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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

ANDRES FELIPE OME OSORIO,

Petitioner,

v.

SERGIO ALBARRAN, et al.,

Respondents.

CASE NO. 5:26-cv-08783-PCP

RESPONDENTS' OPPOSITION TO PRELIMINARY INJUNCTION

I. INTRODUCTION

Petitioner's criminal history, now properly submitted for the Court's consideration, establishes that he is subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(E). Even if not found to be subject to § 1226(c)(1)(E), Petitioner's criminal history nevertheless establishes under § 1226(a) that he is a danger to the community and would be found as such at a bond hearing before an immigration judge. Therefore, he should not have been ordered immediately released. His arrest by Respondents based on this criminal history is legally valid.

The Court ordered Petitioner released based on a claim that he was detained without medical care. However, it is well established that courts lack subject-matter jurisdiction in habeas to order petitioners released based on a claim of inadequate medical care. A habeas petition is not the proper vehicle to raise such a claim. Even on the merits of such a claim, however, Petitioner does not prevail. All detainees in the custody of Immigration and Customs Enforcement receive medical care. Petitioner lacked a basis to make a claim of inadequate care when his petition was filed mere hours after his detention. The detention of someone with a serious medical condition is not per se unconstitutional.

II. ARGUMENT

A. Petitioner Improvidently Obtained the Temporary Restraining Order

1. Petitioner Did Not Disclose Material Facts in an Ex Parte Filing Demonstrating that he is Subject to Mandatory Detention

Petitioner's ex-parte motion for a temporary restraining order failed to mention material facts of which he had knowledge. These material facts establish that Petitioner is subject to mandatory detention.

Petitioner was arrested on or about March 2, 2025, for felony robbery under California Penal Code § 211 with a gang enhancement. *See* Exhibit A. Under 8 U.S.C. § 1226(c)(1)(E), this arrest renders Petitioner subject to mandatory detention because § 211 is a theft offense. *See* Exhibit B (establishing Petitioner's inadmissibility); *see also Rodriguez Vazquez v. Bostock,* No. 25-6842, 2026 WL 2196424, at *6 (9th Cir. July 30, 2026) (acknowledging that § 1226(c)(1)(E) renders alien subject to mandatory detention). Additionally, this felony robbery arrest materially bears on Petitioner's repeated assertions that no changed circumstances justified his arrest by ICE and that he is not a danger to the community. *See, e.g.*, Dkt. No. 2-1 at 6 ("No such changed circumstances exist here: he has no criminal

convictions…" (emphasis added)). Though Petitioner's motion for a temporary restraining order states that he has no criminal *convictions*, Petitioner failed to disclose the fact of this arrest and the statutory provision under which he was arrested; as discussed below, these facts were revealed to the Court by counsel for Respondents in their Motion to Dissolve failed after the Court's TRO grant. Those facts are material because it is Petitioner's specific *arrest* under § 211 that renders him subject to mandatory detention. While it may be true that Petitioner lacks any criminal convictions, a conviction is not necessary to trigger the mandatory detention provision under § 1226(c)(1)(E). Petitioner failed to provide the Court with the necessary information to make an informed determination regarding the legality of Petitioner's detention, which is at the heart of Petitioner's claims in the habeas petition and his request for immediate release.

Petitioner claims that "This is a sealed and dismissed juvenile disposition." Dkt. No. 4 at 2. But the submitted criminal documents do not clearly support this assertion. There is a court document dated September 4, 2025, that orders dismissal and sealing but it is not clear to which charge this court order applies. Dkt. No. 4-2 at 1. Petitioner had an earlier criminal case stemming from a September 2024 incident that was apparently also dismissed and sealed. Dkt. No. 4 at 3. In fact, the case number "[redacted]" on the court order matches the case number for the September 2024 offense. Dkt. No. 4-2 at 5. It thus appears that the court order, at Dkt. No. 4-2 at 1, does not apply to the March 2025 arrest. Moreover, the report prepared by the probation officer notes that the March 2025, arrest resulted in "a sustained violation of probation" and that "gang conditions were imposed." Dkt. No. 4-2 at 2. The report also notes the possibility that "the investigation progresses and formal charges are filed." Dkt. No. 4-2 at 4. It thus appears that the March 2025 charges remain open. Accordingly, Petitioner remains subject to § 1226(c)(1)(E) in at least two ways: he has been "arrested for" a qualifying crime and, through his confession of the probation violation, has "admit[ed] having committed" a qualifying crime. *See* Dkt. No. 4-2 at 5 ("minor admits the VOP").

Petitioner also failed to inform this Court that on or about July 4, 2026, he was arrested for driving under the influence. *See* Exhibit A. This DUI arrest also materially bears on Petitioner's repeated assertions that no changed circumstances justified his arrest by ICE and that he is not a danger to the

community. *See* Dkt. No. 2-1 at 5-6. DUI is an inherently dangerous offense that supports a finding that Petitioner is a danger to the community. *See Birchfield v. North Dakota*, 579 U.S. 438, 443 (2016) ("Drunk drivers take a grisly toll on the Nation's roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year."); *Begay v. United States*, 553 U.S. 137, 141–42 (2008) (recognizing that "[d]runk driving is an extremely dangerous crime" which creates a serious potential risk of physical injury to others), *abrogated on other grounds, Johnson v. United States*, 576 U.S. 591 (2015); *see also Mitchell v. Wisconsin*, 588 U.S. 840, 861 (2019) (Sotomayor, J., dissenting) ("To be sure, drunk driving poses significant dangers."); *Matter of Choc-Tut*, 29 I&N Dec. 48 (BIA 2025) ("Driving under the influence represents a grave danger to the community and is a significant adverse consideration in bond proceedings."). The DUI certainly constitutes changed circumstances since his prior release. The Court was entitled to know this fact before considering Petitioner's arguments that he is not a danger to the community and that no changed circumstances exist.

After Petitioner had filed his TRO Motion but before the Court issued the TRO, counsel for Respondents reached out to counsel for Petitioner and alerted her to the material facts omitted from her filings. *See* Declaration of William Skewes-Cox at 2. A party seeking an ex parte TRO must disclose all material facts to the Court. *See* Cal. R. Prof. Conduct 3.3(d) (requiring disclosure of adverse material facts in ex parte proceeding); *see also* NDCA Civil Local Rule 11-4(a) (requiring compliance with the standards of professional conduct of California). Counsel for Respondents requested that counsel for Petitioner update her filings with the Court before the Court issued an order on the TRO. *See* Declaration of William Skewes-Cox at 2. Petitioner failed to do so and permitted this Court to rule on the TRO without knowledge of these material facts, compelling Respondents to have to seek to get an order reversed since the Court had been deprived of the opportunity to hear pertinent material facts before issuing its order. A District Court judge recently similarly found that a failure to disclose material facts in an ex-parte filing is a violation of court rules. *See C.I.M.O. v. Albarran*, 3:26-cv-08654-JD, Dkt. No. 9 (N.D. Cal. Aug. 21, 2026).

In sum, if Petitioner had disclosed these material facts in his ex-parte motion, as he is required to do under the local rules, it would have established that Petitioner is subject to mandatory detention under

§ 1226(c) or, in the alternative under § 1226(a), that he is clearly a danger to the community and would likely to be found as such by an immigration judge at a post-detention bond hearing.

2. Petitioner's Single Authority to Support his Medical Care Due Process Claim is not Supported by the Citation

The Court granted the TRO based on Petitioner's claim that "his detention without medical care violates the Due Process Clause of the Fifth Amendment." Dkt. No. 3 at 1. Petitioner's TRO cites to a single case in support of that claim: "Courts have consistently held that detaining an individual with a serious, unmanaged medical condition that creates an imminent risk of serious harm or death violates due process. *See Hoptowit v. Ray*, 682 F.2d 1237 (9th Cir. 1982)."[1] Dkt. No. 2-1 at 4. Petitioner misrepresents what that authority stands for. He provided no pin cite, but that case discussed, in small part, medical care at a penitentiary. *See id.* at 1253-54. Therein, the Ninth Circuit stated that "We therefore affirm the district court's holding that the medical services provided at the penitentiary *violate the Eighth Amendment*" – not due process. *Id.* at 1254 (emphasis added). The decision's only mention of due process is to note that "The complaint contained no allegation of violations of equal protection or due process on the basis of unequal treatment by race." *Id.* at 1252. But even that mention of "due process" is not in the section discussing medical care. The phrases "imminent risk," "unmanaged," "medical condition," "serious harm," and "death" do not appear in *Hoptowit*. Petitioner claims that "Courts have consistently held…" but yet did not cite a single example in the TRO of such a court holding.

Petitioner's TRO goes on to advance what appears to be a four-factor legal test to determine when the lack of medical care violates due process:

> Where an individual's condition requires specialized care that detention cannot provide, and the individual's medical device or treatment regimen is incompatible with the conditions of confinement, continued detention violates due process. The violation is heightened where, as here: (a) the government has been directly informed of the condition and its severity; (b) the government has no plan to manage the condition in custody; (c) the

[1] *Hoptowit*'s entry on WestLaw carries a red-flag warning "Overruling Recognized by *Melendres v. Skinner*, 9th Cir. (Ariz.), August 19, 2024." *Melendres* states that "*Hoptowit v. Ray*, 682 F.2d 1237, 1263 (9th Cir. 1982), *overruled in part on other grounds by Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995)." Petitioner's motion omits this subsequent history. *Bluebook*, Rule 10.7 (subsequent history).

> condition creates an imminent risk of death; and (d) the detaining agency has established no medical safety protocols.

Dkt. No. 2-1 at 4. Petitioner then claims that "Each factor is present" and alleges fact in support of fulfilling this test. *Id.* at 4-5. But again, Petitioner has provided no citation for this apparent legal test, and no such test appears in *Hoptowit*. Counsel for Respondents has attempted to locate the case from which Petitioner lifted this legal test but has been unable to find one. If Petitioner has legal authority for this test, Respondents request that he so provide to the Court and Respondents.

In sum, Petitioner cited to a single authority for the legal claim on which the TRO was granted, but that citation is factually not analogous, legally inaccurate and not supported by the citation.

B. The Court Lacks Subject-Matter Jurisdiction Over Petitioner's Claim

As regards Petitioner's conditions of confinement claim, specifically his claim that he is being detained "without medical care," such a claim does not sound in habeas and is not a basis for immediate release. The Ninth Circuit has explicitly recognized "the rule that a habeas claim is one challenging the fact of confinement, rather than the conditions of confinement." *Doe v. Garland*, 109 F.4th 1188, 1194 (9th Cir. 2024). This rule applies to claims in habeas regarding the lack of medical care. *See Moya v. Blanche,* No. 2:26-CV-00675-APG-DJA, 2026 WL 1481604, at *9 (D. Nev. May 27, 2026) (finding that the court lacked "jurisdiction over the portion of Moya's habeas petition that seeks release based on inadequate medical care under the Fifth Amendment."). As a result, "Petitioner's allegations that continued custody poses a substantial risk of serious harm, without more, do not state a habeas claim when the asserted constitutional violation is the alleged inadequacy of medical care and remedial measures short of release would address any such circumstance." *Garcia Boscan v. Becerra*, No. 1:26-CV-00651-KES-SAB-HC, 2026 WL 1146061, at *3 (E.D. Cal. Apr. 28, 2026), *report and recommendation adopted*, No. 1:26-CV-00651-KES-SAB (HC), 2026 WL 1865473 (E.D. Cal. June 28, 2026). "Release is the only available remedy—and thus a claim is at the core of habeas—if a successful petition demonstrates that the *detention itself* is without legal authorization." *Pinson v. Carvajal*, 69 F.4th 1059, 1070 (9th Cir. 2023) (emphasis in original). But as explained above, Petitioner's detention is legal because he is subject to mandatory detention under §1226(c). And even in the alternative that 8 U.S.C. § 1226(a) applies, Petitioner's criminal history demonstrates that he is a danger who would not

prevail at a bond hearing. Thus, this Court lacks subject-matter jurisdiction to order release based on a conditions of confinement claim made in a habeas petition.

C. Respondents Provide Medical Care to All Detainees in their Custody

As regards the merits of his claim, all detainees in ICE custody receive medical care. *See* "ICE Health Service Corps," https://www.ice.gov/detain/ice-health-service-corps. A preliminary injunction regarding prompt medical care at the ICE detention facility in the Northern District already requires that all detainees be provided "a basic medical screening by a medical professional." *Pablo Sequen v. Albarran*, 810 F. Supp. 3d 1084, 1134 (N.D. Cal. 2025). Petitioner has not alleged that no such screening occurred. A serious medical condition, on its own, does not establish constitutionally deficient medical care under the due process clause. *See Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018) (stating the four-part test to establish a due process claim for inadequate medical care). And even if medical care is found to be deficient, the appropriate remedy is an order to provide the required medical care; not immediate release. Moreover, the issue was not yet ripe; Petitioner had been detained for only a few hours when his petition was filed.

III. CONCLUSION

In light of the foregoing, the Court should dissolve the temporary restraining order and dismiss the petition for lack of subject-matter jurisdiction.

DATED: August 28, 2026

Respectfully submitted,

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/s/ William Skewes-Cox
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