE) can now pursue removal using
24 Gordon's identity documents, including his expired Jamaican passport.

FEDERAL RESPONDENTS' RETURN AND MOTION TO DISMISS THE
HABEAS CLAIM
[Case No 2:25-cv-00682-JNW-MLP] - 1

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1 Thus, Gordon's argument about being stateless is not supported, and irrelevant. He
2 cannot demonstrate that his continued detention by ICE has become indefinite or demonstrate a
3 good reason to believe that there is no significant likelihood of his removal in the reasonably
4 foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

5 Accordingly, Federal Respondents respectfully request that the Court deny the Petition
6 and grant this Motion to Dismiss. This motion is supported by the pleadings and documents on
7 file in this case, the Declaration of Deportation Officer D. Strzelczyk ("Strzelczyk Decl."), and
8 the Declaration of Nickolas Bohl ("Bohl Decl.") with exhibits attached thereto. Federal
9 Respondents do not believe that an evidentiary hearing is necessary.

10 **I. FACTUAL AND PROCEDURAL BACKGROUND**

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

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

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

1 During the removal period, the [Secretary of Homeland Security]¹ 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
 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or
 1227(a)(4)(B) of this title.

4 8 U.S.C. § 1231(a)(2).

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

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

15 8 U.S.C. § 1231(a)(6) (emphasis added).

16 During the removal period, ICE² is charged with attempting to effect removal of a
 17 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time
 18 limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen
 19 may be detained only “for a period reasonably necessary to bring about that [noncitizen’s]
 20 removal from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further
 21 identified six months as a presumptively reasonable time to bring about a noncitizen’s removal.

22 *Id.* at 701.

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

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

1 In this case, Gordon is the subject of an administrative order of removal that became final
 2 on October 2, 2024. Gordon is detained pursuant to 8 U.S.C. § 1231(a)(6). Gordon commenced
 3 this habeas action on April 16, 2025. Dkt. 1.

4 **B. Petitioner Javon Ricardo Gordon**

5 Gordon is a national of the Bahamas and a citizen of Jamaica and was admitted to the
 6 United States in September 2020 as a legal permanent resident. Strzelczyk Decl., ¶ 3.

7 He lost that status after being charged with and convicted of a number of crimes. Bohl
 8 Decl., ¶¶ 3, 4, Ex. A (I-213 interview), Ex. B (criminal history). In particular, in August 2005,
 9 Gordon pled guilty in New Jersey Superior Court for distribution of cocaine. *Id.* at ¶ 5, Ex. C;
 10 Strzelczyk, ¶ 4. Subsequently, he was charged with multiple federal crimes, including child
 11 exploitation, sex trafficking of children, and distribution of child pornography. Bohl Decl., ¶ 6,
 12 Ex. D. On September 16, 2011, Gordon pled guilty in the United States District Court for the
 13 District of New Jersey to transporting minors in interstate commerce to engage in prostitution, in
 14 violation of 18 U.S.C. § 2423(a), and was sentenced to 188 months of imprisonment. *Id.* at ¶ 7,
 15 Ex. E. He also has prior convictions in New Jersey and New York state courts for offenses
 16 including obstruction of justice, eluding law enforcement, and promoting prostitution.
 17 Strzelczyk, ¶ 4.

18 Based on his criminal history, the Department of Homeland Security charged him as
 19 removable under multiple provisions of INA § 237(a), including for controlled substance
 20 violations, crimes involving moral turpitude, multiple aggravated felonies related to drug
 21 trafficking and prostitution, and a crime involving child abuse or stalking. Strzelczyk Decl., ¶ 4.
 22 ICE served Gordon with a Notice to Appear on January 29, 2024, and he was transferred to ICE
 23 custody after his release from the federal Bureau of Prisons. Strzelczyk Decl., ¶ 5; Bohl Decl.,
 24 ¶ 8, Ex. F.

1 Then on October 2, 2024, an Immigration Judge (IJ) issued a removal order, which
 2 designated the Bahamas as the country of removal. Strzelczyk Decl., ¶ 6; Bohl Decl., ¶ 9, Ex. G.
 3 Petitioner waived his right to appeal. *Id.*

4 ICE attempted to secure a travel document from the Bahamas, but it declined to issue
 5 one. Strzelczyk Decl., ¶ 7. Then in May 2025, Jamaica became a newly designated Electronic
 6 Nationality Verification (ENV) country, meaning ICE can pursue removal using verified identity
 7 documents. *Id.* at ¶ 8. Gordon has an expired Jamaican passport, of which ICE now has
 8 possession. *Id.* The ENV system allows ICE to remove Gordon to Jamaica based on the expired
 9 passport without further need of a travel document. *Id.*

10 On May 16, 2025, ICE served Gordon with a Notice of Removal that identified Jamaica
 11 as the proposed country of removal. Strzelczyk Decl., ¶ 9. Gordon refused to sign or accept the
 12 notice on at least two occasions. *Id.* ICE had coordinated air travel for Gordon, but then Gordon
 13 claimed a fear of removal to Jamaica. *Id.* at ¶ 10. Gordon's file has been referred to the United
 14 States Citizenship and Immigration Services Asylum Office (AO) for review. *Id.*

15 Gordon currently remains in ICE's custody and subject to a final order of removal.
 16 Strzelczyk Decl., ¶ 12. ICE has confirmed Gordon's Jamaican nationality, that it can remove
 17 him based on his expired passport, and it has the logistical ability to promptly effectuate his
 18 removal. *Id.* Once the AO completes its review, and assuming there was no credible fear
 19 finding, then ICE would be able to promptly effectuate Gordon's removal to Jamaica. *Id.* Thus,
 20 based on the current facts as provided by ICE, there is a significant likelihood that Gordon will
 21 be removed in the reasonably foreseeable future. Federal Respondents will inform the Court
 22 promptly upon any factual developments in this matter.

23 In his petition, Gordon alleges that his continued detention violates his due process rights.
 24 Pet., ¶ 9A. He seeks release from detention. *Id.* at p. 6 (Prayer for Relief). As described below,

1 Gordon's detention is constitutional pending his removal. Accordingly, Federal Respondents
 2 respectfully request that the Court dismiss the Petition.

3 **III. ARGUMENT**

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

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

15 The Supreme Court in *Zadvydas* recognized that as detention becomes prolonged, a
 16 noncitizen's liberty interest grows and may eventually outweigh Congress's interest in detaining
 17 a noncitizen to facilitate his removal. The six-month period established in *Zadvydas* reflects the
 18 earliest moment at which these conflicting interests might raise serious constitutional issues. *See*
 19 *Zadvydas*, 533 U.S. at 701. As the length of detention grows, a sliding scale of burdens is
 20 applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.* (stating
 21 that "for detention to remain reasonable, as the period of post-removal confinement grows, what
 22 counts as the 'reasonably foreseeable future' conversely would have to shrink"). But as the
 23 Supreme Court has noted, the six-month presumption "does not mean that every [noncitizen] not
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1 removed must be released after six months. To the contrary, [a noncitizen] may be held in
 2 confinement until it has been determined that there is no significant likelihood of removal in the
 3 reasonably foreseeable future." *Id.*

4 Here, Gordon's detention is neither indefinite nor permanent. First, Gordon filed his
 5 Petition on April 16, 2025, approximately six months after his removal order became final. Pet.
 6 ¶ 4.B; Strzelczyk Decl., ¶ 6. ICE is able to remove Gordon to Jamaica without any further action
 7 on Jamaica's part and would have been removed already absent the new claim of fear. Gordon's
 8 petition is premised entirely on the unsupported assertion that he is "stateless" and the irrelevant
 9 fact that the Bahamas will not issue him a travel document. Pet., ¶ 9D, 9E. Gordon also
 10 includes emails and documents regarding the need for a travel document from Jamaica. But at
 11 most, those documents establish that as of December 2024, ICE had not requested a travel
 12 document from Jamaica (see Dkt. 1-1 at 9), and more importantly, as explained above, ICE no
 13 longer needs a travel document from Jamaica in order to remove Gordon. ICE has possession of
 14 Gordon's Jamaican passport and can remove him based on that alone. Strzelczyk Decl., ¶¶ 8, 12.
 15 Thus, Gordon's petition fails to demonstrate that his detention is indefinite or permanent.

16 Further, while the procedural posture has changed since Gordon filed his petition in
 17 regards to his new fear claim, it is likely that the AO will review and issue a decision in
 18 relatively short order. If it does not accept Gordon's claim, then ICE can promptly remove him
 19 unless Gordon makes some effort to reopen his removal proceedings.³ And if additional
 20 proceedings should become necessary, then Federal Respondents would consider the appropriate
 21 next steps at that time and promptly inform the Court for its legal basis to continue to detain
 22 Gordon, should it choose to do so.

23
 24 ³ Gordon is free to do so now, but as of the date of the Federal Respondents' motion, Gordon has not done so.

1 Based on the facts as established currently, however, Gordon's detention is not indefinite
2 even without a specific date of anticipated removal. Gordon clearly knew that his removal to
3 Jamaica was an option, as evidenced by his own documents from December 2024 discussing this
4 potentiality. He did not make a fear claim then, but waited until his removal was imminent to do
5 so. While he has the legal right to make that claim, his delay in doing so should not inure to the
6 detriment of the government's ability to detain him without some showing that he is entitled to
7 release under *Zadvydas* and its progeny. Further, Gordon has made no effort to reopen his
8 removal proceedings based on his newly stated claim. Thus, his removal order remains final.

9 Strzelczyk Decl., ¶ 12.

10 **B. Gordon has not overcome the presumption that his post-order detention is
11 reasonable.**

12 Gordon has also not met his required burden here to show that his post-order detention is
13 unreasonable. If a noncitizen remains in post-order detention after six months, the noncitizen has
14 the burden to demonstrate a good reason to believe that there is no significant likelihood of
15 removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. The Government
16 "must respond with evidence sufficient to rebut that showing." *Id.* If the Government fails to
17 rebut the noncitizen's showing, the noncitizen is entitled to habeas relief. *Id.*

18 As discussed above, Gordon's petition is based on the erroneous presumption that he can
19 only be removed to the Bahamas. But the facts provided in DO Strzelczyk's declaration
20 demonstrate that absent Gordon's newly declared fear claim ICE can promptly effectuate his
21 removal. While the Asylum Office's review will add some time, it does not render the process
22 indefinite and once it is completed, then ICE will likely be able to remove Gordon very shortly
23 afterwards.

1 Section 1231(a)(6) satisfies both the substantive and procedural components of the Due
2 Process Clause. The Supreme Court has explained that detention is “a constitutionally valid
3 aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). Post-order
4 detention helps ensure the removal of noncitizens who have already been “ordered removed”
5 from the United States. 8 U.S.C. § 1231(a)(6). Furthermore, Section 1231(a)(6), as
6 implemented by the existing regulations, does not violate the Due Process Clause “[w]hen
7 detention crosses the six-month threshold.” *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1091
8 (9th Cir. 2011).

Because ICE is pursuing Gordon's removal, which may be completed in the next several months, and his detention furthers Congress's goal of ensuring his presence for removal, Gordon has failed to meet his burden, and his petition should be denied.

IV. CONCLUSION

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

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1 DATED this 29th day of May, 2025.

2 Respectfully submitted,

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18 I certify that this memorandum contains 2,473
19 words, in compliance with the Local Civil Rules.

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District Judge Jamal N. Whitehead
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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAVON RICARDO GORDON,

Petitioner,

v.

PAMELA BONDI, Attorney General of the
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Respondents.

Case No. 2:25-cv-00682-JNW-MLP

FEDERAL RESPONDENTS' REPLY IN
SUPPORT OF THEIR MOTION TO
DISMISS THE HABEAS CLAIM

Noted for Consideration:
June 26, 2025

Petitioner submits an email purportedly from Jamaican authorities stating that Petitioner cannot be deported to Jamaica. Dkt. 11-2. That is not ICE's understanding at the current time. In support of its Reply, Respondents submit the declaration of Enrique Rodriguez. ("Rodriguez Decl."). Because Jamaica is designated under the Electronic Nationality Verification (ENV) system, ICE can remove Petitioner based even on his expired passport. *See* Dkt. 8. Indeed, ICE had been in the process of effectuating that removal in May 2025. Rodriguez Decl., ¶ 4. That effort was halted only because Petitioner made a claim of fear of returning to Jamaica, despite never making such a claim before. *Id.* at ¶¶ 4, 5. Petitioner's claim had been referred to USCIS for screening. That screening process is ongoing, and ICE will not remove Petitioner while it is pending. Based on the USCIS interview, however, it appears that Petitioner is withdrawing that

1 claim. Currently, the active fear claim is the only impediment to Petitioner's removal that ICE is
2 aware of. *Id.* at 4. "In particular, ICE has not received any formal refusal from the Jamaican
3 government to accept the petitioner for repatriation under the Electronic Nationality Verification
4 (ENV) process. Internal ICE records contain no documentation indicating that Jamaica has
5 rejected the removal or returned the removal packet. ICE continues to treat Jamaica as a viable
6 destination country based on the petitioner's verified Jamaican identity and the ENV framework
7 currently in place." *Id.* at ¶ 6. The current delay is entirely based on Petitioner's recent claim of
8 fear. Should USCIS issue a negative fear finding and Petitioner is not granted protection, ICE is
9 ready to execute the removal order and effectuate removal to Jamaica based on the facts and
10 circumstances currently known. *Id.* at ¶¶ 8, 9.

11 Based on recent developments, it appears Petitioner is withdrawing his claim. Petitioner
12 was originally scheduled for an interview regarding his fear claim on June 17, 2025. That
13 interview was rescheduled and conducted on June 23, 2025, which occurred after Petitioner filed
14 his response to the Federal Respondents' motion. *See* Dkt. 11 (filed June 20, 2025). At that
15 time, Petitioner advised USCIS "that I don't want to continue with a CAT claim." Rodriguez
16 Decl., ¶ 7. USCIS reminded him that it could base its decision on Petitioner's refusal to answer,
17 but he was adamant in refusal to participate. *Id.* Currently, ICE is waiting for USCIS to issue its
18 decision before proceeding. *Id.* It would seem unlikely that USCIS would grant it after
19 Petitioner withdraws the request.

20 Thus, Petitioner's argument that removal is impossible is not born out by the facts known
21 to ICE. The Rodriguez declaration provides evidence sufficient to show that ICE remains able to
22 remove Petitioner. *See* Rodriguez Decl., ¶¶ 6-9. Further, based on very recent developments, it
23 appears that USCIS may issue a negative fear finding. Should that happen, ICE believes it can
24 promptly remove Petitioner. Thus, Petitioner cannot adequately demonstrate at this time that his

1 continued detention has become indefinite or otherwise show a good reason to believe that there
2 is no significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas v.*
3 *Davis*, 533 U.S. 678, 701 (2001). While this process may be slow, it “does not undermine the
4 conclusion that removal remains foreseeable.” *See Atikurraheman v. Garland*, No. 24-cv-00262-
5 JHC-SKV, 2024 WL 2819242 (W.D. Wash. May 10, 2024), *report and recommendation*
6 *adopted*, No. 24-cv-00262-JHC-SKV, 2024 WL 2818574 (W.D. Wash. June 3, 2024); *see also*
7 *Iddrisu v. Kelly*, No. 17-cv-00038 AFM, 2017 WL 11635015, at *2 (C.D. Cal. Mar. 27, 2017).
8 Furthermore, the procedural delay here was not caused by ICE, but by Petitioner exercising his
9 rights to make a fear claim, and now seemingly revoking that decision. This should not be
10 weighed against ICE.

11 At the very least, Federal Respondents request that the Court allow for USCIS to issue its
12 decision. Because the circumstances and the underlying facts have recently changed,
13 Respondents propose submitting an updated status report within 30 days if that would assist the
14 Court. Additionally, USCIS’s decision may change the legal basis for ICE’s continued detention
15 and moot Petitioner’s current challenge under *Zadvydas*.

16 As before, the process is continuing towards removal, which could occur in the
17 reasonably foreseeable future. For the foregoing reasons, Federal Respondents respectfully
18 request that this Court deny the Petition and dismiss this matter in its entirety. Alternatively,
19 Federal Respondents request that the Court stay any decision pending USCIS’s determination,
20 and they can provide the Court with an updated status report 30 days or at whatever time the
21 Court deems appropriate.

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1 DATED this 26th day of June, 2025.

2 Respectfully submitted,

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18 I certify that this memorandum contains 754
19 words, in compliance with the Local Civil Rules.