

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

OGANES DOGANYAN,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. C25-5097-JLR-MLP

REPORT AND RECOMMENDATION

**I. INTRODUCTION**

Petitioner Oganeg Doganyan is an immigration detainee in U.S. Immigration Customs and Enforcement ("ICE") custody at the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington. Petitioner, proceeding through counsel, filed a habeas petition pursuant to 28 U.S.C. § 2241 seeking release from confinement. (*See* dkt. # 1.) Petitioner alleges in his petition that his continued detention violates his Fifth Amendment rights to substantive and procedural due process because the medical treatment available at NWIPC is inadequate to treat his multiple serious medical problems, and because the Department of Homeland Security ("DHS") failed to timely respond to his request for humanitarian parole. (*See id.* at 8-10.)

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1 Respondents have filed a return and motion to dismiss which is currently ripe for review.  
2 (Dkt. # 7.) Petitioner has not filed any response to Respondents' motion. Respondents have filed  
3 a reply arguing that the Court should consider Petitioner's failure to respond as an admission that  
4 their motion has merit and dismiss the petition for the reasons stated therein. (Dkt. # 11). The  
5 Court, having considered Petitioner's petition, Respondents' motion to dismiss and the exhibits  
6 submitted in support thereof, and the balance of the record, concludes that Respondents' motion  
7 to dismiss should be granted, Petitioner's federal habeas petition should be denied, and this  
8 action should be dismissed with prejudice.

## 9 II. BACKGROUND

### 10 A. Immigration Proceedings

11 Petitioner was born in what is now the country of Armenia, and he was admitted to the  
12 United States in August 1990 as a refugee. (*See* Chavez Decl. (dkt. # 8), ¶ 3; Lambert Decl. (dkt.  
13 # 10), Ex. A.) Petitioner's status was thereafter adjusted to that of a lawful permanent resident.  
14 (*See id.*)

15 On July 2, 2018, Petitioner was convicted in the United States District Court for the  
16 Central District of California on charges of Mail Fraud, Aiding and Abetting and Causing an Act  
17 to be Done, in violation of 18 U.S.C. § 1341 and 18 U.S.C. § 2, and Conspiracy to Commit  
18 Money Laundering, in violation of 18 U.S.C. § 1956(h). (Chavez Decl., ¶ 4; Lambert Decl., Ex.  
19 B.) Petitioner was sentenced to a term of 33 months confinement and was ordered to pay  
20 restitution in the amount of \$1,425,572.47. (*See id.*) In May 2020, Petitioner's sentence was  
21 amended to time served, he was released to home supervision via compassionate release, and he  
22 was placed on supervised release for three years. (Lambert Decl., Ex. B at 3-4.) In September  
23

1 2023, Petitioner's supervised release was revoked after he admitted violating the conditions of  
2 that release, and he was committed to custody for a term of 10 months. (*Id.*, Ex. B at 1-2.)

3 On August 14, 2024, Petitioner was released from the custody of the Federal Bureau of  
4 Prisons into ICE custody pursuant to a detainer, and DHS served Petitioner with a Notice to  
5 Appear ("NTA"). (*See* Chavez Decl., ¶ 5; Lambert Decl., Exs. C, E.) The NTA charged  
6 Petitioner with being subject to removal under 8 U.S.C. § 1227(a)(2)(A)(iii) for having been  
7 convicted of an aggravated felony as defined in 8 U.S.C. §§ 1101(a)(43)(D), 1101(a)(43)(M),  
8 and 1101(a)(43)(U). (*See* Lambert Decl., Ex. C at 4.) And, because Petitioner has been convicted  
9 of offenses for which he is subject to removal under § 1227(a)(2)(A)(ii), his detention is  
10 statutorily mandated under 8 U.S.C. § 1226(c) until his removal proceedings have concluded.<sup>1</sup>

11 After being placed in removal proceedings, Petitioner filed a request for consideration of  
12 humanitarian parole. (*See* dkt. # 1 at 3, 6; Chavez Decl., ¶ 6.) Petitioner asserts that he submitted  
13 the request to DHS on November 26, 2024 (dkt. # 1 at 3, 6), though the DHS Office of  
14 Enforcement and Removal Operations ("ERO") apparently did not receive the request until  
15 January 2, 2025 (Chavez Decl., ¶ 6). ERO considered and denied the request for humanitarian  
16 parole on February 13, 2025, shortly after petitioner filed his federal habeas petition. (*Id.*)

### 17 **B. Allegations of Inadequate Medical Care**

18 Petitioner, by way of the instant petition, seeks release from custody on the grounds that  
19 Respondents have purportedly been unwilling to place him in a detention facility that can  
20 properly treat his serious medical problems. (*See* dkt. # 1 at 1-2.) Petitioner asserts that he has  
21 numerous medical issues, including "Factor II deficiency," a rare blood clotting disorder, as well

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23 <sup>1</sup> Petitioner filed an application for relief from removal, and he was scheduled to appear before an IJ for  
an individual hearing on that application on April 4, 2025. (Chavez Decl., ¶ 7.) The result of that hearing  
is not a part of the record before this Court.

1 as hypertension, Type II diabetes mellitus, dental problems, and anal fistula. (*See id.* at 6.) He  
2 further asserts that regular blood work is required to monitor his various medical conditions and  
3 that he was told by medical staff at NWIPC they could not obtain bloodwork or treat any of his  
4 medical issues out of fear that any treatment could cause excessive bleeding and death. (*Id.*)  
5 Petitioner maintains that NWIPC is not treating his current medical problems, nor could it  
6 properly respond if his blood clotting disorder were to cause a severe, life threatening, loss of  
7 blood. (*Id.*)

8 Respondents aver that NWIPC is capable of providing treatment for Petitioner's various  
9 medical conditions, and has been doing so, though Petitioner has not accepted all offered care.  
10 (*See* Wang Decl. (dkt. # 9), ¶¶ 5-13.) NWIPC is a Level 4 facility meaning it can provide a  
11 higher level of medical care. (*Id.*, ¶ 5.) NWIPC is able to manage patients with complex medical  
12 issues and collaborates with multiple nearby emergency departments that can assist in assessing  
13 critical patients and can hospitalize unstable patients. (*Id.*) NWIPC also has collaborative  
14 agreements with local specialty service providers that cover all aspects of medical specialties.  
15 (*Id.*)

16 ICE Health Service Corps ("IHSC") provides medical, dental, and mental health care to  
17 the detainees at NWIPC. (Wang Decl., ¶ 5.) According to Dr. Eddie Wang, M.D., the IHSC  
18 Clinic Director at NWIPC, IHSC learned of Petitioner's blood clotting disorder while he was still  
19 in the custody of the Bureau of Prisons, and NWIPC was selected to house Petitioner because it  
20 was a Level 4 facility and would have the ability to address Petitioner's medical needs. (*Id.*) Dr.  
21 Wang acknowledges that during Petitioner's IHSC intake screening at NWIPC on August 15,  
22 2024, he was told that additional labs would not be taken at that time due to his bleeding  
23 disorder. (*Id.*, ¶ 7.) Dr. Wang explains, however, that this was because Petitioner had recently

1 had labs drawn while he was still in the custody of the Bureau of Prisons and IHSC immediately  
2 sought to obtain information regarding those labs from the Bureau of Prisons. (*See id.*) The  
3 results of those labs, which were drawn on July 1, 2024, were obtained and reviewed by IHSC,  
4 and noted to be in a good range. (*Id.*)

5       Following review of Petitioner's July 2024 lab results, IHSC determined that because of  
6 Petitioner's increased risk of bleeding, monitoring labs would be requested every six months  
7 instead of every three months "per IHSC protocol." (Wang Decl., ¶ 7.) Monitoring labs were  
8 subsequently ordered for January 2025 but, when IHSC staff attempted to draw those labs,  
9 Petitioner refused on three occasions, apparently because of his concern regarding bleeding  
10 issues. (*See id.*, ¶¶ 7-8; Lambert Decl., Ex. F at 3-5.) Petitioner was thereafter counseled by an  
11 IHSC physician assistant that the lab work was necessary to monitor his condition, and Petitioner  
12 "agreed to the suggestion." (Wang Decl., ¶ 8.) Petitioner was scheduled again for a lab draw on  
13 March 6, 2025, which was rescheduled for March 7, 2025, because Petitioner had not been  
14 fasting as required for some of the labs. (*Id.*) On March 7, 2025, Petitioner refused to go to  
15 medical to have the lab work done. (*Id.*) Finally, on March 11, 2025, Petitioner allowed IHSC to  
16 collect samples for lab work. (*Id.*)

17       In addition to monitoring Petitioner's labs, IHSC has ensured that medication necessary  
18 to treat any minor persistent bleeding related to Petitioner's blood clotting disorder is available.  
19 (Wang Decl., ¶ 6.) Petitioner has also received some dental treatment during the course of his  
20 detention at NWIPC, with additional dental work planned. (*Id.*, ¶ 9.) It has been recommended  
21 that Petitioner undergo oral surgery for a tooth extraction, but it was determined this procedure  
22 would require collaboration with hematology to coordinate a course of action. (*Id.*) A  
23 hematology referral was submitted and approved on February 7, 2025, but as of the date of Dr.

1 Wang's declaration in this action, March 13, 2025, IHSC was still waiting for a hematology  
2 appointment so the oral surgery could be scheduled. (*Id.*) Petitioner's diabetes and hypertension  
3 are being managed with medication, though routine lab work is necessary to properly monitor  
4 these conditions. (*See id.*, ¶¶ 10, 11.) With respect to Petitioner's anal fistula, Petitioner was  
5 referred to a gastroenterology specialist for specialized treatment on January 3, 2025, but the  
6 earliest available appointment was April 7, 2025. (*Id.*, ¶ 12.)

### 7 III. DISCUSSION

8 Petitioner alleges that his continued detention violates his Fifth Amendment rights to  
9 substantive and procedural due process because NWIPC is not capable of providing the  
10 necessary care for his medical issues, which places his life in jeopardy. (*See* dkt. # 1 at 8-10.) He  
11 further alleges that his continued detention constitutes unfair and inhumane treatment under the  
12 Fourteenth Amendment, and cruel and unusual punishment under the Eighth Amendment. (*See*  
13 *id.* at 8-9.) Finally, Petitioner alleges that DHS violated his Fifth Amendment rights by failing to  
14 respond to his request for humanitarian parole within a reasonable time period. (*Id.* at 10.) The  
15 only form of relief sought by Petitioner is release from detention. (*Id.*) Respondent argues that  
16 Petitioner's claims constitute challenges to the conditions of his confinement, and not a direct  
17 challenge to the legality or duration of his confinement, and that the alleged constitutional  
18 violations are therefore not properly brought in this federal habeas action. (Dkt. # 7 at 6-7.)

#### 19 A. Jurisdiction Under § 2241

20 As traditionally understood, challenges to the legality or duration of confinement are  
21 pursued in a habeas proceeding, *see Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979), while  
22 challenges to conditions of confinement are pursued in a civil rights action, *see Badea v. Cox*,  
23 931 F.2d 573, 574 (9th Cir. 1991). Thus, this Court has found that a habeas petitioner's

1 challenges to conditions of confinement were not properly pursued in an action proceeding under  
2 28 U.S.C. § 2241. *See, e.g., Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 1038 (W.D.  
3 Wash. 2019) (finding noncitizen's claim in his § 2241 petition that his detention, "given its  
4 length, multiple transfers, housing among criminal detainees and prisoners, and 70 days in  
5 solitary confinement," had "crossed the line into punishment[.]" did not belong in an  
6 immigration habeas action) (citing *Badea*, 931 F.2d at 574).

7 However, as noted in a recent decision from this district, "this Court has, within the  
8 context of immigration habeas proceedings, adjudicated Fifth Amendment conditions of  
9 confinement claims related to the COVID-19 pandemic." *Doe v. Bostock*, No. C24-0326-JLR-  
10 SKV, 2024 WL 3291033, at \*5 (W.D. Wash. Mar. 29, 2024), *report and recommendation*  
11 *adopted*, No. C24-0326-JLR-SKV, 2024 WL 2861675 (W.D. Wash. June 6, 2024) (citing *Juarez*  
12 *v. Asher*, 556 F. Supp. 3d 1181, 1187-88 (W.D. Wash. 2021) (addressing Fifth Amendment  
13 claims regarding the right to reasonably safe conditions); *Ortiz v. Barr*, C20-0497-RSM-BAT,  
14 2020 WL 13577427, at \*6-7 (W.D. Wash. Apr. 10, 2020) (addressing Fifth Amendment claim  
15 that detention amounted to punishment); *Dawson v. Asher*, C20-0409-JLR-MAT, 2020 WL  
16 1704324, at \*8-9 (W.D. Wash. Apr. 8, 2020) (explaining the circumstances under which the  
17 Court undertook consideration of COVID-19-related conditions of confinement claims in  
18 petitions brought under 28 U.S.C. § 2241)<sup>2</sup>.

19  
20 <sup>2</sup> As explained by the Court in *Dawson*, while neither the United States Supreme Court, nor the Ninth  
21 Circuit, has resolved the question of whether a conditions of confinement claim may be brought in the  
22 form of a petition for a writ of habeas corpus, *see Bell v. Wolfish*, 441 U.S. 520, 526 n.6 (1979), and  
23 *Nettles v. Grounds*, 830 F.3d 922, 931 (9th Cir. 2016), the majority of federal circuit courts allow  
detainees to challenge their conditions of confinement through a habeas petition. *Dawson*, 2020 WL  
1704324, at \*8 (citations to other circuit court decisions omitted). As further explained by the Court,  
although the Ninth Circuit transferred several COVID-19-related emergency motions to the Court to be  
adjudicated as petitions for writs of habeas corpus under 28 U.S.C. § 2241, the transfer orders were

1 Respondents acknowledge that Courts in this district have adjudicated conditions of  
2 confinement claims related to the COVID-19 pandemic in petitions brought under § 2241. (*See*  
3 *dk. # 7 at 7.*) They argue, however, that those cases were decided under unique circumstances  
4 not present here and should not be extended to claims asserted here.<sup>3</sup> (*Id.*)

5 The law is unclear as to whether Petitioner's claims may be properly considered in a  
6 federal habeas petition brought under § 2241. However, the Court need not resolve this issue  
7 because, assuming without deciding that Petitioner's conditions of confinement claims are  
8 properly asserted under § 2241, this Court concludes that Petitioner has not demonstrated any  
9 violation of his constitutional rights that would entitle him to the relief he seeks in this action.

10 **B. Conditions of Confinement/Inadequate Medical Care**

11 When the government detains a person pursuant to an immigration violation, the person  
12 is a civil detainee. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The constitution imposes  
13 upon the government a duty to assume responsibility for a civil detainee's safety and general  
14 well-being. *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989). The  
15 government violates the Due Process Clause if it fails to provide civil detainees with "food,  
16 clothing, shelter, medical care, and reasonable safety." *Id.* at 200.

17  
18 unpublished and did not "resolve this unsettled area of law." *Id.* at \*9. However, given the similarity  
19 between the transferred emergency motions and the new petition raising Fifth Amendment challenges to  
COVID-19-related conditions, the Court considered the petition in *Dawson* under the rubric of 28 U.S.C.  
§ 2241. *Id.*

20 <sup>3</sup> Respondent cites to the Ninth Circuit's decision in *Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023) to  
21 support its argument that Petitioner's conditions of confinement claims are not properly considered as part  
of the instant § 2241 habeas petition. (*See dkt. # 7 at 6.*) In *Pinson*, the Ninth Circuit determined that a  
22 convicted prisoner's conditions of confinement claims raised in a § 2241 habeas petition did not sound in  
habeas and were therefore properly dismissed for lack of jurisdiction. *Id.* However, *Pinson* dealt with a  
23 habeas challenge to conditions of confinement brought by prisoners who had been convicted, and thus did  
not directly address this issue in the context of civil immigration detention. *Id.*



1 Claims involving the right to adequate medical care such as those at issue here “must be  
2 evaluated under an objective deliberate indifference standard.” *Gordon v. Cnty. of Orange*, 888  
3 F.3d 1118, 1124-25 (9th Cir. 2018). To establish a due process violation based upon inadequate  
4 medical care, Petitioner must show: (1) Respondents made an intentional decision with respect to  
5 conditions under which he was confined; (2) the conditions put him at substantial risk of  
6 suffering serious harm; (3) Respondents did not take reasonable measures to abate the risk, “even  
7 though a reasonable official in the circumstances would have appreciated the high degree of risk  
8 involved” – making the consequences of the Respondents’ conduct obvious; and (4) by not  
9 taking such measures, Respondents caused his injury. *Roman v. Wolf*, 977 F.3d 935, 943 (9th  
10 Cir. 2020) (citing *Gordon*, 888 F.3d at 1125). Satisfaction of the third element requires a  
11 showing that the Respondents’ actions were “objectively unreasonable” meaning “more than  
12 negligence but less than subjective intent – something akin to reckless disregard.” *See Gordon*,  
13 888 F.3d at 1125 (quoted sources omitted). A “mere lack of due care” is not sufficient. *Id.*  
14 (quoted sources omitted).

15 Petitioner presents no argument addressing his claims under the standard set forth above  
16 and his claims, that he is not being provided necessary care and/or that NWIPC is incapable of  
17 providing such care, find no support in the record. Dr. Wang, in his declaration, makes clear that  
18 IHSC has the capacity to provide Petitioner with appropriate care and has, in fact, been providing  
19 care for Petitioner’s various medical issues with due regard to the implications of his blood  
20 clotting deficiency on such care. Petitioner makes no effort to refute the contents of Dr. Wang’s  
21 declaration and provides no evidence of his own to demonstrate that he is being denied adequate  
22 care. Indeed, the record suggests that the only instance in which necessary care was not timely  
23 provided was when Petitioner rejected efforts by IHSC staff to obtain blood samples necessary to

1 properly monitor his various conditions. In sum, Petitioner fails to establish a violation of his  
2 constitutional rights based on the alleged denial of medical care.

3 Moreover, the Court finds no support for Petitioner's contention that release from  
4 custody would be the appropriate remedy for any alleged violation of his right to adequate  
5 medical care at NWIPC. As this Court has previously recognized, "[e]ven if Petitioner could  
6 show a Fifth Amendment violation, he does not establish that such a violation would justify  
7 immediate release, as opposed to injunctive relief that would leave him detained while  
8 ameliorating any unconstitutional conditions at the NWIPC." *Ortiz*, 2020 WL 13577427, at \*7  
9 n.8.

10 Finally, to the extent Petitioner claims that his due process rights have been violated by  
11 the failure of DHS to provide an answer to his request for humanitarian parole within a  
12 reasonable time, it appears any such claim is now moot as an answer was provided within days  
13 of Petitioner having filed his federal habeas petition. Notably, again, Petitioner makes no  
14 argument to the contrary.


#### 15 IV. CONCLUSION

16 Based on the foregoing, this Court recommends that Respondents' motion to dismiss  
17 Petitioner's petition for writ of habeas corpus (dkt. # 7) be granted, and that Petitioner's petition  
18 (dkt. # 1) and this action be dismissed with prejudice. A proposed Order accompanies this Report  
19 and Recommendation.

20 Objections to this Report and Recommendation, if any, should be filed with the Clerk and  
21 served upon all parties to this suit not later than **fourteen (14) days** from the date on which this  
22 Report and Recommendation is signed. Failure to file objections within the specified time may  
23 affect your right to appeal. Objections should be noted for consideration on the District Judge's

1 motions calendar **fourteen (14) days** from the date they are filed. Responses to objections may  
2 be filed by **the day before the noting date**. If no timely objections are filed, the matter will be  
3 ready for consideration by the District Judge on **June 4, 2025**.

4 DATED this 14th day of May, 2025.

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7 MICHELLE L. PETERSON  
8 United States Magistrate Judge  
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