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11
12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 Dagmar Jesus Diaz-Gonzalez,

15 Petitioner,

16 v.

17 John Mattos, NSDC Warden; Michael
18 Bernacke, Field Director, Salt Lake City
19 Field Office of ICE ERO; Todd Lyons, ICE
20 Acting Director; Kristi Noem DHS
21 Secretary; Pam Bondi, U.S. Attorney
22 General, et al.,

23 Respondents.

Case No. 2:25-cv-02622-JAD-BNW

**Reply in Support of § 2241
Amended Petition (ECF No. 9) and
Emergency Motion for Temporary
Restraining Order (ECF No. 17)**

INTRODUCTION

Petitioner Dagmar Diaz-Gonzalez raised five claims addressing his unconstitutional detention in his amended § 2241 petition:¹The continued detention of Mr. Diaz-Gonzalez violates his Fifth Amendment right to due process because ICE's denial of or inadequate medical care amounts to a punishment (Ground One); ICE's continued detention of Mr. Diaz-Gonzalez is in violation of governing ICE policy concerning the detention of chronically ill and/or disabled persons (Ground Two); ICE's continued detention of Mr. Diaz-Gonzalez is in violation of governing ICE policy concerning discretionary parole (Ground Three);² ICE's policy to remove noncitizens to a third country with no notice or opportunity to seek fear-based protection violates his Fifth Amendment right to due process and constitutes arbitrary and capricious agency action in violation of the Administrative Procedure Act, 5 U.S.C. § 706 (Ground Four); and Mr. Diaz-Gonzalez's detention in immigration custody pursuant to recent ICE policy regarding third country removal violates the Due Process Clause of the Fifth Amendment (Ground Five).

Petitioner Diaz-Gonzalez raised five issues of immediate irreparable harm in his Emergency Motion for Temporary Restraining Order:³ (1) lack of adequate medical care necessary to treat his two life-threatening chronic illnesses; (2) lack of mobility assistance and assistive care to address activities of daily living; (3) continued medical neglect and inconsistent medical care; (4) potential removal to a third country never considered by an IJ that cannot meet the medical and assistive care needs of Mr. Diaz-Gonzalez.

¹ ECF No. 9.

² Petitioner is hereby withdrawing Ground Three of his Amended § 2241 Petition.

³ ECF No. 17.

1 As explained fully in the Amended Petition and his Emergency Motion for
2 Temporary Restraining Order, Mr. Diaz-Gonzalez's detention violates his
3 constitutional right to due process; the Immigration and Nationality Act (INA), 8
4 U.S.C. §1231(a)(6); and the Administrative Procedures Act (APA), 5 U.S.C. §
5 706(2)(A). Furthermore, removal of Mr. Diaz-Gonzalez to a third country under
6 ICE's current policy would violate Mr. Diaz-Gonzalez due process rights, and the
7 APA.

8 In their Response, Respondents fail to even attempt a response to each
9 specific claim. Instead, they mostly focus on the issue of whether Mr. Diaz-Gonzalez
10 is subject to mandatory detention. Respondents address issues that are not
11 pertinent to Mr. Diaz-Gonzalez's petition. The issue at hand is not whether Mr.
12 Diaz-Gonzalez can be detained or whether ICE has the authority to detain him—the
13 issue is whether his continued detention violates his constitutional rights and has
14 become punitive in nature due to ICE's failure to provide adequate medical care and
15 appropriate accommodations.

16 Respondents highlight the delayed efforts of ICE and NSDC to address Mr.
17 Diaz-Gonzalez's medical conditions. Their response does little to assuage the
18 concerns outlined in Mr. Diaz-Gonzalez's petition and TRO motion. In fact, it proves
19 that ICE and NSDC have not, until very recently, addressed Mr. Diaz-Gonzalez's
20 chronic conditions despite having had custody of him for over three months. ICE's
21 continued detention of Mr. Diaz-Gonzalez necessarily carries with it the obligation
22 to provide medical care sufficient to manage his disabilities and serious chronic
23 conditions, including epilepsy and malignant multiple sclerosis. Respondents efforts
24 to blame Mr. Diaz-Gonzalez for his lack of care are not well taken.

25 Respondents do not address the issue of ICE acting contrary to its own
26 policies and directives regarding disabled and chronically ill persons. Respondents
27 do not address the issue of third country removal at all.

1 In sum, Respondents fail to present a persuasive response to any of Mr. Diaz-
2 Gonzalez's claims; he should be granted relief. This Court should order Mr. Diaz-
3 Gonzalez's immediate release. This Court should also order that Respondents must
4 provide Mr. Diaz-Gonzalez with adequate notice and an opportunity to challenge
5 any future removal to a third country.

6 ARGUMENT

7 **I. Mr. Diaz-Gonzalez's continued detention violates his Fifth**
8 **Amendment right to due process because the past and ongoing**
9 **failure to provide him with adequate medical care for his physical**
10 **disabilities and chronic illnesses, amounts to punishment.**

11 The Fifth Amendment guarantees detainees are not denied medical care and
12 are not subject to conditions that "amount to punishment." *Bell v. Wolfish*, 441 U.S.
13 520, 535 (1979). It is not disputed that Mr. Diaz-Gonzalez is diagnosed with
14 malignant, fulminate multiple sclerosis. It is also not disputed that Mr. Diaz-
15 Gonzalez has epilepsy and has had recurrent seizures while in ICE custody.
16 Respondents in their Response do not dispute that Mr. Diaz-Gonzalez has not
17 received medication and treatment for his M.S. in the last three months. In fact,
18 Respondents disclose that NSDC is not equipped with the equipment necessary to
19 treat Mr. Diaz-Gonzalez's M.S.

20 Due to NSDC's inability to treat Mr. Diaz-Gonzalez's chronic conditions, he
21 must "receive the treatment at a hospital in March."⁴ Notably, the medical records
22 submitted by Respondents show that the treatment was due in January.⁵ As alleged
23 and confirmed, ICE has not been providing Mr. Diaz-Gonzalez with the medications
24 and treatments necessary for his M.S. It is also clear that ICE is not able to
25 adequately care for Mr. Diaz-Gonzalez's chronic conditions at the NSDC facility.

26 ⁴ ECF No. 21.

27 ⁵ Exhibit G at 8.

1 Although an appointment is alleged to have been scheduled, it is not for another
2 month. This is unacceptable. He has not received treatment while detained in their
3 custody since November 2025. To wait another month for M.S. medication and
4 treatment because of ICE's inability to treat Mr. Diaz-Gonzalez makes abundantly
5 clear that his detention is in violation of the Fifth Amendment.

6 Respondents bring up Mr. Diaz-Gonzalez's criminal history and discuss their
7 authority to detain him.⁶ Respondents include multiple records regarding Mr. Diaz-
8 Gonzalez's Nevada criminal conviction.⁷ Yet, this has nothing to do with the claims
9 in Mr. Diaz-Gonzalez's petition. Mr. Diaz-Gonzalez's criminal history has nothing to
10 do with whether his detention is violative due to the acknowledged lack of medical
11 care. Whether ICE can detain Mr. Diaz-Gonzalez is not challenged here. If ICE
12 cannot adequately care for Mr. Diaz-Gonzalez, they must release him. To the extent
13 Respondents' rely on Mr. Diaz-Gonzalez's criminal history to justify his detention
14 even though they cannot provide adequate medical care for his debilitating
15 condition, that is not permissible. ICE detention is not supposed to be punitive, and
16 Mr. Diaz-Gonzalez has already served his criminal sentence..

17 Respondents accuse Mr. Diaz-Gonzalez of refusing his epilepsy medication.
18 Mr. Diaz-Gonzalez has not refused medication offered to him. He takes every
19 medication given to him. Mr. Diaz-Gonzalez has inadvertently missed some doses of
20 morning seizure medication because he did not wake up and get himself over to the
21 pill line in time which can be difficult due to his disability. Moreover, when looked
22 at in light of the entirety of the record of Mr. Diaz-Gonzalez's medication
23 administration provided by Respondents, those missed doses are anomalous and do
24 not show a pattern of refusing medication.

25
26 ⁶ ECF No. 21 at 2–11.

27 ⁷ ECF No. 21-2 ; ECF No. 21-3.

1 Respondents blame Mr. Diaz-Gonzalez for their own lack of medical care.
2 They blame Mr. Diaz-Gonzalez for failing to notify ICE of what care he needed or of
3 his condition. This is simply Respondents avoiding accountability by attributing
4 fault to the petitioner.

5 Respondents claim Mr. Diaz-Gonzalez did not disclose to ICE that he had
6 M.S., this is untrue. According to Mr. Diaz-Gonzalez he told them about his M.S.
7 when he told them about his seizures and his need for a wheelchair. Respondents
8 own filed exhibits refute this claim as well.

9 On a DHS Record of Deportable/Inadmissible Alien dated November 14,
10 2025, it states, "The subject does not claim good health."⁸ That same document,
11 dated November 14, 2025, states, "DIAZ-GONZALEZ claims to have MS, Seizures
12 and high blood pressure. DIAZ-GONZALEZ states that he takes nine different types
13 of medication for his medical problems. DIAZ-GONZALEZ is wheelchair bound."⁹
14 DHS/ICE absolutely knew that Mr. Diaz-Gonzalez had MS, they knew he took
15 multiple medications and from their own records, it was Mr. Diaz-Gonzalez who
16 notified them. Respondents seek to attribute fault to Mr. Diaz-Gonzalez; however,
17 their own records undermine that position. The submitted PSI also includes a
18 portion discussing Mr. Diaz-Gonzalez's two traumatic brain injuries, short-term
19 memory loss, and seizures.¹⁰

20 Respondents mention Mr. Diaz-Gonzalez's request to be transferred to
21 segregation. He was transferred to segregation for his own safety based on issues
22 regarding his previous conviction. Mr. Diaz-Gonzalez was notified by other
23 detainees that he was going to be assaulted or worse if he did not request to be
24

25 ⁸ ECF No. 21-2 at 2.

26 ⁹ ECF No. 21-2 at 4.

27 ¹⁰ ECF No. 21-2 at 20.

1 moved. His request to be moved to segregation was not of his own volition but
2 because of the threats that were being made against him. Here is another example
3 of how Mr. Diaz-Gonzalez's detention is not tenable. For his physical safety he must
4 be segregated, but in turn, this also increases the harm seizures could cause with no
5 one to alert personnel. It also limits his ability to seek assistance with ordinary
6 tasks such as eating or writing letters and grievances.

7 Most of the actions taken to address Mr. Diaz-Gonzalez's chronic medical
8 conditions have occurred in the last few weeks. This does not refute the need for
9 relief, but only shows that, but for this habeas petition, efforts likely would not have
10 been made. The progress notes submitted under seal listing the current medication
11 for his M.S. are dated February 2, 2026.¹¹ The medical Orders list nothing from
12 November 14, 2025 to February 3, 2026.¹² Additionally, it should be noted that the
13 order for Neurology and offsite infusion are dated for May 2, 2026 and May 5, 2026,
14 respectively.¹³ Nurse Bradley's declaration states that the first time she heard of
15 Mr. Diaz-Gonzalez's M.S. was the day of her declaration, February 9, 2026.
16 Although that may very well be true to her personally, ICE as an agency, was well
17 aware of Mr. Diaz-Gonzalez's M.S.

18 On January 22, 2026, petitioner requested a walker to try and exercise due to
19 his "Multiple sclerosis."¹⁴ On December 17, 2025, Progress Notes states, "data from
20 previous note: hx of MS dx in 2021 denies recent flares and uses a wheelchair to
21 ambulate."¹⁵ Respondents defense that they did not provide Mr. Diaz-Gonzalez with
22
23

24 ¹¹ Exhibit G at 8–12.

25 ¹² Exhibit G at 13.

26 ¹³ Exhibit G at 13.

27 ¹⁴ Exhibit G at 14.

¹⁵ Exhibit G at 15.

1 M.S. medication and treatment because they did not know, or worse because Mr.
2 Diaz-Gonzalez did not tell them, does not stand.

3 This Court, very recently, granted an order regarding the lack of adequate
4 medical care given to a detainee in the § 2241 habeas matter of *Sahin v. Radar*,
5 Case No. 2:26-cv-00134-RFB-MDC.¹⁶ In it, the Court found that ICE had violated
6 the APA and its own directives to provide medical care and use its discretion for
7 release, in addition to finding that the detainee's ongoing detention was arbitrary
8 and capricious.¹⁷ The Court also found that relief was warranted under the Fifth
9 Amendment because ICE had violated its duty to "provide conditions of reasonable
10 health and safety to people in its custody."¹⁸

11 In sum, Mr. Diaz-Gonzalez's civil detention has become punitive in nature, as
12 there is no other discernable reason that detention is warranted for an individual
13 with the advanced and debilitating conditions afflicting Mr. Diaz-Gonzalez. There
14 are other options, supervision under alternatives to detention that would still allow
15 Mr. Diaz-Gonzalez to receive the medical care he needs but ensure his presence at
16 the time of any future removal. Respondents fail to provide any information to rebut
17 that showing. As such, Mr. Diaz-Gonzalez must be immediately released.

18 **II. Respondents failed to state any defenses to Grounds Two, Four and**
19 **Five, therefore, relief should be granted as to each because they are**
20 **meritorious.**

21 Respondents failed to address the substance of Grounds Two, Four, and Five
22 of Mr. Diaz-Gonzalez's Amended § 2241 Petition.¹⁹ Accordingly, this Court should
23 grant relief on each of those claims because they are meritorious, as explained at

24 ¹⁶ This Order is sealed and will be filed under sealed.

25 ¹⁷ Exhibit 7. (filed under seal).

26 ¹⁸ Exhibit 7 at 19. (filed under seal).

27 ¹⁹ Petitioner is hereby withdrawing Ground Three of his Amended § 2241
Petition.

length in the Amended § 2241 Petition, and Respondents' have not provided any legal grounds that would support denying those claims.

CONCLUSION

Mr. Diaz-Gonzalez warrants relief on each claim in his Amended § 2241 Petition and relief is also warranted by the arguments provided in his Emergency TRO Motion. Mr. Diaz-Gonzalez must be released immediately under reasonable conditions of supervision, and he must be given adequate notice and an opportunity to contest any future attempt to remove him to a third country.

Dated February 17, 2026

Respectfully submitted,

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