

TODD BLANCHE
Deputy Attorney General of the United States
SIGAL CHATTAH
First Assistant United States Attorney
District of Nevada
Nevada Bar Number 8264
VIRGINIA T. TOMOVA
Assistant United States Attorney
Nevada Bar No. 12504
501 Las Vegas Blvd. So., Suite 1100
Las Vegas, Nevada 89101
Phone: (702) 388-6336
Fax: (702) 388-6787
Virginia.Tomova@usdoj.gov
Attorneys for the Federal Respondents

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

In re: Dagmar Jesus Diaz-Gonzalez,

Petitioner,

Case No. 2:25-cv-02622-JAD-BNW

**Federal Respondents' Response to
Petitioner's First Amended Petition for
a Writ of Habeas Corpus Under 28
U.S.C. § 2241, ECF No. 9, and
Emergency Motion for Temporary
Restraining Order, ECF No. 17**

Federal Respondents by and through their undersigned counsel hereby file their
Response to Petitioner's Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241
(ECF No. 9) ("Petition") and Emergency Motion for Temporary Restraining Order
("Motion").¹

I. Introduction

Petitioner seeks extraordinary relief in the form of immediate release from lawful
immigration detention and emergency injunctive relief barring removal. Neither request is
supported by statute, precedent, or the factual record.

Petitioner is detained pursuant to a final order of removal under 8 U.S.C. § 1231.
He waived his right to appeal the Immigration Judge's removal order, rendering that order
administratively final on December 15, 2025. His current detention is well within the

¹ Although the Federal Respondents argue in this response that Petitioner is lawfully detained, Federal Respondent John Mattos does not have a position regarding the lawfulness of Petitioner's continued detention.

1 ninety-day statutory removal period and well within the six-month presumptively
2 reasonable period recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

3 Even assuming *arguendo* that his removal proceedings were reopened, Petitioner
4 would remain subject to mandatory detention under 8 U.S.C. § 1226(c) due to his
5 aggravated felony conviction for Attempt Sexual Assault.

6 Petitioner's Fifth Amendment medical-care claim likewise fails. The undisputed
7 record demonstrates active medical monitoring, repeated counseling regarding medication
8 compliance, specialist referral, and scheduled hospital treatment. At most, Petitioner
9 alleges delay and disagreement with treatment decisions, which do not rise to the level of
10 deliberate indifference under governing Ninth Circuit law.

11 Because Petitioner cannot establish that his detention violates the Constitution or
12 laws of the United States, and because he cannot satisfy the demanding standard for
13 temporary restraining order relief, both the Petition (ECF No. 9) and the Motion (ECF No.
14 17) should be denied.

15 **II. Factual and Procedural Background**

16 **A. Immigration and Criminal History**

17 Petitioner Dagmar Jesus Diaz-Gonzalez is a native and citizen of Cuba. The Notice
18 to Appear ("NTA") alleges that Petitioner was admitted to the United States as a refugee
19 on September 19, 2002, and later adjusted status to that of a lawful permanent resident.
20 Exhibit A, at 1.

21 On July 11, 2014, Petitioner entered into a written guilty plea agreement in the
22 Eighth Judicial District Court, Clark County, Nevada, Case No. C-14-297975-1. Exhibit C,
23 at 5–8. The criminal information in that criminal case charged that Petitioner willfully
24 attempted to sexually assault the victim and forcibly detained her against her will. Exhibit
25 C, at 1–2.

26 On September 10, 2014, the state court entered an Amended Judgment of
27 Conviction reflecting that Petitioner was convicted of Attempt Sexual Assault and Second
28 Degree Kidnapping, both Category B felonies under Nevada law. Exhibit C, at 9–11. The

1 court sentenced Petitioner to a maximum term of 240 months' imprisonment on Count I
2 and 180 months' imprisonment on Count II. *Id.* at 10–11. The judgment imposed lifetime
3 supervision and required sex offender registration. *Id.* at 11.

4 The Presentence Investigation Report reflects, among other things, that Petitioner
5 reported a history of seizures and later reported a diagnosis of Multiple Sclerosis (“M.S.”).
6 Exhibit C, at 13–15.

7 On November 14, 2025, upon Petitioner's release from Nevada Department of
8 Corrections custody, the Department of Homeland Security (“DHS”) encountered
9 Petitioner and transferred him to immigration custody at the Nevada Southern Detention
10 Center (“NSDC”). Exhibit B, at 1–2. That same day, DHS served Petitioner with the NTA
11 and placed him into removal proceedings. Exhibit A, at 1. DHS charged Petitioner as
12 removable based on his aggravated felony conviction. *Id.*

13 On December 15, 2025, following admissions and concessions, the Immigration
14 Judge sustained the charges of removability and ordered Petitioner removed to Spain or, in
15 the alternative, to Cuba. Exhibit D, at 1–2. The order reflects that Petitioner made no
16 applications for relief from removal. *Id.* at 1. Both DHS and Petitioner waived appeal at the
17 hearing. *Id.* at 2.

18 On December 19, 2025, Petitioner filed a Notice of Appeal with the Board of
19 Immigration Appeals (“BIA”). Exhibit F, at 1–3. On January 6, 2026, the BIA
20 acknowledged receipt of the appeal. Exhibit E, at 1.

21 Petitioner remains detained at NSDC pending resolution of his appeal. Exhibit B, at
22 1–2; Exhibit D, at 2.

23 **B. Conditions of Confinement and Medical Care at NSDC**

24 Petitioner was transferred from Nevada Department of Corrections to NSDC on
25 November 14, 2025. Exhibit G, at 2 ¶ 3.

26 On November 18, 2025, NSDC staff first requested Petitioner's prior medical
27 records from NDOC. Exhibit G, at 2 ¶ 4. After receiving no response, staff sent additional
28 written inquiries on November 24, 2025, and January 22, 2026. *Id.* at 2 ¶¶ 5–6. During this

1 period, NSDC records staff also made numerous telephone calls between November 18,
2 2025, and February 4, 2026. *Id.* at 2 ¶ 8. NSDC received some records on approximately
3 February 5, 2026, although a complete set has not yet been provided. *Id.* at 2 ¶ 7.

4 On December 17, 2025, NSDC medical staff asked Petitioner whether he was taking
5 medication for M.S., and he indicated that he was not and had never been seen by
6 neurology. *Id.* at 2 ¶ 9.

7 Between November 2025 and January 2026, Petitioner repeatedly refused prescribed
8 seizure medications on numerous dates, including on November 16, 24, 25, 26, 28, and 29,
9 on December 13, 15, 17, 18, 23, 26, and 31, and on January 8, 9, 11, 12, 13, 14, 15, 16, 17,
10 18, 19, 20, 21, 22, 24, 29, and 30. Exhibit G, at 3 ¶ 12. Nurse Practitioner Bradley
11 counseled Petitioner regarding the importance of medication compliance. *Id.* at 3 ¶ 13.

12 On February 1, 2026, Petitioner experienced a seizure and was placed in medical
13 observation. *Id.* at 3 ¶ 14. He experienced two additional seizures while under observation.
14 *Id.*

15 On February 2, 2026, Nurse Practitioner Bradley evaluated Petitioner who in turn
16 reported that he “feels fine.” *Id.* at 3 ¶ 15. The only injury noted was a small hematoma on
17 his forehead with a two-centimeter circular abrasion, which Petitioner reported he
18 sustained during the first seizure in his housing unit. *Id.* He denied signs or symptoms of
19 illness or injury and made no new complaints. *Id.* On that same date, Petitioner was
20 referred to a neurologist. *Id.* at 3 ¶ 16.

21 Nurse Practitioner Bradley states that February 2, 2026, was the first day she
22 learned that Petitioner previously took medications for his M.S., and that Petitioner did not
23 mention this during his evaluation. *Id.* at 2 ¶ 10. Petitioner is currently scheduled to receive
24 M.S. treatment at a hospital in March 2026, and NSDC staff are contacting other hospitals
25 to determine whether an earlier appointment is available. *Id.* at 2 ¶ 11.

26 On February 3, 2026, at his request, Petitioner was placed in NSDC’s Restrictive
27 Housing Unit pending a protective custody investigation. *Id.* at 3 ¶ 17. His access to
28 medical care remains the same as when he was housed in general population. *Id.*

Petitioner's care at NSDC is overseen by Nurse Practitioner Bradley, Dr. Hegmann, and Dr. Sarkissian, and he has also been treated by Dr. Minev. *Id.* at 3 ¶ 18. Petitioner has not filed grievances regarding his medical treatment at NSDC and has not submitted sick call requests regarding seizure or M.S. medications. *Id.* at 3–4 ¶¶ 19–20. He has not advised medical staff that he has difficulty feeding himself, holding a pen, or performing basic needs such as eating, bathing, and toileting. *Id.* at 4 ¶ 21.

III. Jurisdiction and Burden of Proof

It is axiomatic that “[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopach Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n.20 (2020).

Section 2241 of Title 28 provides district courts with jurisdiction to hear federal habeas petitions. The burden is on the habeas petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treaties of the United States to warrant relief. *See Skafrouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011). “[T]he petitioner must satisfy his burden of proof by a preponderance of the evidence.” *Id.*

III. Argument

A. Petitioner Is Detained Pursuant to 8 U.S.C. § 1231

There are two primary categories of civil detention of noncitizens: pre-final-order detention, governed by 8 U.S.C. § 1225(b) or 8 U.S.C. § 1226, and post-final-order detention, governed by 8 U.S.C. § 1231. 8 U.S.C. § 1231(a)(1)(B) sets forth when a noncitizen's detention status shifts from pre-final-order detention to post-final-order detention. 8 U.S.C. § 1231(a)(1)(B) states:

(B) Beginning of period

The removal period begins on the latest of the following:
 (i) The date the order of removal becomes administratively final.

- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

(Emphasis added).

When an Immigration Judge ("IJ") issues an order of removal, the IJ must "inform the alien of the right to appeal that decision." 8 U.S.C. § 1229a(c)(5). If the alien affirmatively waives his right to appeal, the IJ's decision becomes final. 8 C.F.R. §§ 1003.39; *see also* 8 U.S.C. § 1101(a)(47)(B). "A Notice of Appeal [to the BIA] may not be filed by any party who has waived appeal pursuant to § 1003.39." 8 C.F.R. § 1003.3(a)(1). The BIA may summarily dismiss an appeal that is "barred by an affirmative waiver of the right of appeal that is clear on the record." 8 C.F.R. § 1003.1(d)(2)(i)(G). But "a party wishing to challenge the validity of an appeal waiver may file either a motion to reconsider with the [IJ] or an appeal directly with the" BIA. *In re Patino*, 23 I. & N. Dec. 74, 75 (BIA 2001). To be valid, an appellate waiver must be "considered or intelligent." *United States v. Mendoza-Lopez*, 481 U.S. 828, 840 (1987).

The Supreme Court recently stated: "This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1749 (2020). "[T]his Court has noted time and time again, the Court is 'obliged to give effect, if possible, to every word Congress used.'" *National Ass'n of Mfrs. v. Department of Def.*, 138 S. Ct. 617, 632 (2018) (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)).

Here, Petitioner is clearly detained under 8 U.S.C. § 1231. Petitioner is subject to an order of removal that is administratively final. As reflected in the Order of the Immigration Judge, dated December 15, 2025, Petitioner was ordered removed to Spain or Cuba and Petitioner expressly waived his right to appeal the removal order. Exhibit D. The order of removal became final on the same day it was issued because a removal order becomes final upon waiver of appeal (*see* 8 C.F.R. § 1003.39; *see also* *Phong v. Garland*, No. 21-70095, 2022

1 WL 17102354, at *1 (9th Cir. Nov. 22, 2022). Petitioner's removal period under 8 U.S.C.
2 § 1231(a)(1)(B) has thus begun and he is thus subject to post-final-order detention.

3 Federal Respondents acknowledge that Petitioner subsequently filed a notice of
4 appeal to challenge the removal order that the IJ issued on December 15, 2025. *See e.g.*,
5 Exhibit F, at 1. However, that filing does not automatically divest the IJ's removal order of
6 its finality, especially given that the notice of appeal was improper given Petitioner's prior
7 waiver of the same. *See* 8 C.F.R. § 1003.3(a)(1).

8 To the extent Petitioner contends that his waiver was invalid, that issue would not
9 be properly before this Court in a § 2241 proceeding. Before raising the issue of waiver with
10 the Court, Petitioner would have to first exhaust the administrative remedies available
11 before the Immigration Court and the BIA. *See In re Patino*, 23 I. & N. Dec. 74, 75 (BIA
12 2001). The validity of Petitioner's waiver would thus be a premature question for this
13 Court's consideration. Because Petitioner has not challenged the validity of his appeal
14 waiver, the IJ's removal order continues to be final and his continued detention is lawful
15 under 8 U.S.C. § 1231.

16 Accordingly, Petitioner is lawfully detained pursuant to 8 U.S.C. § 1231, and his
17 removal period began on December 15, 2025.

18 **B. Petitioner Has Not Established that His Detention Under 8 U.S.C. § 1231 Is**
19 **Unlawful**

20 Because his order of removal became final on December 15, 2025, Petitioner's
21 detention is well within the 90-day window for removal and the six-month presumptively
22 reasonable period for detention under *Zadvydas*. Once the removal period commences, the
23 Federal Respondents have ninety days to effectuate an alien's removal. 8 U.S.C. §
24 1231(a)(1)(A). Under no circumstance during the removal period shall the Attorney
25 General or the Department of Homeland security release the alien. 8 U.S.C. §
26 1231(a)(2)(A). Further, upon expiration of the ninety-day mandatory removal period, the
27 United States may continue detaining an alien in limited circumstances. 8 U.S.C. §
28 1231(a)(6). Specifically, 8 U.S.C. § 1231(a)(6) provides:

(6) Inadmissible or criminal aliens

An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

While a noncitizen detained under 8 U.S.C. § 1231(a)(6) does not have a statutory right to release or a bond hearing pursuant to *Johnson v. Arteaga-Martinez*, 142 S. Ct. 1827, 1832-34 (2022), a noncitizen may warrant relief if he or she establishes a due process violation under the standard set forth in *Zadvydas*, 533 U.S. at 690-701. In *Zadvydas*, 533 U.S. at 689, the Supreme Court held that “in light of the Constitution’s demands”, “indefinite and potentially permanent” detention under 8 U.S.C. § 1231 –i.e., detention with “no obvious termination point”—would raise a “serious question” under the Fifth Amendment’s Due Process Clause. The Supreme Court proceeded to conclude that detention of a noncitizen for up to six months under 8 U.S.C. § 1231 is “presumptively reasonable.” *Id.* at 700-01. However, the Supreme Court stated that after six months, “once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [United States] must respond with evidence sufficient to rebut that showing.” *Id.* at 701. The Court opined that when the detention period grows in time, “what counts as the ‘reasonably foreseeable future’ conversely [. . .] shrink[s].” *Id.* But, the Supreme Court cautioned that “a[] [noncitizen] may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

Here, Federal Respondents respectfully submit that the Court need not reach the *Zadvydas* burden-shifting framework regarding likelihood of removal in the reasonably foreseeable future. Petitioner has been detained for less than the ninety-day removal period authorized by statute and regulation, and well within the presumptively reasonable period recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner’s order of removal became final on December 15, 2026, which marks the beginning of the statutory removal period and the subsequent six-month presumptive period of detention. The ninety-day period of

1 mandatory detention under 8 U.S.C. § 1231 does not expire until March 15, 2026, and
2 Petitioner has thus failed to establish that his detention would be unlawful under the
3 applicable post-final-order detention framework.

4 **C. Even If Petitioner's Immigration Proceedings Were Reopened, Petitioner Would**
5 **Be Subject to Mandatory Detention Pursuant to 8 U.S.C. § 1226(c)**

6 Although Petitioner waived his right to appeal the IJ's removal order and thus
7 improperly filed a notice of appeal with the BIA, Federal Respondents respectfully submit
8 that assuming, *arguendo*, that the BIA were to accept his appeal and allow Petitioner to
9 challenge his removal order, Petitioner would nonetheless be subject of the mandatory
10 detention provisions of 8 U.S.C. § 1226(c). Additionally, 8 U.S.C. § 1101(A) defines
11 aggravated felony to include "murder, rape or sexual abuse of a minor."

12 Because Petitioner was convicted of attempted rape, and rape as well as other
13 similar sexual offenses have long been held to be crimes involving moral turpitude,
14 Petitioner is subject to 8 U.S.C. § 1226(c)'s mandatory detention provisions. *See Nunez v.*
15 *Holder*, 594 F.3d 1124, 1132 (9th Cir. 2010) (recognizing rape as a crime of moral
16 turpitude); *Levin v. I.N.S.*, 4 F. App'x 402, 403 (9th Cir. 2001); *Castro v. White*, No. 2:24-cv-
17 01476-JNW-BAT, 2024 U.S. Dist. LEXIS 241787, at *5 (W.D. Wash. Dec. 17, 2024) ("8
18 U.S.C. § 1101(A) defines aggravated felony to include 'murder, rape or sexual abuse of a
19 minor.'"); *see also Matter of Saria* 367 F.3d 1079 (9th Cir. 2004); *Matter of Keely*, 27 I&N Dec.
20 146 (BIA 2017).

21 Title 8 U.S.C. § 1226 provides the framework for the arrest, detention, and release
22 of non-citizens who are in removal proceedings. 8 U.S.C. § 1226; *see also Demore v. Kim*,
23 538 U.S. 510, 530, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003) ("Detention during removal
24 proceedings is a constitutionally permissible part of that process."); *Avilez v. Garland*, 69
25 F.4th 525, 529-530 (9th Cir. 2023). Under § 1226(a), DHS has the discretionary authority
26 to determine if a noncitizen should be detained, released on bond, or released on
27 conditional parole pending the completion of removal proceedings, unless the non-citizen
28 falls within one of the categories of criminals described in § 1226(c), for whom detention is

1 mandatory until removal proceedings have concluded. 8 U.S.C. § 1226; *Jennings v.*
2 *Rodriguez*, 583 U.S. 281, 303-06, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018). "Subsection c
3 applies throughout the administrative and judicial phases of removal proceedings
4" *Avilez*, 69 F.4th at 535. This means individuals who are detained under § 1226(c) "are
5 not statutorily eligible for release on bond during the judicial phase of the proceedings,
6 except under the narrow circumstances defined by § 1226(c)(2) [where DHS determines
7 release is necessary for witness-protection purposes and the noncitizen will not pose a
8 danger or flight risk.]" *Id.* at 535-36; 8 U.S.C. § 1226(c). Section 1226(c)(1)(B) includes any
9 non-citizen who "is deportable by reason of having committed any offenses that are crimes
10 of moral turpitude, *see* 8 U.S.C. § 1227(a)(2)(A)(i), or an offense that is an aggravated
11 felony. *See* 8 U.S.C. § 1227(a)(2)(A)(iii); *Castro*, 2024 U.S. Dist. LEXIS 241787, at *4-5.

12 In this case, Petitioner was convicted of Attempt Sexual Assault and Second Degree
13 Kidnapping, both Category B felonies under Nevada law. Exhibit C at 9–11. Attempted
14 Sexual Assault qualifies as an aggravated felony. The Immigration and Nationality Act
15 defines aggravated felony to include "murder, rape, or sexual abuse of a minor". 8 U.S.C. §
16 1101(a)(43)(A), (U). The statute further provides that "an attempt or conspiracy to
17 commit" such an offense also constitutes an aggravated felony. 8 U.S.C. § 1101(a)(43)(U).
18 Because Nevada's sexual assault statute requires penetration and constitutes rape (*see*
19 Nevada Revised Statute § 200.366), Petitioner's conviction for Attempt Sexual Assault falls
20 squarely within 8 U.S.C. § 1101(a)(43)(A) and (U). *See Matter of Saria*, 367 F.3d 1079 (9th
21 Cir. 2004); *Matter of Keeley*, 27 I&N Dec. 146 (BIA 2017).

22 As a result, Petitioner is removable pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii) and
23 subject to mandatory detention under 8 U.S.C. § 1226(c). *See e.g., Avilez v. Garland*, 69 F.4th
24 525, 535–36 (9th Cir. 2023) (individuals detained under § 1226(c) are not statutorily eligible
25 for bond during administrative or judicial review except in the narrow witness-protection
26 circumstances set forth in § 1226(c)(2)).

Accordingly, even if Petitioner's detention were evaluated under 8 U.S.C. § 1226 rather than 8 U.S.C. § 1231, he would remain subject to mandatory detention and would not be eligible for release on bond.

D. Petitioner's Medical Care Does Not Violate the Fifth Amendment

Petitioner's Fifth Amendment medical care claim is addressed under the objective standard of a Fourteenth Amendment due process claim, as set out in *Castro v. County of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016). *See Fraihat v. U.S. Immigration and Customs Enforcement*, 16 F.4th 613, 636 (9th Cir. 2021) (applying test from *Castro* to immigration detainees' deliberate indifference claim); *see also Malinski v. New York*, 324 U.S. 401, 415 (1945) (Frankfurter, J., concurring) (confirming that due process under Fifth and Fourteen amendments have "the same meaning").

Thus, to state a claim for deliberate indifference, Petitioner must allege facts to show that: (i) Respondents made an intentional decision with respect to the conditions under which Petitioner was confined; (ii) those conditions put Petitioner at substantial risk of suffering serious harm; (iii) Respondents did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of Respondents' conduct obvious; and (iv) by not taking such measures, Respondents caused Petitioner's injuries. *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018). Under this test, Petitioner must "prove more than negligence but less than subjective intent—something akin to reckless disregard." *Castro*, 833 F.3d at 1069. Petitioner cannot establish deliberate indifference here.

First, CoreCivic² has worked since November 18, 2025, to obtain Petitioner's medical records from the Nevada Department of Corrections. Specifically, staff made written requests on November 18, 2025; November 24, 2025, and January 22, 2026.

² NSDC is run by CoreCivic, which has a contract with the United States. *See* <https://www.cetient.com/case/north-v-corecivic-inc-9828713> (last visited, February 12, 2026).

1 Additionally, during this time, staff made numerous telephone calls. These efforts,
2 however, were unsuccessful. CoreCivic finally received some responsive records on
3 approximately February 5, 2026.

4 Second, Petitioner hampered CoreCivic's ability to treat his M.S. symptoms by
5 advising medical staff that he did not receive treatment for M.S. and had never been seen
6 by a neurologist. Indeed, the first time NP Bradley learned that Petitioner required medical
7 treatment for his M.S. was today. Upon recently learning of his need for M.S treatment,
8 CoreCivic staff discovered that the M.S. treatment Petitioner previously received requires
9 the intravenous administration of a combination of various medications. Because NSDC
10 does not have the requisite equipment to facilitate this treatment, it must be completed at a
11 hospital. Petitioner is scheduled to receive the treatment at a hospital in March. CoreCivic
12 staff are currently contacting other hospitals to see if Petitioner can receive treatment at
13 another hospital sooner. With respect to his seizure condition, Petitioner regularly refuses
14 to take his medications. To illustrate, he refused medications on 11/16, 11/24, 11/25,
15 11/26, 11/28, 11/29, 12/13, 12/15, 12/17, 12/18, 12/23, 12/26, 12/31, 1/8, 1/9, 1/11,
16 1/12, 1/13, 1/14, 1/15, 1/16, 1/17, 1/18, 1/19, 1/20, 1/21, 1/22, 1/24, 1/29, and 1/30.
17 NP Bradley has counseled Petitioner on the importance of taking his medications.

18 On February 1, Petitioner was placed in medical observation after he had a seizure.
19 After he was placed in medical observation, he had two additional seizures. In response, he
20 was seen by NP Bradley. During the encounter, Petitioner advised that he "feels fine." The
21 only injury noted was a small hematoma on Petitioner's forehead with 2cm circular
22 abrasion which he reported he sustained during the first seizure in his housing unit.
23 Petitioner denied any signs or symptoms of any illness or injury and made no new
24 complaints. Despite this, NP Bradley still referred Petitioner to a neurologist.

25 On February 3, 2026, Petitioner requested to be placed in protective custody. Thus,
26 at his request, Petitioner was placed in NSDC's Restrictive Housing Unit pending a
27 protective custody investigation. His access to medical care remains the same as it did
28 when he was in a general population unit.

1 Petitioner has not filed any grievances regarding his medical treatment at NSDC
2 and has not submitted any sick call requests regarding seizure or M.S. medications.
3 Additionally, he has never advised NP Bradley that he has difficulty feeding himself,
4 holding a pen, or performing basic needs such as eating, bathing, and toileting. At NSDC,
5 Petitioner's care is being overseen by three providers—NP Bradley, Dr. Hegmann, and Dr.
6 Sarkissian. He has also been treated by Dr. Minev.

7 Petitioner fails to assert facts for the Court to infer that he is at risk of serious harm.
8 For example, Petitioner does not allege what the effect of receiving his IV medications in
9 March or not taking his seizure medications would have on him. What is more, Petitioner
10 chose not to timely inform CoreCivic staff of his alleged need for IV medication and
11 Petitioner chooses to refuse his seizure medications. For these same reasons, Petitioner
12 fails to show that he faces an ongoing risk of serious harm. Absent facts to suggest that
13 Petitioner's health is in danger, Petitioner fails to establish the first or second elements.
14 Even if the Court were to assume that Plaintiff was at risk of serious harm based upon the
15 alleged delay in receipt of his medications, Petitioner fails to show that any action by any
16 CoreCivic medical employee was objectively unreasonable, as needed to establish the third
17 element. As detailed above, staff has worked since his admission to obtain his records from
18 NDOC. When they did not have the benefit of his medical records, they asked Petitioner to
19 describe his prior M.S. treatment. Petitioner claimed he did not previously receive any.
20 And while CoreCivic prescribed him various seizure medications, he consistently refuses to
21 take them.

22 Thus, CoreCivic medical staff's actions were not objectively unreasonable. To the
23 contrary, they were objectively reasonable and appropriate. Upon learning Petitioner's
24 needs, CoreCivic medical staff acted expeditiously to schedule Petitioner for his IV
25 treatment and referred him to a neurologist. CoreCivic medical staff have also provided
26 him with his seizure medications, despite Petitioner's continued noncompliance with his
27 medication regimen. Petitioner is unable to establish the third element. CoreCivic is
28 providing him with sufficient and constitutionally adequate medical care.

1 For these reasons, the Petition fails to carry its burden under the Fifth Amendment
2 as it does not show sufficient facts to support a finding of deliberate indifference or that
3 Petitioner is receiving insufficient care at NSDC. The Petition and Motion should be
4 denied because actions of NSDC staff were objectively reasonable and consistent with
5 constitutional standards.

6 **IV. Conclusion**

7 For the foregoing reasons, Federal Respondents respectfully request that the Court
8 deny the Petition (ECF No. 9), deny the Emergency Motion for Temporary Restraining
9 Order (ECF No. 17), and dismiss this action with prejudice.

10 Respectfully submitted this 13th day of February 2026.

11
12 TODD BLANCHE
13 Deputy Attorney General of the United States
14 SIGAL CHATTAH
15 First Assistant United States Attorney

16 /s/ Christian R. Ruiz
17 CHRISTIAN R. RUIZ
18 Assistant United States Attorney
19
20
21
22
23
24
25
26
27
28