

District Judge Tana Lin

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GREGGY SORIO,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:25-cv-02492-TL

FEDERAL RESPONDENTS'¹
OPPOSITION TO PETITIONER'S
MOTION FOR TEMPORARY
RESTRAINING ORDER

Noted for Consideration on:
December 15, 2025

¹ Respondent Bruce Scott is not a Federal Respondent.

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I. INTRODUCTION

Petitioner Greggory Sorio fails to make a clear showing that he is entitled to the extraordinary remedy of a temporary restraining order (“TRO”). Dkt. No. 2, TRO Motion (“Motion” or “Mot.”). Section 241 of the Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1231, mandates Petitioner’s detention pending his removal. 8 U.S.C. § 1231(a)(2)(A). U.S. Immigration and Customs Enforcement (“ICE”) attempted to execute Petitioner’s removal order on December 7, 2025. After Petitioner had boarded his flight to the Philippines, unknown individuals informed airline staff that Petitioner was not fit to travel. Although Petitioner had been medically cleared to travel, the escorting officers at the airport did not have documentation of this clearance. As a result, the airline did not allow Petitioner to remain on the flight. Petitioner was returned to the Northwest ICE Processing Center (“NWIPC”).

The Petition contests that he is medically fit to travel. It asks this Court to (1) enjoin his removal until he is medically stable, and (2) order Respondents to “allow Petitioner to seek adequate medical care and stabilize until such a time as he can be safely removed to the Philippines.” Dkt. No. 2-1, Proposed Order.² This Court should deny these requests.

First, the issue of removal is no longer an issue to be decided on an emergency basis. ICE agreed not to remove Petitioner from the United States or transfer him to another facility during the pendency of this litigation before this Court. Dkt. No. 10. This Court included this stipulated provision in its Order. Dkt. No. 11. As a result, there is no imminent risk of Petitioner’s transfer or removal. Thus, the issue of his removal beyond this litigation would be more appropriately addressed in the Court’s decision on the habeas petition.

² While Petitioner does not explicitly ask to be released from detention as part of the Motion, his request to “seek adequate medical care” implies that he is seeking release as his Motion is based on his claim that medical care at the NWIPC is inadequate. As described below, release is not an appropriate remedy even if he were to prevail here.

1 Second, Petitioner's medical treatment and conditions of confinement claim does not
2 provide a basis for mandatory injunctive relief. Petitioner incorrectly asserts that he was denied
3 adequate medical care at the NWIPC in violation of Fifth Amendment substantive due process.
4 Not only was Petitioner afforded adequate medical care while at the NWIPC, but he was also
5 referred to outside specialists for treatment not available within the NWIPC. Now that Petitioner
6 has been returned to NWIPC, he continues to have access to and obtain medical treatment.
7 Moreover, Petitioner provides no legal basis for this Court's ability to order that Petitioner be
8 seen by a specific medical provider. Rather, even if his Court were to find that Petitioner's
9 medical care at the NWIPC is not adequate, the appropriate remedy would be for this Court to
10 order that Petitioner receive the appropriate medical care – not care by a specific provider.

11 Accordingly, Federal Respondents respectfully request that this Court deny the Motion.
12 This Opposition is supported by the Declaration of Yralees Melendez Diaz ("Melendez Diaz
13 Decl.") and the Declaration of Dr. Eddie Ling-Tse Wang ("Wang Decl.").

14 II. FACTUAL BACKGROUND

15 A. Immigration Background

16 Petitioner is a native and citizen of the Philippines who was admitted into the United
17 States in 2007 as a lawful permanent resident. Melendez Diaz Decl., ¶¶ 4-5. Since 2010,
18 Petitioner has been convicted of numerous crimes, including violation of a domestic violence
19 protection order in 2019 and assault in 2024. *Id.*, ¶¶ 6-7. ICE took custody after he was released
20 from the Anchorage Correctional Complex in Anchorage, Alaska in February 2025. *Id.*, ¶ 8. He
21 was transferred to the NWIPC shortly thereafter. *Id.*, ¶ 10.

22 In February, U.S. Department of Homeland Security ("DHS") issued Petitioner with a
23 Notice to Appear, charging him as removable pursuant to 8 U.S.C. § 1227(A)(2)(E)(ii). *Id.*, ¶ 9.
24 On October 2, 2025, an immigration judge ordered Petitioner to be removed to the Philippines.

1 *Id.*, ¶ 11. As Petitioner waived appeal, this order immediately became administratively final. As
2 a result, the 90-day removal period commenced. 8 U.S.C. § 1231(a)(1)(B)(i). Detention during
3 the removal period is mandatory.

4 On November 26, 2025, Petitioner, through counsel, filed an application for stay of
5 removal with DHS based on exceptional medical need. Pet., ¶ 27, Ex. A. On December 6, 2025,
6 ICE denied the request. *Id.*, ¶ 28, Ex. B.

7 After being medically cleared for travel, ICE attempted to remove Petitioner to the
8 Philippines on December 7, 2025. Melendez Diaz Decl., ¶¶ 12-14. ICE transported Petitioner to
9 the airport for his flight on Philippines Airlines. *Id.*, ¶ 13. U.S. Customs and Border Protection
10 (“CBP”) took custody of Petitioner at the airport. CBP then escorted Petitioner onto the plane.
11 *Id.* However, two unknown individuals approached the airline after Petitioner had boarded the
12 plane and requested to conduct a medical evaluation, which delayed the flight. *Id.*, ¶ 14.
13 Ultimately, the airline removed Petitioner from the flight. *Id.* Petitioner was returned to the
14 NWIPC pending his removal. *Id.*, ¶ 15.

15 The Philippines Consulate informed ICE that Petitioner called the Consulate the day after
16 he was removed from the flight to request “the Consulate’s assistance to coordinate with ICE-
17 ERO in securing the required clearance from the ICE doctor because he wants to go back to the
18 Philippines as soon as possible.” *Id.*, Ex. A. Petitioner further informed the Consulate “that he is
19 able to travel to the Philippines.” *Id.* The Consulate issued an updated travel document on
20 December 8, 2025, so that Petitioner can travel to the Philippines.

21 **B. Medical Treatment at NWIPC**

22 Medical care at the NWIPC is provided by the ICE Health Service Corps (“IHSC”). *See*
23 Wang Decl., ¶¶ 1-4. NWIPC also has collaborative agreements with local specialty services for
24 outside referrals. *See id.*, ¶ 11.

1 Since arriving at NWIPC, Petitioner has been seen by IHSC medical staff on numerous
2 dates. *Id.*, ¶¶ 7, 8 9. Petitioner first interacted with IHSC on July 24, 2025, due to diarrhea. *Id.*,
3 ¶ 7. Petitioner has been diagnosed with ulcerative colitis and inflammatory bowel syndrome.
4 *Id.*, ¶¶ 8, 10. Petitioner has undergone a full medical workup at the hospital and follow up with a
5 gastroenterologist on November 26, 2025. *Id.*, ¶¶ 8, 10. Dr. Wang opines that ulcerative colitis
6 and inflammatory bowel syndrome are not conditions which necessarily medically restrict travel.
7 *Id.*, ¶¶ 8, 10.

8 In October, Petitioner underwent two amputations to his due to osteomyelitis. *Id.*, ¶ 9.
9 After having not reported any issues with his toe when he was seen by the emergency department
10 concerning gastrointestinal issues on October 16, 2025, Petitioner first reported having toe pain
11 to IHSC on October 20, 2025. *Id.*, ¶ 12. IHSC immediately initiated antibiotic treatment. *Id.* He
12 was transported to the emergency room two days later when he reported worsening pain while on
13 antibiotics. *Id.* Unfortunately, his osteomyelitis required amputations to his right fifth digit on
14 October 27 and 29, 2025. *Id.*, ¶ 9. Petitioner returned to the NWIPC from the hospital on
15 November 12, 2025. *Id.* IHSC treated his surgical wound at various appointments and removed
16 his sutures on November 20, 2025. *Id.* At subsequent appointments, various providers found
17 that his wound was healing well. *Id.* Petitioner's wound has closed. The records indicate that
18 there were no signs of discharge, redness, or infection. *Id.* Dr. Wang states that "[a] right foot
19 surgical wound with near complete healing does not necessitate a medical hold for travel. *Id.*

20 While at NWIPC, Petitioner has also been seen for chest pains. On October 20, 2025,
21 medical records indicate that Petitioner had "brief episode of chest pain, due to anxiety; no chest
22 pain at visit." *Id.*, ¶ 12. Petitioner's electrocardiogram ("EKG") was normal. *Id.* On November
23 8, 2025, Petitioner had a cardiac Echo with normal findings. *Id.*

1 In sum, Dr. Wang opines that the Petition’s general allegation that there has been a
2 failure to provide him with necessary and appropriate healthcare is unsupported by the medical
3 records. *Id.*, ¶ 15. In Dr. Wang’s medical opinion, Petitioner is fit for travel. *Id.*, ¶ 19.

4 III. LEGAL STANDARD

5 “The district courts of the United States ... are courts of limited jurisdiction. They
6 possess only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopah*
7 *Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has
8 been tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of*
9 *Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241
10 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of
11 habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of
12 the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v.*
13 *Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

14 The standard for issuing a temporary restraining order is “substantially identical” to the
15 standard for issuing a preliminary injunction. *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*,
16 240 F.3d 832, 839 n.7 (9th Cir. 2001). “It frequently is observed that a preliminary injunction is
17 an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear*
18 *showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)
19 (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555
20 U.S. 7, 22 (2008).

21 A plaintiff seeking a preliminary injunction must show that: (1) he is likely to succeed on
22 the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the
23 balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter*, 555
24 U.S. at 20. Alternatively, a plaintiff can show that there are “serious questions going to the

merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation omitted).

“A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (internal quotation omitted). Where a plaintiff seeks mandatory injunctive relief, “courts should be extremely cautious.” *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). Thus, in a mandatory injunction request, the moving party “must establish that the law and facts *clearly* favor [his] position, not simply that [he] is likely to succeed.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis in original).

Here, rather than preserving the status quo, Petitioner seeks emergency mandatory injunctive relief in the form of an order requiring medical care beyond what is deemed necessary and appropriate by IHSC medical. While Petitioner frames his request as seeking “adequate medical care,” he is seeking an order for ICE to obtain medical care by his preferred providers – not IHSC. While this Motion should be denied in its entirety because Petitioner has failed to meet his burden for the requested injunctive relief, this briefing focuses on his claims concerning his medical care and the denial of his request for stay of removal as ICE has already agreed not to remove Petitioner from the United States while the habeas petition is pending.

IV. ARGUMENT

A. Petitioner has not established that the law and facts clearly favor injunctive relief.

1. This Court lacks jurisdiction to review Petitioner’s challenge to ICE’s denial of his administrative stay of removal. (Pet., Count I)

1 The INA bars this Court's review of Plaintiff's challenges to the denial of his
2 administrative request for a stay of removal. 8 U.S.C. § 1252(g). Congress has spoken clearly,
3 emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or
4 claim" arising from the execution of removal orders, "notwithstanding any other provision of
5 law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. 8
6 U.S.C. § 1252(g).

7 In the exercise of its constitutional power to define federal court jurisdiction, in 1996,
8 Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"),
9 which repealed the existing scheme for judicial review of final orders of deportation and replaced
10 it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee*
11 (*"AADC"*), 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the INA, Congress
12 provided in the newly-enacted Section 1252(g) that:

13 Except as provided in this section and notwithstanding any other provision of law,
14 no court shall have jurisdiction to hear any cause or claim by or on behalf of any
15 alien arising from the decision or action by the Attorney General to commence
proceedings, adjudicate cases, or execute removal orders against any alien under
this Act.

16 8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended Section 1252(g) to
17 clarify that the statute's proscription against jurisdiction does in fact apply to habeas and
18 mandamus actions. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11
19 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, Section 1252(g), now
20 provides that:

21 Except as provided in this section and notwithstanding any other provision of law,
22 (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas
23 corpus provision, and sections 1361 and 1651 of such title, no court shall have
24 jurisdiction to hear any cause or claim by or on behalf of any alien arising from
the decision or action by the Attorney General to commence proceedings,
adjudicate cases, or execute removal orders against any alien under this chapter.

1 8 U.S.C. § 1252(g) (2017) (emphasis added).

2 In *AADC*, the Supreme Court held that Section 1252(g) precludes judicial review of three
3 discrete actions that DHS may take: the “‘decision or action’ to ‘*commence* proceedings,
4 *adjudicate* cases, or *execute* removal orders.’” 525 U.S. at 482 (original emphasis). With a valid
5 order of removal, any request for this Court to enjoin Plaintiff’s removal falls directly within one
6 of the discrete actions precluded from judicial review.

7 While Plaintiff fashions his claim as a procedural due process claim, the claim challenges
8 to ICE’s denial of his administrative request for a stay. Pet., Claim I. Petitioner claims that he
9 lacked an opportunity to be heard and “was not able to present evidence of medical opinions
10 from non-ICE medical professionals.” Pet., ¶ 82. This claim directly attacks ICE’s discretionary
11 denial of his stay request, including the sufficiency of ICE’s consideration. *See Rauda v.*
12 *Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (“No matter how Matias frames it, his challenge is to
13 the Attorney General’s exercise of his discretion to execute Matias’s removal order, which we
14 have no jurisdiction to review.”).

15 This squarely falls within ICE’s decision to execute his removal order, which is
16 precluded from judicial review by 8 U.S.C. § 1252(g). *Fatty v. Nielsen*, No. 17-cv-1535, 2018
17 WL 3491278, at *2 (W.D. Wash. Jul. 20, 2018) (“Were Mr. Fatty challenging his removal or the
18 discretionary denial of his request for stay of removal, review of that challenge clearly would be
19 precluded by Section 1252(g).”). However, even if this Court had jurisdiction to review this
20 claim, it lacks merit. Petitioner had an opportunity to be heard when, through counsel, he
21 submitted his request, along with supporting evidence – medical records. Pet., Ex. A. Petitioner
22 cites to inapposite case law concerning the right to be heard by a neutral decisionmaker prior to
23 redetention. Mot., at 7. Petitioner cites to no legal support that a hearing by a neutral decision
24 maker is required in relation to an administrative stay of removal. In fact, the regulations

1 concerning this discretionary determination explicitly provide that a denial is not
2 administratively appealable. 8 C.F.R. § 241.6(b). Accordingly, Petitioner has not demonstrated
3 that the facts and law clearly favor his claim that his procedural due process rights were violated
4 with respect to the denial of his application for an administrative stay of removal.

5 **2. Petitioner's condition of confinement claim is not properly brought pursuant**
6 **to habeas because it is outside of core habeas. (Pet., Counts II & III)**

7 Petitioner's claims concerning his medical care at the NWIPC challenge the conditions of
8 his confinement. This Court should not consider the conditions of confinement as part of a 28
9 U.S.C. § 2241 habeas corpus petition. *See Pinson v. Carvajal*, 69 F.4th 1059, 1069 (9th Cir.
10 2023), *cert. denied sub nom. Sands v. Bradley*, 144 S. Ct. 1382 (2024). The Court should thus
11 dismiss Petitioner's medical care claim for lack of jurisdiction. "[T]he writ of habeas corpus is
12 limited to attacks upon the legality or duration of confinement." *Crawford v. Bell*, 599 F.2d 890,
13 891 (9th Cir. 1979). In *Crawford*, the Ninth Circuit held that "release from confinement" was
14 not the appropriate remedy to address the petitioner's claims "alleg[ing] that the terms and
15 conditions of [petitioner's] incarceration constitute[d] cruel and unusual punishment" and
16 "violated his due process rights." *Id.*, at 891-92. Such a claim must be brought as a civil rights
17 claim, *Dohner v. Seifert*, 5 F.3d 535 (9th Cir. 1993), that if proven, would be remedied by "a
18 judicially mandated change in conditions and/or an award of damages." *Crawford*, 599 F.2d at
19 892. The appropriate remedy is not a writ of habeas corpus ordering the detainee's release.

20 The Ninth Circuit's decision in *Pinson v. Carvajal* solidified the rule that a habeas claim
21 is one challenging the fact of confinement, rather than the conditions of confinement. 69 F.4th at
22 1072-73. There, two inmates sought habeas relief, arguing that the conditions of their
23 incarceration during the COVID-19 pandemic violated the Eighth Amendment. *Id.*, at 1062.

24 The Ninth Circuit rejected claimant Sands' argument that only habeas relief could ameliorate the

1 harm inflicted on him by the government's ongoing failure to sufficiently treat his underlying
2 illnesses and protect him from exposure to the coronavirus. *Id.*, at 1063, 1065-66, 1075. In so
3 doing, the Ninth Circuit affirmed the district court's dismissal of Sands' habeas petition for lack
4 of jurisdiction, delineating that "the relevant question is whether, based on the allegations in the
5 petition, release is *legally required* irrespective of the relief requested." *Id.*, at 1072. In
6 dismissing the petition, the Court concluded that Sands challenged only the conditions of his
7 confinement and not the underlying legal basis for that confinement, and therefore his claim was
8 "outside the core of habeas." *Id.*, at 1073. Consequently, pursuant to *Pinson*, an individual's
9 claim is at "the core of habeas corpus" if it "(1) goes directly to the constitutionality of the
10 physical confinement itself and (2) seeks either immediate release from that confinement or the
11 shortening of its duration." *Id.*, at 1069 (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973))
12 (cleaned up); *see also Doe v. Garland*, 109 F.4th 1188, 1194 (9th Cir. 2024) (reiterating *Pinson*'s
13 holding).

14 Here, Petitioner's medical claims are insufficient to invoke habeas jurisdiction. *See*
15 *Pinson*, 69 F.4th at 1072-73 ("[A] successful claim sounding in habeas necessarily results in
16 release, but a claim seeking release does not necessarily sound in habeas."). Rather, Petitioner
17 must show that his detention is without legal authorization, but, his detention is lawful under 8
18 U.S.C. § 1231(a) and he cannot demonstrate that his release is warranted. *See id.*, at 1070; *see*,
19 *e.g., Luedtke v. Ciolli*, No. 21-15670, 2023 WL 6060605, at *1 (9th Cir. Sept. 18, 2023) (unpub.)
20 (affirming dismissal of a habeas petition where the claimant's allegations were that his medical
21 conditions require his immediate release from confinement). His withholding of medical
22 treatment claim is thus "a garden-variety Eighth Amendment claim based on the deliberate
23 failure to deliver adequate medical care, which is a standard civil rights claim." *Pinson*, 69 F.4th
24 at 1073 (citing *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 78 (2001) (Stevens, J., dissenting))

(explaining that Eighth Amendment claims based on inadequate medical care “fall[] in the heartland of substantive *Bivens* claims”); *Estelle v. Gamble*, 429 U.S. 97, 105 (1976) (“Regardless of how evidenced, deliberate indifference to a prisoner’s serious illness or injury states a cause of action under § 1983.”); see *Cutsinger v. Ducharme*, 944 F.2d 908 (9th Cir. 1991) (“A challenge to conditions of confinement should be presented in a section 1983 lawsuit rather than in a habeas corpus petition.”) (citing *Crawford*, 599 F.2d at 891-92).

And though the Supreme Court has left open the question of whether there are circumstances when a challenge to the conditions of confinement is properly brought in a habeas petition, Petitioner’s claim ultimately “neither goes to the fact of [his] confinement nor would require immediate release if successful,” so “it is outside the core of habeas.” *Pinson*, 69 F.4th at 1073; see *Ziglar v. Abbasi*, 582 U.S. 120, 144-45 (2017) (“[W]e leave to another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement, as distinct from the fact or length of confinement.”) (quoting *Bell v. Wolfish*, 441 U.S. 520, 526, n.6 (1979)); see, e.g., *Dinkins v. United States*, No. 22-56089, 2024 WL 1253789, at *1 (9th Cir. Mar. 25, 2024) (unpub.) (applying *Pinson* and concluding that an incarcerated petitioner cannot challenge the conditions of his confinement through a habeas petition filed under 28 U.S.C. § 2241); *Grigsby v. Gutierrez*, No. 22-16734, 2024 WL 811024, at *1 (9th Cir. Feb. 27, 2024) (unpub.) (same). Accordingly, this Court should decline to extend such consideration to the claim in this case.

3. Regardless, Petitioner is receiving constitutionally adequate medical care, and his conditions of confinement do not violate due process.

Petitioner’s detention does not violate substantive due process as the medical care he has received at the NWIPC is constitutionally adequate. He cannot establish a substantive due

1 process violation based on the government's purported failure to provide the specific medical
2 care he requests by the treatment provider that he prefers outside of the NWIPC.

3 Dr. Wang's declaration establishes that Petitioner has received the necessary and
4 appropriate care that he required while at the NWIPC. IHSC has attended to his gastrointestinal
5 issues and initiated him on Infalamtory Bowel Syndrome treatment, Dicyclomine. *See Wang*
6 *Decl.*, ¶¶ 7-10; 12, 15. IHSC referred Petitioner to a GI specialist when he complained of
7 ongoing diarrhea with intermittent bloody stool. *Id.*, ¶ 12. Petitioner's appointment was
8 scheduled for the specialist's first available appointment. *Id.* In the interim, Petitioner was
9 brought to the emergency room due to exacerbation of abdominal pain and bloody stool in
10 October with a follow up appointment a few days later. *Id.*, ¶¶ 12, 16, 18.

11 IHSC has also provided Petitioner with necessary and appropriate medical care for his
12 osteomyelitis. *Id.*, ¶ 17. Petitioner first reported to pain on October 20, 2025, and in response,
13 IHSC immediately initiated antibiotics. *Id.*, ¶ 12. When he reported worsening pain, he was
14 taken to the emergency room. *Id.* Petitioner did not disclose any prior cuts or trauma to the
15 infected toe/toenail which could have resulted in earlier detection. *Id.*, ¶ 17. Unfortunately,
16 Petitioner had a rapid progressing infection without a known etiology, which required
17 amputations to his toe. *Id.*, ¶¶ 17, 9. Since his release from the hospital, IHSC has been treating
18 and monitoring the surgical wound. *Id.*, ¶ 9. The wound has closed without signs of discharge,
19 redness, or infection when examined. *Id.*

20 As the Supreme Court has repeatedly recognized, detention is a constitutionally
21 permissible aspect of the government's enforcement of the immigration laws and fulfills the
22 legitimate purpose of ensuring that individuals appear for their removal proceedings. *See*
23 *Jennings v. Rodriguez*, 583 U.S. 281, 285 (2018); *Demore v. Kim*, 538 U.S. 510, 523 (2003);
24 *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). Consistent with the requirements of due

1 process, Petitioner's confinement is thus "reasonably related" to a legitimate government
2 interest. *Bell v. Wolfish*, 441 U.S. 535, 538-39 (1979).

3 Due process requires the government to assume some responsibility for civil detainees'
4 safety and well-being, such as "food, clothing, shelter, medical care, and reasonable safety."
5 *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989). To demonstrate a
6 due process violation on a conditions-of-confinement claim, a petitioner must show: (1) the
7 defendant made an intentional decision with respect to the conditions under which the plaintiff
8 was confined; (2) those conditions put the plaintiff at substantial risk of suffering serious harm;
9 (3) the defendant did not take reasonable available measures to abate that risk, even though a
10 reasonable officer in the circumstances would have appreciated the high degree of risk involved
11 – making the consequences of the defendant's conduct obvious; and (4) by not taking such
12 measure, the defendant caused the plaintiff's injuries. *Castro v. Cty. of L.A.*, 833 F.3d 1060,
13 1071 (9th Cir. 2016) (en banc).

14 Petitioner cannot meet this standard. The government does not dispute that Petitioner has
15 various medical conditions. However, Petitioner cannot show that the medical care at NWIPC
16 puts him at a substantial risk of suffering serious harm. His chronic gastrointestinal condition
17 has been being treated and monitored, with outside referrals when required. IHSC promptly
18 treated Petitioner's toe infection in response to his first complaint of pain. He was brought to the
19 hospital when it worsened despite treatment. Since his release from the hospital, IHSC has
20 consistently cared for the surgical wound, which has healed. Accordingly, Petitioner cannot
21 show the substantial medical care available to him places him at substantial risk of sustaining
22 serious harm.

23 Second, the medical care offered to Petitioner constitutes objectively reasonable
24 measures to abate the risk of serious physical harm that Petitioner alleges. The Ninth Circuit

1 applies an “objectively unreasonable” test to failure-to-protect claims brought under the Due
 2 Process Clause. *Castro*, 833 F.3d at 1071. “[T]he defendant’s conduct must be objectively
 3 unreasonable, a test that will necessarily ‘turn on the facts and circumstances of each particular
 4 case.’” *Id.* (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 396 (2015) (alterations and internal
 5 quotation marks omitted)). Litigants claiming deliberate indifference must establish that
 6 government action is “objectively unreasonable” – a standard akin to reckless disregard. *Gordon*
 7 *v. Cty. Of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018). “[T]he Constitution does not require
 8 that detention facilities reduce the risk of harm to zero.” *C.G.B. v. Wolf*, 464 F. Supp. 3d 174,
 9 212 (D.D.C. 2020) (quoting *Benavides v. Gartland*, No. 20-cv-46, 2020 WL 1914916, at *5
 10 (S.D. Ga. Apr. 18, 2020) & citing *Dawson v. Asher*, No. 20-cv-0409, 2020 WL 1704324, at *12
 11 (W.D. Wash. Apr. 8, 2020)). Neither general allegations of negligence nor a petitioner’s general
 12 disagreement with treatment received is enough to show deliberate indifference. *See Estelle v.*
 13 *Gamble*, 429 U.S. 97, 105-06 (1976). Rather, that standard can be met “only when the decision
 14 by the [medical] professional is such a substantial departure from accepted professional
 15 judgment, practice, or standards as to demonstrate that the person responsible actually did not
 16 base the decision on such a judgment.” *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982).

17 Finally, Petitioner cannot demonstrate that his medical care at NWIPC places him in
 18 sufficiently imminent danger. “To satisfy the fourth element, a plaintiff need only prove a
 19 ‘sufficiently imminent danger[],’ because a ‘remedy for unsafe conditions need not await a
 20 tragic event.’” *Roman v. Wolf*, 977 F.3d 935, 943 (9th Cir. 2020) (quoting *Helling v. McKinney*,
 21 509 U.S. 25, 33-34 (1993)). The Petition alleges that Petitioner is not receiving adequate
 22 medical care. The Petition asserts that he can only receive adequate healthcare outside of the
 23 NWIPC. The Court should thus find this assertion to be irrelevant here. Without any showing
 24 that he is in sufficient imminent danger due to inadequate medical care at NWIPC, his due

1 process claims concerning the lawfulness of his detention due to alleged inadequate medical care
2 should be dismissed. Accordingly, Petitioner's conditions of confinement do not violate his
3 Fifth Amendment substantive due process right to reasonable safety.

4 **4. Petitioner cannot show punitive conditions of confinement. (Pet., Count III)**

5 Petitioner's detention is not punitive because it is reasonably related to legitimate
6 governmental objectives. When evaluating the constitutionality of civil detention conditions
7 under the Fifth Amendment, a district court must determine whether those conditions "amount to
8 punishment of the detainee." *Bell*, 441 U.S. at 535. A petitioner may show punishment through
9 an express intent to punish or a condition that is not "reasonably related to a legitimate
10 governmental objective." *Bell*, 441 U.S. at 539; *see also Kingsley*, 576 U.S. at 398 (noting that
11 "a pretrial detainee can prevail by providing only objective evidence that the challenged
12 governmental action is not rationally related to a legitimate governmental objective or that it is
13 excessive in relation to that purpose"). "A restriction is punitive where it is intended to punish,
14 or where it is 'excessive in relation to [its] non-punitive purpose.'" *See Jones v. Blanas*, 393
15 F.3d 918, 933-34 (9th Cir. 2004).

16 Petitioner has not demonstrated that IHSC's medical treatment constitutes an express
17 intent to punish him. "The wide range of 'judgment calls' that meet constitutional and statutory
18 requirements [for federal detention] are confided to officials outside of the Judicial Branch of
19 Government." *Bell*, 441 U.S. at 562. The Constitution thus leaves the government latitude in
20 determining how it may achieve its legitimate interest in executing the immigration laws. In
21 evaluating those determinations, courts must be careful to impose only what the Constitution
22 requires – not "a court's idea of how best to operate a detention facility." *Id.*, at 539. Here,
23 Petitioner's detention is justified. He is subject to a final order of removal and, absent this
24 Court's order, the removal order can be executed promptly. Further, Petitioner falls well short of

1 demonstrating that his confinement at NWIPC with the medical treatment available is so
2 excessive that it evinces “an expressed intent to punish on the part of detention facility officials.”
3 *Bell*, 441 U.S. at 538. Finally, Petitioner’s detention is proportionately related to the
4 government’s non-punitive responsibilities and administrative purposes. While civil detainees
5 retain greater liberty protections than individuals convicted of crimes, *see, e.g., Youngberg*, 457
6 U.S. at 321-22; *Bell*, 441 U.S. at 535, Petitioner’s continued immigration detention after he has
7 been subject to a final order of removal cannot be described as punitive or excessive in relation
8 to the legitimate governmental purpose of protecting the public and enforcing U.S. immigration
9 laws.

10 **5. Even if this Court were to find a that the facts and law favored Petitioner on**
11 **any of his claims, release from detention is not an appropriate remedy.**

12 Even if Petitioner could demonstrate a Fifth Amendment violation concerning his
13 conditions of confinement, this Court should not grant order him released from detention.
14 Petitioner does not claim that he would be unable to obtain appropriate medical care at any ICE
15 detention facility. He limits his claims to the NWIPC and does not address the treatment that is
16 available by the medical specialists with whom ICE contracts. Thus, Petitioner fails his burden
17 of demonstrating that release would be the appropriate form of relief here. Or, “[e]ven if
18 Petitioner could show a Fifth Amendment violation, he does not establish that such a violation
19 would justify immediate release, as opposed to injunctive relief that would leave him detained
20 while ameliorating any unconstitutional conditions at the NWIPC.” *Ortiz v. Barr*, No. 20-cv-
21 497, 2020 WL 13577427, at *7 n.8 (W.D. Wash. April 10, 2020); *accord Doe v. Bostock*, No.
22 24-cv- 326, 2024 WL 3291033, at *8 (W.D. Wash. Mar. 29, 2024). Accordingly, even if this
23 Court were to find that due process has been violated, immediate release is not an appropriate
24

1 form of relief. Petitioner has not clearly demonstrated that the law or facts – even if this Court
2 were to find a violation – clearly supports his immediate release.

3 **B. Petitioner is unlikely to suffer irreparable harm in the absence of preliminary relief.**

4 Petitioner has not demonstrated that he will suffer irreparable injury absent the mandatory
5 injunctive relief he seeks. To do so, he must demonstrate “immediate threatened injury.”
6 *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los*
7 *Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th
8 Cir.1980)). Merely showing a “possibility” of irreparable harm is insufficient. *See Winter*, 555
9 U.S. at 22. “Issuing a preliminary injunction based only on a possibility of irreparable harm is
10 inconsistent with [the Supreme Court’s] characterization of injunctive relief as an extraordinary
11 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such
12 relief.” *Winter*, 555 U.S. at 22.

13 Here, Petitioner has not established that “irreparable injury is likely in the absence of an
14 injunction.” *Winter*, 555 U.S. at 22. Petitioner asserts that his removal would interfere with his
15 access to the medical care and providers that have been treating him “over the past almost two
16 months.” *Mot.*, at 8. As discussed above, for the purposes of the Motion, Petitioner’s removal is
17 not relevant because ICE has agreed not to remove him while these proceedings are pending.
18 More importantly, he has been detained at the NWIPC for the last two months. Thus, this
19 assertion does not support that he can only receive adequate medical treatment if he is not
20 detained at the NWIPC. Finally, Petitioner has not demonstrated that his health conditions have
21 been caused by the medical treatment at NWIPC. IHSC has monitored and treated Petitioner’s
22 conditions and appropriately and promptly reacted to his complaints. When IHSC has been
23 unable to provide the care needed, Petitioner was referred to outside specialists. *See Youngberg*
24 *v. Romeo*, 457 U.S. 307, 322-23 (1982) (urging judicial deference and finding presumption of

1 validity regarding decisions of medical professionals concerning conditions of confinement).

2 Accordingly, Petitioner has not demonstrated that he will be subject to immediate
3 irreparable injury if not released.

4 **C. The balance of the equities and public interests favor the Government.**

5 It is well-settled that the public interest in enforcement of United States immigration laws
6 is significant. *See United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Nken v.*
7 *Holder*, 556 U.S. 418, 435 (2009) (“There is always a public interest in prompt execution of
8 removal orders: The continued presence of an alien lawfully deemed removable undermines the
9 streamlined removal proceedings IIRIRA established, and permit[s] and prolong[s] a continuing
10 violation of United States law.”). Petitioner is subject to a final order of removal, and the
11 government may detain him as a result, and it has an interest in enforcing U.S. immigration laws.
12 The government has a legitimate interest in the continued detention of immigration detainees that
13 is authorized by Congress and recognized by the Supreme Court. Petitioner has been medically
14 cleared for removal and he remains under mandatory detention pursuant to 8 U.S.C. § 1231(a)
15 pending his removal. Currently, the only bar to Petitioner’s removal is this habeas litigation.
16 Because Petitioner cannot show that the balance of hardships and public interest tips in his favor,
17 the Court should deny Petitioner’s Motion.

18 **CONCLUSION**

19 For all of the foregoing reasons, Petitioner has not satisfied his high burden of
20 establishing entitlement to mandatory injunctive relief, and his Motion should be denied.

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1 DATED this 12th day of December, 2025.

2 Respectfully submitted,

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16 *I certify that this memorandum contains 5,841*
17 *words, in compliance with the Local Civil*
18 *Rules.*