

District Judge Tana Lin

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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 RETURN

Noted for Consideration:
December 23, 2025

¹ Respondent Bruce Scott is not a Federal Respondent.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

TABLE OF AUTHORITIES III

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 2

A. Immigration Background 2

B. Medical Treatment at NWIPC 3

III. LEGAL STANDARD 5

IV. ARGUMENT 5

A. This Court lacks jurisdiction to review Petitioner’s challenge to ICE’s denial of his administrative stay of removal. (Pet., Count I) 5

B. Petitioner’s condition of confinement claim is not properly brought pursuant to habeas because it is outside of core habeas. (Pet., Counts II & III) 8

C. Even if this Court were to consider Petitioner’s conditions of confinement claims, Petitioner is receiving constitutionally adequate medical care, and his conditions of confinement do not violate due process..... 10

D. Petitioner cannot show punitive conditions of confinement. (Pet., Count III)... 14

E. Even if this Court were to find a that the facts and law favored Petitioner on any of his claims, release from detention is not an appropriate remedy. 15

F. Petitioner has been medically cleared for removal..... 16

V. CONCLUSION 16

TABLE OF AUTHORITIES

CASES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Barahona-Gomez v. Reno, 236 F.3d 1115, 1118 (9th Cir. 2001) 19

Bell v. Wolfish, 441 U.S. 520, 526, n.6 (1979) 12, 17

Bell v. Wolfish, 441 U.S. 535, 538-39 (1979) 14, 17, 18

Benavides v. Gartland, No. 20-cv-46, 2020 WL 1914916, at *5 (S.D. Ga. Apr. 18, 2020)..... 15

C.G.B. v. Wolf, 464 F. Supp. 3d 174, 212 (D.D.C. 2020)..... 15

Castro v. Cty. of L.A., 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc) 14, 15

Corr. Servs. Corp. v. Malesko, 534 U.S. 61, 78 (2001) (Stevens, J., dissenting)..... 11

Crawford v. Bell, 599 F.2d 890, 891 (9th Cir. 1979)..... 9, 11

Cutsinger v. Ducharme, 944 F.2d 908 (9th Cir. 1991) 11

Dawson v. Asher, No. 20-cv-0409, 2020 WL 1704324, at *12 (W.D. Wash. Apr. 8, 2020) 16

Demore v. Kim, 538 U.S. 510, 523 (2003) 14

Dep't of Homeland Sec. v. Thuraissigiam, 140 S. Ct. 1959, 1974 n. 20 (2020)..... 5

DeShaney v. Winnebago Cty. Dep't of Soc. Servs., 489 U.S. 189, 200 (1989) 14

Dinkins v. United States, No. 22-56089, 2024 WL 1253789, at *1 (9th Cir. Mar. 25, 2024) 12

Doe v. Bostock, No. 24-cv- 326, 2024 WL 3291033, at *8 (W.D. Wash. Mar. 29, 2024) 19

Doe v. Garland, 109 F.4th 1188, 1194 (9th Cir. 2024) 10

Dohner v. Seifert, 5 F.3d 535 (9th Cir. 1993)..... 9

Estelle v. Gamble, 429 U.S. 97, 105 (1976) 11

Estelle v. Gamble, 429 U.S. 97, 105-06 (1976) 16

Exxon Mobil Corp. v. Allopalth Servs., Inc., 545 U.S. 546, 552 (2005)..... 5

Fatty v. Nielsen, No. 17-cv-1535, 2018 WL 3491278, at *2 (W.D. Wash. Jul. 20, 2018)..... 8

Gordon v. Cty. Of Orange, 888 F.3d 1118, 1125 (9th Cir. 2018) 15

Grigsby v. Gutierrez, No. 22-16734, 2024 WL 811024, at *1 (9th Cir. Feb. 27, 2024) 12

Helling v. McKinney, 509 U.S. 25, 33-34 (1993) 16

Jennings v. Rodriguez, 583 U.S. 281, 285 (2018) 13

Jones v. Blanas, 393 F.3d 918, 933-34 (9th Cir. 2004) 17

Kingsley v. Hendrickson, 576 U.S. 389, 396 (2015)..... 15, 17

Lambert v. Blodgett, 393 F.3d 943, 969 n.16 (9th Cir. 2004)..... 6

Luedtke v. Ciolli, No. 21-15670, 2023 WL 6060605, at *1 (9th Cir. Sept. 18, 2023)..... 11

1 *Ortiz v. Barr*, No. 20-cv-497, 2020 WL 13577427, at *7 n.8 (W.D. Wash. April 10, 2020)..... 19
2 *Pinson v. Carvajal*, 69 F.4th 1059, 1069 (9th Cir. 2023), *cert. denied sub nom. Sands v. Bradley*,
3 144 S. Ct. 1382 (2024)..... 9, 10, 11
4 *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973)..... 10
5 *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022)..... 8
6 *Reno v. American-Arab Anti-Discrimination Committee (“AADC”)*, 525 U.S. 471, 474 (1999).. 6
7 *Roman v. Wolf*, 977 F.3d 935, 943 (9th Cir. 2020)..... 16
8 *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982)..... 16, 18
9 *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001)..... 14
10 *Ziglar v. Abbasi*, 582 U.S. 120, 144-45 (2017) 12

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

STATUTES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

28 U.S.C. § 2241 8, 10

28 U.S.C. § 2241(c)(3)..... 5

8 C.F.R. § 241.6(b) 7

8 U.S.C. § 1227(A)(2)(E)(ii)..... 2

8 U.S.C. § 1231(a) 9

8 U.S.C. § 1231(a)(1)(B)(i)..... 2

8 U.S.C. § 1231(a)(2)(A) 1

8 U.S.C. § 1252(g) 5, 6, 7

8 U.S.C. § 1252(g) (1996) 6

8 U.S.C. § 1252(g) (2017) 6

Title 28 U.S.C. § 2241 5

1 I. INTRODUCTION

2 Petitioner Greggory Sorio is subject to a valid, executable order of removal and is in U.S.
3 Immigration and Customs Enforcement (“ICE”) detention pending that removal. In this habeas
4 action, Petitioner does not dispute that his removal order is executable, nor does he challenge his
5 removal order. Instead, Petitioner claims that his mandatory detention under 8 U.S.C.
6 § 1231(a)(2)(A) violates substantive due process and seeks his immediate release “so he can
7 receive adequate medical care prior to his deportation.” Dkt. No. 1, Pet., Prayer for Relief.
8 However, Petitioner only remains in detention because immigration officers at the airport did not
9 have written medical clearance in their possession to provide the airline on December 7, 2025.
10 Although a medical professional had found Petitioner cleared Petitioner to travel on that date,
11 Petitioner claims that “he is medically unfit to travel.” *Id.* In addition to seeking his release, he
12 asks this Court to stay his removal until he can travel.

13 This Court should deny the Petition. Petitioner’s medical treatment and conditions of
14 confinement claim does not provide a basis for the Court to release him from ICE custody.
15 Petitioner incorrectly asserts that he was denied adequate medical care and subject to punitive
16 conditions of confinement at the Northwest ICE Processing Center (“NWIPC”) in violation of
17 Fifth Amendment substantive due process. Not only was Petitioner afforded adequate medical
18 care while at the NWIPC, but he was also referred to outside specialists for treatment not
19 available within the NWIPC. Now that Petitioner has been returned to NWIPC, he continues to
20 have access to and obtain medical treatment. Even if this Court were to find that Petitioner’s
21 medical care at the NWIPC is not adequate, the appropriate remedy would be for this Court to
22 order that Petitioner receive the appropriate medical care – not care by a specific provider.

23 Finally, Petitioner is medically clear to travel. While he has medical issues, those issues
24 are not impairments to travel. Thus, Petitioner can be safely removed to the Philippines now.

1 The only barrier to his removal is this habeas litigation. His removal will end his detention and
2 he will be able to care for his medical conditions after removal as he sees fit.

3 Accordingly, Federal Respondents respectfully request that this Court deny the Motion.
4 This Opposition is supported by the Supplemental Declaration of Dr. Eddie Ling-Tse Wang
5 (“Wang Supp. Decl.”) and prior filings in this case.

6 **II. FACTUAL BACKGROUND**

7 **A. Immigration Background**

8 Petitioner is a native and citizen of the Philippines who was admitted into the United
9 States in 2007 as a lawful permanent resident. Dkt. No. 14 Declaration of Yralees Melendez
10 Diaz (“Melendez Diaz Decl.”), ¶¶ 4-5. Since 2010, Petitioner has been convicted of numerous
11 crimes, including violation of a domestic violence protection order in 2019 and assault in 2024.
12 *Id.*, ¶¶ 6-7. ICE took custody of Petitioner after he was released from the Anchorage
13 Correctional Complex in Anchorage, Alaska in February 2025. *Id.*, ¶ 8. He was transferred to
14 the NWIPC shortly thereafter. *Id.*, ¶ 10.

15 In February, U.S. Department of Homeland Security (“DHS”) issued Petitioner with a
16 Notice to Appear, charging him as removable pursuant to 8 U.S.C. § 1227(A)(2)(E)(ii). *Id.*, ¶ 9.
17 On October 2, 2025, an immigration judge ordered Petitioner to be removed to the Philippines.
18 *Id.*, ¶ 11. As Petitioner waived appeal, this order immediately became administratively final. As
19 a result, the 90-day removal period commenced. 8 U.S.C. § 1231(a)(1)(B)(i). Detention during
20 the removal period is mandatory.


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

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

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

15 **B. Medical Treatment at NWIPC**

16 Medical care at the NWIPC is provided by the ICE Health Service Corps (“IHSC”). *See*
17 Wang Supp. Decl., ¶ 4. NWIPC is a level 4 facility, meaning that it can provide a higher level of
18 medical care. *Id.* The medical clinic includes family medicine and emergency medicine
19 physicians, physician aids, advanced nurse practitioners, nurses, record technicians, pharmacists
20 and pharmacy technicians, psychiatrists and behavioral health specialists, and dentists and dental
21 technicians. *Id.* NWIPC can manage patients with complex medical issues and collaborates with
22 multiple nearby emergency departments that can assist in assessing critical patients and
23 hospitalize unstable patients. *Id.* NWIPC also has collaborative agreements with local specialty
24 services that cover all aspects of medical specialties. *Id.*

1 Since arriving at NWIPC, Petitioner has been seen by IHSC medical staff on numerous
2 dates. *Id.*, ¶¶ 7, 17; Dkt. No. 13, Wang Decl., ¶¶ 9, 13. Except for his initial intake, Petitioner
3 first interacted with IHSC on July 24, 2025,  Wang Supp. Decl., ¶ 7. Petitioner
4 has been diagnosed with ulcerative colitis and inflammatory bowel syndrome. Wang Decl., ¶¶ 8,
5 10. Petitioner underwent a full medical workup at the hospital and follow up with a
6 gastroenterologist on November 26, 2025. *Id.*, ¶¶ 8, 10. Dr. Wang opines that ulcerative colitis
7 and inflammatory bowel syndrome are not conditions which necessarily medically restrict travel.
8 *Id.*, ¶¶ 8, 10.

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

1 While at NWIPC, Petitioner has also been seen for chest pains. On October 20, 2025,
2 medical records indicate that Petitioner had “brief episode of chest pain, due to anxiety; no chest
3 pain at visit.” *Id.*, ¶ 12. Petitioner’s electrocardiogram (“EKG”) was normal. *Id.* On November
4 8, 2025, Petitioner had a cardiac Echo with normal findings. *Id.*

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

8 **III. LEGAL STANDARD**

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

18 **IV. ARGUMENT**

19 **A. This Court lacks jurisdiction to review Petitioner’s challenge to ICE’s denial of his 20 administrative stay of removal. (Pet., Count I)**

21 The INA bars this Court’s review of Plaintiff’s challenge to the denial of his
22 administrative request for a stay of removal. 8 U.S.C. § 1252(g). Congress has spoken clearly,
23 emphatically, and repeatedly, providing that “no court” has jurisdiction over “any cause or
24 claim” arising from the execution of removal orders, “notwithstanding any other provision of

1 law,” whether “statutory or nonstatutory,” including habeas, mandamus, or the All Writs Act. 8
2 U.S.C. § 1252(g).

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

9 Except as provided in this section and notwithstanding any other provision of law,
10 no court shall have jurisdiction to hear any cause or claim by or on behalf of any
11 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.

12 8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended Section 1252(g) to
13 clarify that the statute’s proscription against jurisdiction does in fact apply to habeas and
14 mandamus actions. *See REAL ID Act of 2005*, Pub. L. No. 109-13, 119 Stat. 231, 310-11
15 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, Section 1252(g), now
16 provides that:

17 Except as provided in this section and notwithstanding any other provision of law,
18 (*statutory or nonstatutory*), including section 2241 of Title 28, or any other habeas
19 corpus provision, and sections 1361 and 1651 of such title, no court shall have
20 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.

21 8 U.S.C. § 1252(g) (2017) (emphasis added).

22 In *AADC*, the Supreme Court held that Section 1252(g) precludes judicial review of three
23 discrete actions that DHS may take: the “‘decision or action’ to ‘commence proceedings,
24 *adjudicate cases, or execute removal orders.*” 525 U.S. at 482 (original emphasis). With a valid

1 order of removal, any request for this Court to enjoin Plaintiff's removal falls directly within one
2 of the discrete actions precluded from judicial review.

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

11 This squarely falls within ICE's decision to execute his removal order, which is
12 precluded from judicial review by 8 U.S.C. § 1252(g). *Fatty v. Nielsen*, No. 17-cv-1535, 2018
13 WL 3491278, at *2 (W.D. Wash. Jul. 20, 2018) ("Were Mr. Fatty challenging his removal or the
14 discretionary denial of his request for stay of removal, review of that challenge clearly would be
15 precluded by Section 1252(g)."). However, even if this Court had jurisdiction to review this
16 claim, it lacks merit. Petitioner had an opportunity to be heard when, through counsel, he
17 submitted his request, along with supporting evidence – medical records. Pet., Ex. A. Petitioner
18 cannot rely on inapposite case law concerning the right to be heard by a neutral decisionmaker
19 prior to redetention. Redetention is not at issue here; ICE's decision to execute Petitioner's
20 removal order is at issue. Petitioner cites to no legal support that a hearing by a neutral decision
21 maker is required in relation to an administrative stay of removal. In fact, the regulations
22 concerning this discretionary determination explicitly provide that a denial is not
23 administratively appealable. 8 C.F.R. § 241.6(b). Accordingly, this Court should deny
24

1 Petitioner's claim that his procedural due process rights were violated with respect to the denial
2 of his application for an administrative stay of removal.

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

5 Petitioner's claims concerning his medical care at the NWIPC challenge the conditions of
6 his confinement. This Court should not consider the conditions of confinement as part of a 28
7 U.S.C. § 2241 habeas corpus petition. *See Pinson v. Carvajal*, 69 F.4th 1059, 1069 (9th Cir.
8 2023), *cert. denied sub nom. Sands v. Bradley*, 144 S. Ct. 1382 (2024). The Court should thus
9 deny Petitioner's medical care claim for lack of jurisdiction.

10 "[T]he writ of habeas corpus is limited to attacks upon the legality or duration of
11 confinement." *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979). In *Crawford*, the Ninth
12 Circuit held that "release from confinement" was not the appropriate remedy to address the
13 petitioner's claims "alleg[ing] that the terms and conditions of [petitioner's] incarceration
14 constitute[d] cruel and unusual punishment" and "violated his due process rights." *Id.*, at 891-
15 92. Such a claim must be brought as a civil rights claim, *Dohner v. Seifert*, 5 F.3d 535 (9th Cir.
16 1993), that if proven, would be remedied by "a judicially mandated change in conditions and/or
17 an award of damages." *Crawford*, 599 F.2d at 892. The appropriate remedy is not a writ of
18 habeas corpus ordering the detainee's release.

19 The Ninth Circuit's decision in *Pinson v. Carvajal* solidified the rule that a habeas claim
20 is one challenging the fact of confinement, rather than the conditions of confinement. 69 F.4th at
21 1072-73. There, two inmates sought habeas relief, arguing that the conditions of their
22 incarceration during the COVID-19 pandemic violated the Eighth Amendment. *Id.*, at 1062.
23 The Ninth Circuit rejected claimant Sands' argument that only habeas relief could ameliorate the
24 harm inflicted on him by the government's ongoing failure to sufficiently treat his underlying

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

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

1 heartland of substantive *Bivens* claims”); *Estelle v. Gamble*, 429 U.S. 97, 105 (1976)
2 (“Regardless of how evidenced, deliberate indifference to a prisoner’s serious illness or injury
3 states a cause of action under § 1983.”)); *see Cutsinger v. Ducharme*, 944 F.2d 908 (9th Cir.
4 1991) (“A challenge to conditions of confinement should be presented in a section 1983 lawsuit
5 rather than in a habeas corpus petition.”) (citing *Crawford*. 599 F.2d at 891-92).

6 And though the Supreme Court has left open the question of whether there are
7 circumstances when a challenge to the conditions of confinement is properly brought in a habeas
8 petition, Petitioner’s claim ultimately “neither goes to the fact of [his] confinement nor would
9 require immediate release if successful,” so “it is outside the core of habeas.” *Pinson*, 69 F.4th at
10 1073; *see Ziglar v. Abbasi*, 582 U.S. 120, 144-45 (2017) (“[W]e leave to another day the
11 question of the propriety of using a writ of habeas corpus to obtain review of the conditions of
12 confinement, as distinct from the fact or length of confinement.”) (quoting *Bell v. Wolfish*, 441
13 U.S. 520, 526, n.6 (1979)); *see, e.g., Dinkins v. United States*, No. 22-56089, 2024 WL 1253789,
14 at *1 (9th Cir. Mar. 25, 2024) (unpub.) (applying *Pinson* and concluding that an incarcerated
15 petitioner cannot challenge the conditions of his confinement through a habeas petition filed
16 under 28 U.S.C. § 2241); *Grigsby v. Gutierrez*, No. 22-16734, 2024 WL 811024, at *1 (9th Cir.
17 Feb. 27, 2024) (unpub.) (same). Accordingly, this Court should decline to extend such
18 consideration to the claim in this case.

19 **C. Even if this Court were to consider Petitioner’s conditions of confinement claims,
20 Petitioner is receiving constitutionally adequate medical care, and his conditions of
21 confinement do not violate due process.**

22 Petitioner’s detention does not violate substantive due process as the medical care he has
23 received at the NWIPC is constitutionally adequate. He cannot establish a substantive due
24 process violation based on the government’s purported failure to provide the specific medical
care he requests by the treatment provider that he prefers outside of the NWIPC.

1 Dr. Wang's declarations establishes that Petitioner has received the necessary and
2 appropriate care that he required while at the NWIPC. IHSC has attended to his gastrointestinal
3 issues and initiated him on Inflammatory Bowel Syndrome treatment, Dicyclomine. *See* Wang
4 Decl., ¶¶ 7-10; 12, 15; Wang Supp. Decl., ¶¶ 10, 11, 12, 15,. IHSC referred Petitioner to a GI
5 specialist when he complained of ongoing diarrhea with intermittent bloody stool. Wang Decl.,
6 ¶ 12. Petitioner's appointment was scheduled for the specialist's first available appointment. *Id.*
7 In the interim, Petitioner was brought to the emergency room due to exacerbation of abdominal
8 pain and bloody stool in October with a follow up appointment a few days later. *Id.*, ¶¶ 12, 16,
9 18.

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

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

1 *Zadvydus v. Davis*, 533 U.S. 678, 690-91 (2001). Consistent with the requirements of due
2 process, Petitioner’s confinement is thus “reasonably related” to a legitimate government
3 interest. *Bell v. Wolfish*, 441 U.S. 535, 538-39 (1979).

4 Due process requires the government to assume some responsibility for civil detainees’
5 safety and well-being, such as “food, clothing, shelter, medical care, and reasonable safety.”
6 *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989). To demonstrate a
7 due process violation on a conditions-of-confinement claim, a petitioner must show: (1) the
8 defendant made an intentional decision with respect to the conditions under which the plaintiff
9 was confined; (2) those conditions put the plaintiff at substantial risk of suffering serious harm;
10 (3) the defendant did not take reasonable available measures to abate that risk, even though a
11 reasonable officer in the circumstances would have appreciated the high degree of risk involved
12 – making the consequences of the defendant’s conduct obvious; and (4) by not taking such
13 measure, the defendant caused the plaintiff’s injuries. *Castro v. Cty. of L.A.*, 833 F.3d 1060,
14 1071 (9th Cir. 2016) (en banc).

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

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

19 Finally, Petitioner cannot demonstrate that his medical care at NWIPC places him in
20 sufficiently imminent danger. “To satisfy the fourth element, a plaintiff need only prove a
21 ‘sufficiently imminent danger[],’ because a ‘remedy for unsafe conditions need not await a
22 tragic event.’” *Roman v. Wolf*, 977 F.3d 935, 943 (9th Cir. 2020) (quoting *Helling v. McKinney*,
23 509 U.S. 25, 33-34 (1993)). The Petition alleges that Petitioner is not receiving adequate
24 medical care at the NWIPC. But Petitioner continues to receive adequate health care, including

1 outside specialist appointments, while at NWIPC. Even if that were not true, Petitioner has not
2 demonstrated that he cannot receive adequate health care at any facility. Thus, the appropriate
3 remedy would be for ICE to provide Petitioner with appropriate medical care. Accordingly,
4 Petitioner's medical care does not violate his Fifth Amendment substantive due process right to
5 reasonable safety.

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

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

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

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

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

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

1 Court were to find that due process has been violated, immediate release is not an appropriate
2 form of relief. Petitioner has not clearly demonstrated that the law or facts – even if this Court
3 were to find a violation – clearly supports his immediate release.

4 **F. Petitioner has been medically cleared for removal.**

5 As described above, Section 1252(g) precludes this Court’s review of ICE’s decision to
6 execute his removal order. However, where a plaintiff’s claim “instead constitute[s] general
7 collateral challenges to unconstitutional practices and policies used by the agency,” Section
8 1252(g) will not bar jurisdiction. *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1118 (9th Cir. 2001)
9 (internal citations and quotation marks omitted). To the extent that this Court views Petitioner’s
10 request for a stay of removal as a collateral claim, Petitioner has not demonstrated that a stay is
11 appropriate.

12 Petitioner asks this Court to stay his removal until he is fit to travel. IHSC has cleared
13 him for travel. Like other noncitizens with medical conditions who are removed from the United
14 States, Petitioner will likely need additional medical care after his removal. However, he has not
15 shown that he medically unfit *to travel* to the Philippines. Wang Decl., ¶¶ 8, 9. Most of
16 Petitioner’s assertions involve the care that he has received at NWIPC and how he believes his
17 medical conditions have developed. His assertions do not support that he will be unable to fly to
18 the Philippines. Thus, this Court should deny Petitioner’s request to stay his removal.

19 **V. CONCLUSION**

20 For all of the foregoing reasons, this Court should deny the Petition.

21
22 //

23
24 //

1 DATED this 19th day of December, 2025.

2 Respectfully submitted,

3 CHARLES NEIL FLOYD
4 United States Attorney

5 s/ Michelle R. Lambert

6 MICHELLE R. LAMBERT, NYS #4666657

7 Assistant United States Attorney

8 United States Attorney's Office

9 Western District of Washington

10 1201 Pacific Avenue, Suite 700

11 Tacoma, Washington 98402

12 Phone: (206) 553-7970

13 Fax: (206) 553-4067

14 Email: michelle.lambert@usdoj.gov

15 *Attorneys for Federal Respondents*

16 I certify that this memorandum contains 5,133
17 words, in compliance with the Local Civil Rules.