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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PEDRO PABLO EXPOSITO,

Petitioner,

vs.

KRISTI NOEM, et al.,

Respondents.

Case No. 25cv2399 RSH DEB

**RETURN TO PETITION
FOR WRIT OF HABEAS CORPUS**

DATE: October 2, 2025

TIME: 2:00 p.m.

CTRM: 3B (Schwartz)

Hon. Robert S. Huie

I

SUMMARY OF ARGUMENT

Petitioner argues that his removal is not reasonably foreseeable, because he is eligible to apply for a waiver of inadmissibility in his removal proceedings. ECF No. 12 at 2. Yet, the Supreme Court has ruled that mandatory detention pending removal proceedings is constitutional, and there is no exception for aliens who are applying for relief from removal in those proceedings. See *Demore v. Kim*, 538 U.S. 510 (2003). Furthermore, Petitioner has not alleged that any delays in his removal proceedings are attributable to the Government.

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1 Petitioner appears to acknowledge that Immigration Judges (IJs) have no jurisdiction
2 to conduct bond hearings for arriving aliens, and he does not dispute that he is an arriving
3 alien. He nonetheless contends that he is entitled to a bond hearing, either before an IJ or
4 before this Court, to assess flight risk. ECF No. 1 (Pet.) at 6. There is no legal basis for his
5 request for such relief, especially since his removal proceedings commenced only a few
6 months ago, and, again, he has alleged no delay that can be attributed to the Government.

7 Petitioner also seeks release from custody based on his allegation that the detention
8 facility is providing inadequate medical care for his diabetic macular edema condition, but
9 relief from conditions of confinement is outside the scope of available habeas relief, and
10 appropriate relief would not be release from custody. Petitioner currently has a scheduled
11 appointment with an optometrist on October 1, 2025, and the undersigned hopes to have
12 an update at the hearing on October 2, 2025.

13 The habeas petition should be denied.

14 II

15 STATEMENT OF FACTS

16 Petitioner is a native and citizen of Cuba who immigrated to the United States in
17 October 1991. Pet., para. 18. Ex. 1.¹

18 In 2006, Petitioner was convicted of felony credit card fraud in violation of 18 U.S.C.
19 § 1029(a)(1) and sentenced to three years of probation. Pet., para. 20. It appears that he
20 could not be placed in removal proceedings at that time because, although his conviction
21 rendered him inadmissible, it did not render him deportable. *See* 8 U.S.C. §
22 1227(a)(2)(A)(i) (CIMT must have been committed within five years of admission); 8
23 U.S.C. § 1227(a)(2)(A)(ii) (requires two CIMT convictions); 8 U.S.C. § 1227(a)(2)(A)(iii)
24 and 8 U.S.C. § 1101(a)(43)(M)(i) (loss must exceed \$10,000).

25 On May 27, 2025, Petitioner applied for admission to the United States at the port
26 of entry in San Juan, Puerto Rico. Pet., para. 19. Ex. 2

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28 ¹ The attached exhibits are a true and correct copy of documents contained in
Petitioner's A-File, received by the undersigned from local ICE counsel.

1 On May 31, 2025, the medical clinic at the ICE detention facility in El Paso, Texas,
2 conducted intake processing, and it was noted that Petitioner had “Type 2 diabetes mellitus
3 without complications,” and he was prescribed medication for it. ECF No. 6 (Medical
4 Records (MR)) at 83. Petitioner was then transferred to the Otay Mesa Detention Center
5 (OMDC).

6 In a letter dated June 9, 2025, which Petitioner filed in his removal proceedings,
7 Petitioner’s doctor in Puerto Rico stated that Petitioner was “receiving close
8 ophthalmologic care under Clinical Trial ML43435,^[2] which is actively ongoing at our
9 center” and that his “last visit was on May 7, 2025.” Ex. 35.

10 On June 15, 2025, Petitioner went through medical intake at the OMDC medical
11 clinic. At that time, he stated that his medical concerns were Diabetes Mellitus and
12 Cholesterol. MR at 29. The medical records indicate that Petitioner stated that he was *not*
13 “currently receiving physician care or are enrolled in a chronic care clinic for” those
14 conditions, and he denied that he was scheduled to see a physician. *Id.*

15 On June 19, 2025, there was a follow-up examination at the OMDC medical clinic
16 with chronic care coordinator Dr. Pettit, specifically regarding Petitioner’s reported
17 diabetes. MR at 24-27 (“CCC Diabetes). According to Dr. Pettit’s progress notes,
18 Petitioner specifically reported that he did *not* have a history of diabetic retinopathy. MR
19 24-25.³ Petitioner’s degree of his control of his diabetes was assessed as good. *Id.* at 27.
20 Dr. Pettit prescribed several medications, MR 26, and Petitioner was scheduled for a
21 follow-up visit on December 19, 2025. MR 67. Dr. Pettit also ordered a follow-up
22 comprehensive metabolic panel. MR 19, 64.

23 On June 23, 2025, Petitioner was served with a Notice to Appear and placed in
24 removal proceedings. Ex. 5. Due to his conviction, Petitioner was charged with
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26 ² See National Library of Medicine, *A Study to Investigate Faricimab Treatment*
27 *Response in Treatment-Naive, Underrepresented Patients With Diabetic Macular Edema*
(*ELEVATUM*), <https://clinicaltrials.gov/study/NCT05224102>

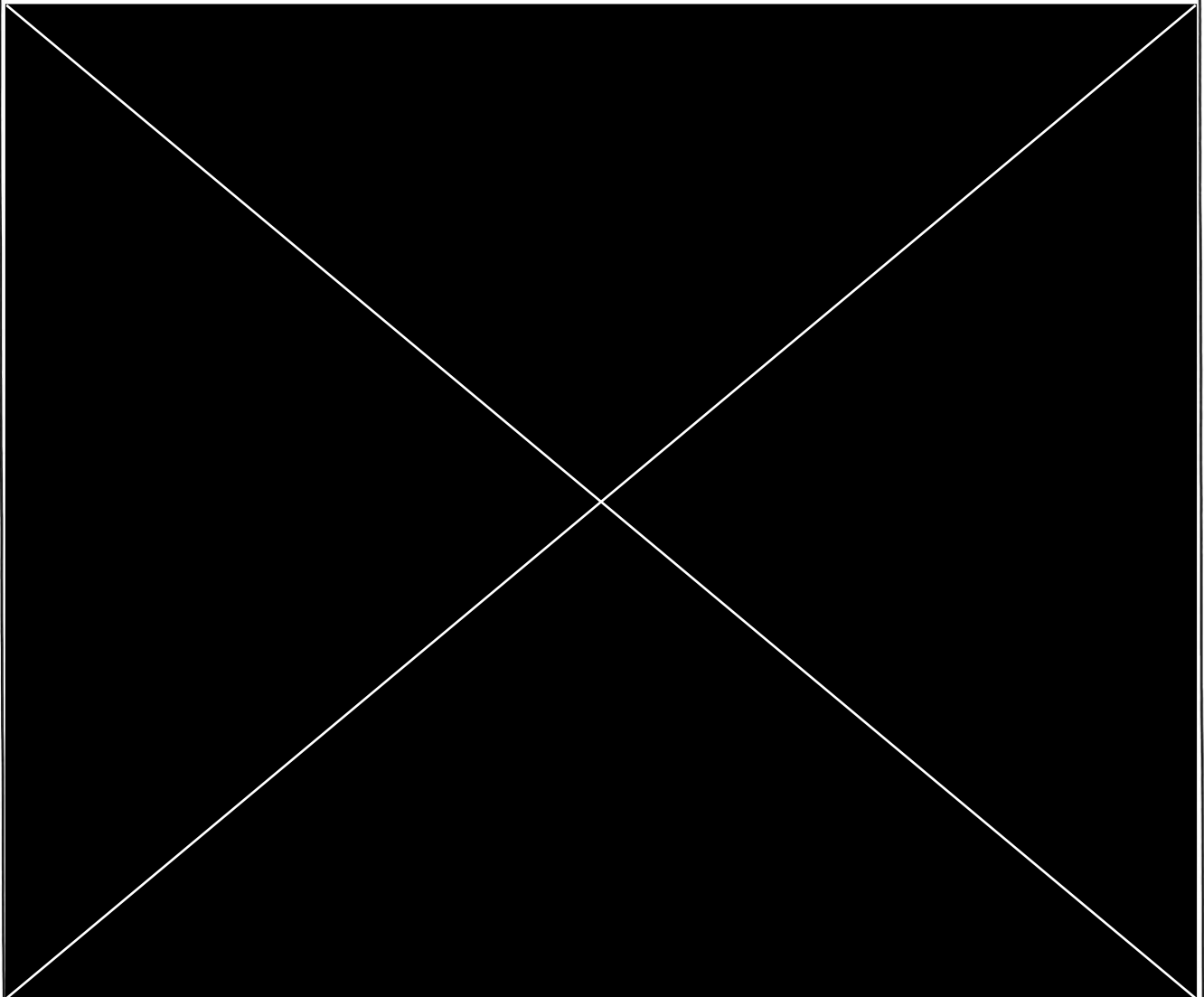
28 ³ Yet, Petitioner submitted medical records in his removal proceedings indicating that
he received an injection for that condition on August 4, 2023. Ex. 32.

1 inadmissibility under 8 U.S.C. § 1182(a)(2)(A)(i)(I) (“a crime involving moral turpitude
2 (other than a purely political offense) or an attempt or conspiracy to commit such a
3 crime”). Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1226(c). *See*
4 *also* 8 U.S.C. § 1101(a)(13)(C)(v) (LPR not an arriving alien unless “has committed an
5 offense identified in section 1182(a)(2), unless since such offense the alien has been
6 granted relief under section 1182(h) or 1229b(a).”). *See* Pet., para. 20.

7 The Notice to Appear stated that Petitioner’s first hearing would be on July 10, 2025,
8 Ex. 5, and on June 30, 2025, the Immigration Court notified Petitioner that his master
9 calendar hearing before the IJ would be on July 10, 2025. Ex. 38. The hearing was
10 subsequently continued until July 31, 2025, Exs. 38-41, so that Petitioner could file an
11 application for waiver of inadmissibility, which he did on July 30, 2025.

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18 On July 23, 2025, Petitioner submitted a request to ICE for release from custody,
19 which “included a detailed explanation of Petitioner’s medical condition, a letter from his
20 treating retina specialist (Exhibit 1), diagnostic test results. . .” Pet., para. 26; ECF Doc.
21 1-2.

22 On July 30, 2025, Petitioner filed an application for waiver of inadmissibility. Ex.
23 43. Following that, hearings before the IJ were continued three times, on July 31, August
24 20, and September 18, 2025, Exs. 44-48, presumably to allow Petitioner’s counsel to
25 prepare for the merits hearing, which is now scheduled for October 6, 2025. *Id.* 47.



On September 12, 2025, Petitioner went to sick call, stating: “I am a diabetic and I have diabetic retinopathy. I am on an injections for my retinas. I am losing my vision and it is very blurry.” MR 8. The RN noted that Petitioner was “upset, crying and stating is very afraid of going blind.” *Id.* The RN noted that Petitioner would receive further evaluation concerning diabetic retinopathy. *Id.* at 9.

On September 14, 2025, Petitioner visited the clinic, and the RN noted: “Patient reports in good spirits” and “that his vision has been deteriorating over the last 5 months. He has increased blurred vision because of his diabetic retinopathy. He reports having to get a Vabysmo injection every 45 days into his eye for the condition. He has not received the injection here at OMDC, and as a result he reports his vision is getting worse.” MR 7.

1 That same day, Petitioner commenced this habeas action under 28 U.S.C. § 2241.
2 ECF No. 1.

3 In a letter dated September 17, 2025, the same doctor in Puerto Rico stated that
4 Petitioner's "last documented visit to our clinic *was on March 26, 2025*" and that he had
5 an appointment (that he apparently missed) on May 7, 2025. ECF No. 3-3 at 2 (emphasis
6 added).

7 On September 18, 2025, Petitioner's hearing before the IJ was continued to October
8 6, 2025, for a hearing on the merits. Ex. 47.

9 Petitioner is currently scheduled to see an optometrist on October 1, 2025.

10 III

11 ARGUMENT

12 A. MANDATORY DETENTION IS CONSTITUTIONAL

13 Because Petitioner is charged with inadmissibility under 8 U.S.C. § 1182(a)(2), he
14 is subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(A) ("The Attorney General
15 shall take into custody any alien who- (A) is inadmissible by reason of having committed
16 any offense covered in section 1182(a)(2) of this title . . .").

17 Petitioner argues that his mandatory detention pending his removal proceedings is
18 unlawful, but the Supreme Court has upheld such mandatory detention and made no
19 exception for aliens who have applied for relief from removal in those proceedings.

20 In the present case, the statutory provision at issue governs detention of
21 deportable criminal aliens pending their removal proceedings. Such detention
22 necessarily serves the purpose of preventing deportable criminal aliens from
23 fleeing prior to or during their removal proceedings, thus increasing the
24 chance that, if ordered removed, the aliens will be successfully removed.

25 *Demore v. Kim*, 538 U.S. at 527–28.

26 The Supreme Court held that the mandatory detention of respondents in removal
27 proceedings is "constitutionally permissible" for the "limited period" necessary to
28 complete removal proceedings. *Id.* at 526, 531. Although the petitioner in *Demore* was

1 detained for over six months, which was longer than average, the Supreme Court found his
2 “temporary” confinement permissible. *Id.* at 530-531.

3 In *Demore v. Kim*, the Court noted that Kim had been “detained for somewhat longer
4 than the average—spending six months in INS custody prior to the District Court’s order
5 granting habeas relief, *but respondent himself had requested a continuance of his removal*
6 *hearing.*” *Id.* at 530 (emphasis added). Likewise, Petitioner’s removal proceedings have
7 been continued numerous times to allow him time to prepare and prosecute his application
8 for a waiver of inadmissibility.

9 **B. NO BOND HEARING AVAILABLE IN THESE REMOVAL PROCEEDINGS**

10 Petitioner acknowledges that IJs have no jurisdiction to conduct bond hearings for
11 arriving aliens, and he does not dispute that he is an arriving alien. Pet., para. 32 (“his
12 classification as an ‘Arriving Alien’ excludes him from Immigration Judge bond
13 jurisdiction”). See 8 U.S.C. § 1225(b); 8 C.F.R. § 1003.19(h)(2)(i)(B) (“an immigration
14 judge may not redetermine conditions of custody imposed by the Service with respect to the
15 following classes of aliens: . . . (B) Arriving aliens in removal proceedings, including aliens
16 paroled after arrival pursuant to section 212(d)(5) of the Act”).

17 There is no caselaw that supports Petitioner’s contention that he has a constitutional
18 right to such a hearing pending his administrative proceedings, especially since his
19 proceedings commenced only a few months ago, and he has alleged no delay that can be
20 attributed to the Government. Likewise, there is no legal basis for Petitioner’s request that
21 this Court, in effect, assume the role of an IJ to determine that he is not a flight risk and
22 order his release. Pet. at 6.

23 **C. INADEQUATE MEDICAL CARE NOT A BASIS FOR HABEAS RELIEF**

24 The essence of Petitioner’s habeas petition is his contention that he should be
25 released, because the OMDC medical clinic has not referred him to an ophthalmologist for
26 treatment of his diabetic macular edema. See Petition, paras. 28, 34. Petitioner’s request
27 for relief is outside the scope of available habeas relief. The Supreme Court has stated that
28 “the writ of habeas corpus is limited to attacks upon the legality or duration of

1 confinement.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973), cited in *Crawford v. Bell*,
2 599 F.2d 890, 891-92 (9th Cir. 1979). See *Nettles v. Grounds*, 830 F.3d 922, 933 (9th Cir.
3 2016) (en banc) (“prisoners may not challenge mere conditions of confinement in habeas
4 corpus”).

5 Appropriate relief for Petitioner’s complaint about inadequate medical care would
6 not be release from custody. See *Hill v. McDonough*, 547 U.S. 573, 579 (2006) (“[a]n
7 inmate’s challenge to the circumstances of his confinement” must be brought through a
8 civil rights action); *Nettles v. Grounds*, 830 F.3d 922, 935 (9th Cir. 2016) (holding that
9 conditions claim that do not require release must be brought in a civil-rights action) (citing
10 *Skinner v. Switzer*, 562 U.S. 521, 534 (2011)); *Shook v. Apker*, 472 F. App’x 702, 702-03
11 (9th Cir. 2012) (affirming dismissal of inmate’s habeas petition challenging inadequate
12 medical care); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (“Habeas corpus
13 proceedings are the proper mechanism for a prisoner to challenge the “legality or duration”
14 of confinement. A civil rights action, in contrast, is the proper method of challenging
15 “conditions of ... confinement.”) (internal citation omitted); see also *Chasson v.*
16 *Immigration & Customs Enforcement*, No. CV-17-5819-SVW (JPR), 2017 U.S. Dist.
17 LEXIS 190792, at *2 (C.D. Cal. Nov. 15, 2017) (“the principal purpose of a habeas corpus
18 writ is to provide a remedy for prisoners challenging the fact or duration of their
19 confinement, not the conditions of their confinement.”); *Kafatia v. Gilkey*, No. CV 11-
20 9090-CJC SP, 2012 WL 1987136, at *5 (C.D. Cal. Apr. 25, 2012), report and
21 recommendation adopted, No. CV 11-9090-CJC SP, 2012 WL 1986316 (C.D. Cal. May
22 31, 2012) (“Because the fundamental nature of petitioners 2241 Petition is a challenge to
23 the conditions of his confinement rather than to the legality of his confinement, it is not
24 cognizable on habeas corpus review.”).

25 The undersigned has obtained Petitioner’s OMDC medical records as of September
26 16, 2025, plus the medical records that Petitioner filed in connection with his removal
27 proceedings. The OMDC medical records have been lodged under seal, ECF No. 6, and
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1 the timeline is set forth in the Statement of Facts. ICE has informed the undersigned that
2 Petitioner has a scheduled appointment with an optometrist on October 1, 2025.

3 **IV**

4 **CONCLUSION**

5 For the reasons set forth above, the habeas petition should be dismissed as premature
6 or denied, because.

7 DATED: September 29, 2025

ADAM GORDON
United States Attorney

8
9 *s/ Samuel W. Bettwy*
SAMUEL W. BETTWY
Assistant U.S. Attorney

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11 Attorneys for Respondents
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