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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

PEDRO PABLO EXPOSITO,

Petitioner,

vs.

KRISTI NOEM, et al.,

Respondents.

Case No. 25cv2399 RSH DEB

**RESPONSE TO EX PARTE  
APPLICATION TO EXPEDITE  
CONSIDERATION OF HABEAS  
PETITION**

This response is pursuant to the Court's September 19, 2025 Order. ECF No. 4. The Return to the habeas petition is otherwise due on September 29, 2025.

**ARGUMENT**

In his habeas petition, Petitioner does not contend that his custody is unlawful, so there is no habeas relief to grant. He appears to acknowledge that Immigration Judges (IJs) have no jurisdiction to conduct bond hearings for arriving aliens, and he does not dispute that he is an arriving alien. ECF No. 1 (Pet.), para. 32 ("his classification as an 'Arriving Alien' excludes him from Immigration Judge bond jurisdiction"). In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court held that the mandatory detention of respondents in removal proceedings is "constitutionally permissible" for the "limited period" necessary to complete removal proceedings. *Id.* at 526, 531. Although the petitioner in *Demore* was

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

3 Petitioner contends, nonetheless, that he is entitled to a bond hearing, either before  
4 an IJ or before this Court, to assess flight risk. Pet. at 6. There is no legal basis for his  
5 request for such relief, especially since his proceedings commenced only a few months  
6 ago, and he has alleged no delay that can be attributed to the Government.

7 The essence of the habeas petition and his instant application for expedited briefing  
8 is his contention that he should be released, because the medical clinic at the Otay Mesa  
9 Detention Center (OMDC) has not referred him to an ophthalmologist for treatment of his  
10 diabetic macular edema. *See* Petition, paras. 28, 34. Petitioner’s request for relief is outside  
11 the scope of available habeas relief. The Supreme Court has stated that “the writ of habeas  
12 corpus is limited to attacks upon the legality or duration of confinement.” *Preiser v.*  
13 *Rodriguez*, 411 U.S. 475, 484 (1973), *cited in Crawford v. Bell*, 599 F.2d 890, 891-92 (9th  
14 Cir. 1979). *See Nettles v. Grounds*, 830 F.3d 922, 933 (9th Cir. 2016) (en banc) (“prisoners  
15 may not challenge mere conditions of confinement in habeas corpus”).

16 Appropriate relief for Petitioner’s complaint about inadequate medical care would  
17 not be release from custody. *See Hill v. McDonough*, 547 U.S. 573, 579 (2006) (“[a]n  
18 inmate’s challenge to the circumstances of his confinement” must be brought through a  
19 civil rights action); *Nettles v. Grounds*, 830 F.3d 922, 935 (9th Cir. 2016) (holding that  
20 conditions claim that do not require release must be brought in a civil-rights action) (citing  
21 *Skinner v. Switzer*, 562 U.S. 521, 534 (2011)); *Shook v. Apker*, 472 F. App’x 702, 702-03  
22 (9th Cir. 2012) (affirming dismissal of inmate’s habeas petition challenging inadequate  
23 medical care); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (“Habeas corpus  
24 proceedings are the proper mechanism for a prisoner to challenge the “legality or duration”  
25 of confinement. A civil rights action, in contrast, is the proper method of challenging  
26 “conditions of ... confinement.”) (internal citation omitted); *see also Chasson v.*  
27 *Immigration & Customs Enforcement*, No. CV-17-5819-SVW (JPR), 2017 U.S. Dist.  
28 LEXIS 190792, at \*2 (C.D. Cal. Nov. 15, 2017) (“the principal purpose of a habeas corpus

1 writ is to provide a remedy for prisoners challenging the fact or duration of their  
2 confinement, not the conditions of their confinement.”); *Kafatia v. Gilkey*, No. CV 11-  
3 9090-CJC SP, 2012 WL 1987136, at \*5 (C.D. Cal. Apr. 25, 2012), *report and*  
4 *recommendation adopted*, No. CV 11-9090-CJC SP, 2012 WL 1986316 (C.D. Cal. May  
5 31, 2012) (“Because the fundamental nature of petitioners 2241 Petition is a challenge to  
6 the conditions of his confinement rather than to the legality of his confinement, it is not  
7 cognizable on habeas corpus review.”).

8 The undersigned has obtained Petitioner’s OMDC medical records as of September  
9 16, 2025, plus the medical records that Petitioner filed in connection with his removal  
10 proceedings. The OMDC medical records are being lodged under seal, and a timeline is set  
11 forth below. Meanwhile, the undersigned has made an inquiry to ICE about the status of  
12 Petitioner’s treatment at the OMDC medical clinic, which is operated by CoreCivic.

### 13 STATEMENT OF FACTS

14 Petitioner is a native and citizen of Cuba who immigrated to the United States in  
15 October 1991. Pet., para. 18.

16 In 2006, Petitioner was convicted of felony credit card fraud in violation of 18 U.S.C.  
17 § 1029(a)(1) and sentenced to three years of probation. Pet., para. 20. It appears that he  
18 could not be placed in removal proceedings at that time because, although his conviction  
19 rendered him inadmissible, it did not render him deportable. *See* 8 U.S.C. §  
20 1227(a)(2)(A)(i) (CIMT must have been committed within five years of admission); 8  
21 U.S.C. § 1227(a)(2)(A)(ii) (requires two CIMT convictions); 8 U.S.C. § 1227(a)(2)(A)(iii)  
22 and 8 U.S.C. § 1101(a)(43)(M)(i) (loss must exceed \$10,000).

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

25 Due to his conviction, Petitioner was placed in removal proceedings and charged  
26 with inadmissibility under 8 U.S.C. § 1182(a)(2)(A)(i)(I) (“a crime involving moral  
27 turpitude (other than a purely political offense) or an attempt or conspiracy to commit such  
28 a crime”) and is being mandatorily detained pursuant to 8 U.S.C. § 1226. *See also* 8 U.S.C.

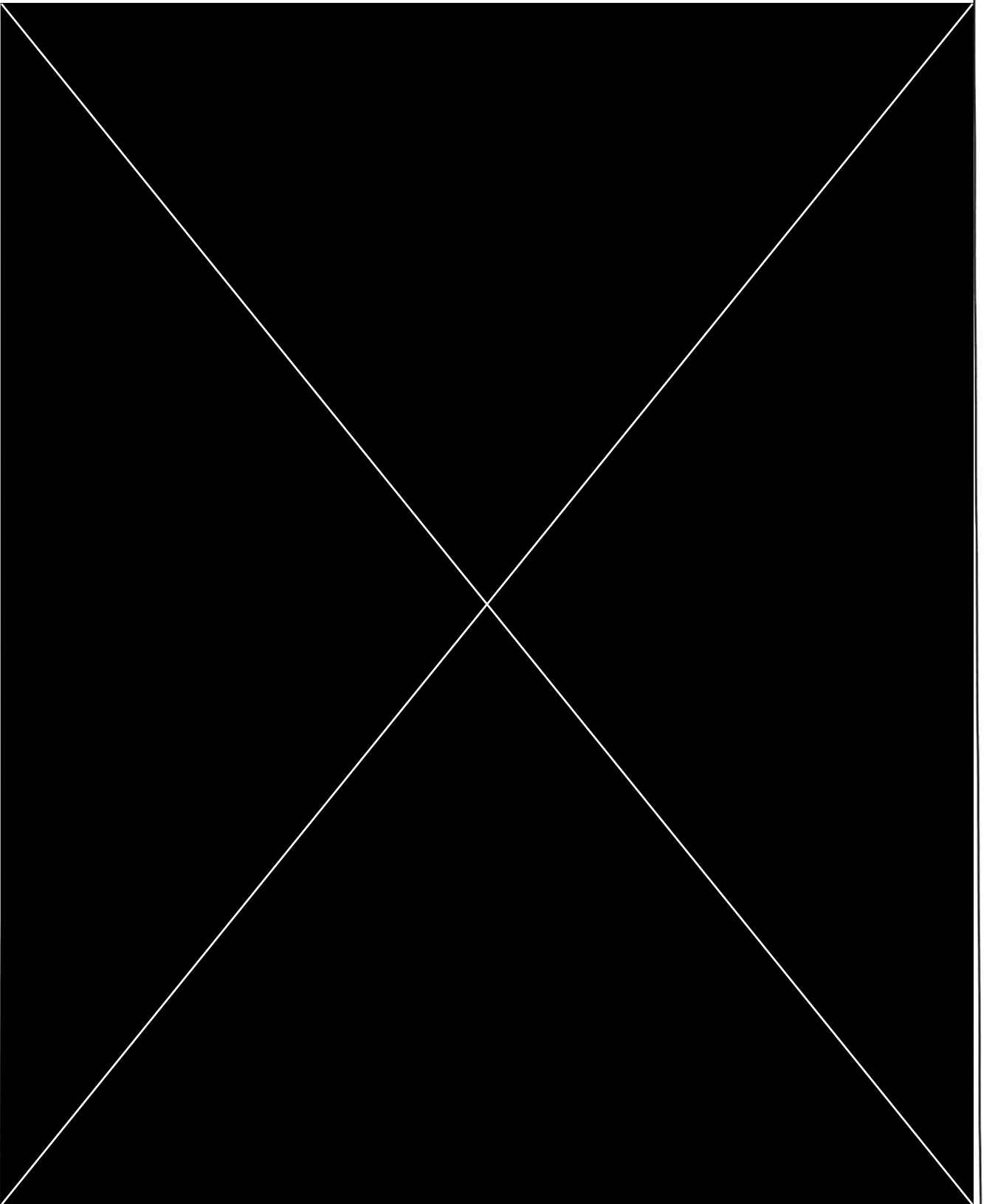
1 § 1101(a)(13)(C)(v) (LPR not an arriving alien unless “has committed an offense  
2 identified in section 1182(a)(2), unless since such offense the alien has been granted relief  
3 under section 1182(h) or 1229b(a).”). *See* Pet., para. 20.

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<sup>1</sup> *See* National Library of Medicine, *A Study to Investigate Faricimab Treatment Response in Treatment-Naïve, Underrepresented Patients With Diabetic Macular Edema (ELEVATUM)*, <https://clinicaltrials.gov/study/NCT05224102>

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

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

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

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

21 The undersigned has asked for an update from ICE.

22 For the reasons set forth above, Petitioner's ex parte application should be denied,  
23 and his habeas petition should be summarily denied.

24 DATED: September 23, 2025

ADAM GORDON  
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25  
26 s/ Samuel W. Bettwy  
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28 Attorneys for Respondents