TIMOTHY COURCHAINE
United States Attorney
District of Arizona

KATHERINE R. BRANCH
Assistant U.S. Attorney
Arizona State Bar No. 025128
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: 602-514-7500
Facsimile: 602-514-7760
Email: Katherine.Branch@usdoj.gov
Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Ruslan Makhmudov, Petitioner, v. Pamela Bondi, et al., Respondents.	No. 2:25-cv-01951-KML--MTM **RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Respondents Pamela Bondi, Kristi Noem, John Cantu, and Fred Figueroa, by and through counsel, respond to the Petition for Writ of Habeas Corpus (Doc. 1) and request that the Court deny the Petition.

I. INTRODUCTION.

Petitioner Ruslan Makhmudov is a citizen of Russia and is currently detained by the United States Department of Homeland Security. Doc. 1 at ¶ 18. As Petitioner acknowledges in his Petition for Writ of Habeas Corpus, Doc. 1 at ¶ 2, he is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) as an arriving alien. Petitioner alleges that he suffers from several serious medical issues and that his continued detention violates the Fifth Amendment. Doc. 1 at ¶¶ 52-61. Petitioner seeks an order compelling Respondents to release him from custody and enjoining Defendants from

detaining him. Doc. 2 at 4; Doc. 1 at 9.

II. RESPONSE TO PETITION.

A. Legal Standard.

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. Allopath 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*, 591 U.S. 103, 125 n.20 (2020). 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

B. Petitioner's Detention Under 8 U.S.C. § 1225(b)(1) Does Not Violate the Statute or Due Process.

"The power to admit or exclude aliens is a sovereign prerogative[.]" *Thuraissigiam*, 591 U.S. at 139 (alteration omitted) (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). "[T]he Constitution gives 'the political department of the government' plenary authority to decide which aliens to admit[.]" *Id.* (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). As established by Congress, this "process of decision generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jenning v. Rodriguez*, 583 U.S. 281, 287 (2018). A non-citizen, such as Petitioner, "who arrives in the United States" is treated as "an applicant for admission." 8 U.S.C. § 1225(a)(1). All "[a]pplicants for admission must 'be inspected by immigration officers' to ensure that they may be admitted into the country consistent with U.S. immigration law." *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(3)).

If "an immigration officer determines that an [arriving] alien . . . is inadmissible,"

the officer "shall order the alien removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). But even if an applicant for admission is not determined to be inadmissible pursuant to section 1225(b)(1), he may still be subject to mandatory detention. Indeed, an applicant who is not determined to be inadmissible nonetheless "*shall be detained* for a [removal] proceeding" unless the "examining immigration officer determines" that the alien is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

Although detention pursuant to section 1225(b) is mandatory, it is not indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue until immigration officers have finished 'consider[ing]' the application for asylum or until removal proceedings have concluded." *Id.* (internal citation omitted). But "[o]nce those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297. Further, while section 1225(b) does not provide for bond hearings, *see id.* at 297-303, it does contain "a specific provision authorizing release from . . . detention": The Secretary of Homeland Security "may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2)," *id.* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)). The Supreme Court has held that the express exception to detention provided in 8 U.S.C. § 1182(d)(5)(A) "implies that there are no *other* circumstances under which aliens detained under § 1225(b) may be released." *Id.* at 300 (emphasis in original) (citation omitted). The Supreme Court's decision in *Thuraissigiam* reinforced this holding. In that case, the Supreme Court "reiterated th[e] important rule" that a noncitizen seeking initial entry to the United States "has no entitlement" to *any* legal rights, constitutional or otherwise, other than those expressly provided by statute. *See* 591 U.S. at 138-39; *see also id.* at 107 ("Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause.").

C. The Court lacks jurisdiction to review the Attorney General's discretionary decision to deny Petitioner's request for humanitarian parole.

Petitioner alleges that DHS has been "indifferent" to his repeated requests for release on humanitarian parole. Doc. 1 at ¶ 56. Generally, under 28 U.S.C. § 2241, a district court may exercise jurisdiction over a habeas petition when the petitioner is in custody and alleges that this custody violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c); *Maleng v. Cook*, 490 U.S. 488, 490 (1989). However, the Real ID Act of 2005 precludes a district court from reviewing decisions that are committed to the discretion of the Attorney General. *See* 8 U.S.C. § 1252. Section 1252 provides, in pertinent part:

> Notwithstanding any other provision of law (statutory or nonstatutory), including [28 U.S.C. § 2241], or any other habeas corpus provision, . . . and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review--
> * * * *
> (ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title [(relating to authority to apply for asylum)].

8 U.S.C. § 1252(a)(2)(B).

The applicable statutory and regulatory provisions regarding humanitarian parole vest full discretion for humanitarian parole in the Attorney General, the Secretary of the Department of Homeland Security ("DHS"), and various DHS officials. *See* 8 U.S.C. § 1182(d)(5)(A) ("The Attorney General may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States. . . ."); *see also* 8 C.F.R. § 212.5(a). This is precisely the type of discretionary decision that the Real ID Act precludes the district court from reviewing. *See United States v. Leal-Del Carmen*, 697 F.3d 964, 975 (9th Cir. 2012) ("[T]he federal government had exclusive authority to parole [an alien lacking a lawful

immigration status] into the country . . . ." (citing 8 U.S.C. § 1182(d)(5)(A)); *Hassan v. Chertoff*, 593 F.3d 785, 789-90 (9th Cir. 2008) (whether to grant or revoke parole is decided by the Attorney General or certain DHS officials); *Acosta v. United States*, No. C14-420 RSM, 2014 WL 2216105, at *4 n.1 (W.D. Wash. May 29, 2014) (court lacked authority to grant parole under 8 U.S.C. § 1182(d)(5)(A)); *United States v. Li*, No. CV-12-482-PHX-DGC, 2013 WL 6729895, at *2 (D. Ariz. Dec. 19, 2013) (there is no authority under which the court could compel the Attorney General to grant humanitarian parole); *Torres v. Barr*, 976 F.3d 918, 931 (9th Cir. 2020) ("Neither we nor the agency has jurisdiction over [the decision to grant or deny parole]."); *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) ("The parole process is purely discretionary and its results are unreviewable . . . ."). Therefore, the Court does not have jurisdiction to grant Petitioner the parole he seeks.

D. Petitioner's conditions-of-confinement claim is not cognizable in a habeas petition brought pursuant to 28 U.S.C. § 2241.

Petitioner is an arriving alien mandatorily detained under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) pending a final determination of his asylum claim. Petitioner does not challenge his mandatory detention, but instead filed a petition for writ of habeas corpus alleging that his continued detention in light of his medical issues violates the Fifth Amendment. The Court lacks jurisdiction over the habeas petition because a petition for writ of habeas corpus is inappropriate in the context of a conditions-of-confinement claim.

"[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and [ ] the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *see also Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979) ("According to traditional interpretation, the writ of habeas corpus is limited to attacks upon the legality or duration of confinement." (citing *Preiser*, 411 U.S. at 484–86)). "[W]hen a prisoner's claim would not necessarily spell speedier release, that claim does not lie at the core of habeas corpus, and may be brought, if at all, under [42 U.S.C.] § 1983." *Skinner v. Switzer*, 562 U.S. 521, 535 n.13 (2011) (internal citation and quotations omitted). "[C]onstitutional claims that merely challenge the

conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core and may be brought pursuant to § 1983 in the first instance." *Nelson v. Campbell*, 541 U.S. 637, 643 (2004); *see Muhammad v. Close*, 540 U.S. 749, 750 (2004) ("Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus; requests for relief turning on circumstances of confinement may be presented in a § 1983 action.").

Although the Supreme Court has left open the question of whether a prisoner may bring conditions-of-confinement claims in a habeas action, *see, e.g.*, *Ziegler v. Abassi*, 582 U.S. 120, 144-45 (2017) ("[W]e have left open the question whether [petitioners] might be able to challenge their confinement conditions via a petition for writ of habeas corpus." (citing cases)), the Ninth Circuit has definitively held that: "Habeas corpus proceedings are the proper mechanism for a prisoner to challenge the 'legality or duration' of confinement. A civil rights action, in contrast, is the proper method of challenging 'conditions of . . . confinement.'" *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (quoting *Preiser*, 411 U.S. at 484, 498-99); *see also Nettles v. Grounds*, 830 F.3d 922, 930 (9th Cir. 2016) (en banc) ("[A] § 1983 action is the *exclusive* vehicle for claims brought by state prisoners that are not within the core of habeas corpus.") (emphasis added).[1] Indeed, the Ninth Circuit has "long held that prisoners may not challenge mere conditions of confinement in habeas corpus." *Nettles*, 830 F.3d at 933 (citing *Crawford*, 599 F.3d at 891-92). In *Crawford*, the Ninth Circuit affirmed the dismissal a federal prisoner's habeas petition, noting that:

> Crawford's petition does not challenge the *legality of his imprisonment*. Instead, the petition alleges that *the terms and conditions* of his incarceration constitute cruel and unusual punishment, violate his right to due process, and invade his constitutionally protected privacy. The appropriate remedy for such constitutional violations, if proven, would be a judicially mandated change in conditions and/or an award of damages, but not release from confinement.

[1] Although the *Nettles* court declined to address whether this rule applies to petitions filed by federal prisoners and detainees, courts have routinely applied *Nettles* to § 2241 petitions when addressing the cognizability of conditions-of-confinement claims brought under § 2241.

599 F.2d at 891-92 (emphasis added). The Ninth Circuit has also affirmed the dismissal of claims in a § 2241 petition which "do not concern the manner, location, or conditions of [the petitioner's] sentence's execution" as "not cognizable under section 2241." *Wright v. Shartle*, 699 F. App'x 733, 733 (9th Cir. 2017). The Ninth Circuit affirmed dismissal of a § 2241 petition that alleged claims of inadequate medical care, noting that the claims "concern the conditions of [ ] confinement and are properly brought under *Bivens* [*v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971)]." *Shook v. Apker*, 472 F. App'x 702, 702 (9th Cir. 2012).

Consistent with the above, a number of district courts in the Ninth Circuit have concluded that conditions-of-confinement claims are not cognizable in a § 2241 petition. *See, e.g.*, *Ibarra-Perez v. Howard*, 468 F. Supp. 3d 1156, 1170 (D. Ariz. 2020) (claims regarding detention conditions related to COVID-19 are not cognizable in a § 2241 action); *Chester v. Carr*, No. EDCV 18-0093-JPR, 2018 WL 5862823, at *7-8 (C.D. Cal. July 10, 2018) (citing *Nettles* and holding that "[a] civil-rights action – not a habeas one" is the "proper vehicle" for claims regarding visitation, interference with mail, and confinement in solitary housing); *Thody v. United States*, No. ED CV 17-2024-PA (DFM), 2017 WL 6389593, at *2 (C.D. Cal. Oct. 25, 2017) (citing *Nettles* and holding that claim for injunctive relief in the form of single-cell housing was not appropriate in § 2241 petition because such relief is not available through a habeas action), *report and recommendation adopted,* No. EDCV172024PADFM, 2017 WL 6389090, at *1 (C.D. Cal. Dec. 12, 2017); *Chasson v. Immigration & Custom Enf't*, No. CV 17-5819-SVW (JPR), 2017 U.S. Dist. LEXIS 190792, at *3-4 (C.D. Cal. Nov. 15, 2017) (holding federal detainee's "challeng[e] [to] the adequacy of his medical care" was not cognizable in habeas); *Beiruti v. Sugrue*, No. 1:09-cv-00360-TAG HC, 2009 WL 902048, at *1 (E.D. Cal. Apr. 2, 2009) (holding that claims regarding access to bathrooms and religious dietary restriction "are cognizable in a civil rights action rather than a habeas corpus action"); *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 WL 3316306, at *2 n.1 (S.D. Cal. June 10, 2024) (finding court lacked jurisdiction over habeas petition premised upon an Eighth

Amendment claim). Because Petitioner concedes that he is lawfully detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) and brings this habeas action to challenge the conditions of his confinement, the Court lacks jurisdiction over this action.

E. Respondents have not been deliberately indifferent to Petitioner's medical needs.

If the Court were to reach the merits of this action, Petitioner has failed to establish that Respondents have acted with deliberate objective indifference to his medical needs. "The Government . . . may detain [an individual] to ensure his presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution." *Bell v. Wolfish*, 441 U.S. 520, 536-37 (1979); *see also Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004). "When the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). When the Government fails to provide a detainee with "basic human needs–*e.g.*, food, clothing, shelter, medical care, and reasonable safety–it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause." *Id.* at 200.

Claims for violations of the right to adequate medical care brought by pretrial detainees under the Fifth Amendment "must be evaluated under an objective deliberate indifference standard." *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018) (citing *Castro v. Cnty. of Los Angeles*, 833 F3d. 1060, 1071 (9th Cir. 2016) (en banc)); *see also id.* at 1124 (noting that medical care claims brought by pretrial detainees arise under the Due Process clause rather than the Eighth Amendment's Cruel and Unusual Punishment Clause). The conditions under which a constitutional violation may be established by a pretrial detainee are as follows:

(1) The defendant made an intentional decision with respect to the conditions under which the plaintiff was confined;

(2) Those conditions put the plaintiff at substantial risk of suffering serious

harm;

(3) The defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and

(4) By not taking such measures, the defendant caused the plaintiff's injuries.

Castro, 833 F3d. at 1071; *see also Gordon*, 999 F.3d at 1124-25. As the Ninth Circuit has explained, "the pre-trial detainee 'must prove more than negligence but less than subjective intent—something akin to reckless disregard.'" *Smith v. Washington*, 781 F. App'x 595, 598 (9th Cir. 2019) (quoting *Castro*, 833 F3d. at 1071). "With respect to the third element, the defendant's conduct must be objectively unreasonable, a test that will necessarily turn on the facts and circumstances of each particular case. The mere lack of due care by a [federal] official does not deprive an individual of life, liberty, or property under the [Fifth] Amendment." *Gordon*, 888 F.3d at 1125 (internal citations, quotations, and alterations omitted).

Here, Petitioner fails to establish that Respondents have acted with "deliberate objective indifference" with respect to his medical needs. As addressed in the attached declaration of Luis A. Rodriguez, M.D., a staff physician at the Eloy Detention Center ("EDC"), Petitioner was seen by an off-site cardiologist within approximately one-month after he entered EDC and has received treatment from at off-site cardiologist, cardiothoracic surgeon, gastroenterologist, optometrist, and radiologist since being detained on September 19, 2024. Ex. A, Decl. of Dr. Rodriguez at ¶ 6 (recounting Petitioner's off-site medical care since entering EDC). When emergent care has been necessary, Petitioner has been transported to local emergency departments for evaluation. *Id.* He is receiving his prescribed medications, his medical conditions are being continually monitored, and he is being seen by outside specialists as indicated. *Id.* at ¶ 7. EDC medical staff anticipate that Petitioner will require follow-up medical care with the outside optometrist and cariologist in the near future, *id.* at ¶ 9, and appropriately schedule medical care that is beyond EDC's capacity to provide, *id.* at ¶ 10.

The Petition similarly acknowledges that Petitioner has received considerable medical care to treat and manage his health conditions, including two surgeries at St. Joseph's Hospital and Medical Center in February 2025, Doc. 1 at ¶¶ 41, 42; Doc. 1-1 at ECF p. 376, emergency transportation to the Banner Casa Grande Medical Center when he presented to the EDC medical unit complaining of chest pain and shortness of breath whereupon he was released after a transthoracic echocardiogram was performed, which was read by a cardiologist at St. Joseph's Hospital and Medical Center who determined that no intervention was needed, Doc. 1-1 at ECF pp. 376; 379. Petitioner's medical records reflect that, after several days in the hospital, Petitioner indicated his symptoms had resolved and asked to be discharged. *Id.*

Although Petitioner might wish to receive medical care in California or to recuperate at home in California, he has not established that Respondents have acted with deliberate indifference to his medical needs, but even if he could, "[t]he appropriate remedy for such constitutional violations, if proven, would be a judicially mandated change in conditions . . . but not release from confinement." *Crawford*, 599 F.2d at 892.

III. CONCLUSION.

The Petition must be denied because Petitioner is lawfully detained, the Court lacks jurisdiction to review the Attorney General's discretionary decision not to grant Petitioner's request for humanitarian parole, and a claim challenging the conditions of confinement cannot be brought via a petition for writ of habeas corpus. Even if the Court were to reach the merits, Respondents have not been deliberately indifferent to Petitioner's medical needs, and the relief requested—immediate release from immigration detention—is not an appropriate remedy for a conditions-of-confinement claim. Respondents request that the Petition for Writ of Habeas Corpus be denied.

Respectfully submitted this 1st day of July, 2025.

TIMOTHY COURCHAINE
United States Attorney
District of Arizona

s/Katherine R. Branch
KATHERINE R. BRANCH
Assistant United States Attorney