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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Enrique Paz-Vasquez

Petitioner,

v.

Todd Blanche,
Attorney General of the United States,

Markwayne Mullin, Secretary,
Department of Homeland Security,

Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement;

Christopher D. McGregor, Acting Field Office Director of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Phoenix,

Eric Rokowsky, Warden
Eloy Detention Center

Respondents.

No.

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
HEARING REQUESTED

INTRODUCTION

Petitioner Enrique Paz-Vasquez, through his undersigned counsel, pursuant to Rule 65 of the Federal Rules of Civil Procedure, moves this Court to issue a Temporary Restraining Order (TRO) requiring Respondents to either: (1) immediately release Petitioner from civil immigration detention; or (2) provide Petitioner with a constitutionally adequate bond hearing within seven days at which the Government bears the burden of justifying continued detention by clear and convincing evidence. This motion is made in support of Petitioner's pending Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241.

Petitioner has been detained in civil immigration custody for over six months without receiving a constitutionally adequate hearing to determine whether his continued detention is justified. Petitioner faces an indeterminate period of continued confinement while his removal case remains on appeal before the Board of Immigration Appeals ("BIA"). Petitioner's prolonged detention without meaningful review violates both substantive and procedural due process under the Fifth Amendment.

Immediate relief is necessary to prevent irreparable harm to Petitioner's liberty interests while this Court adjudicates his habeas petition. Without a TRO, Petitioner will continue to suffer unconstitutional deprivation of liberty during the pendency of these proceedings.

FACTUAL BACKGROUND

1. Paz-Vasquez is a 34-year-old native and citizen of Mexico. He is married to Monica Jacome, a Lawful Permanent Resident. Paz-Vasquez has five U.S. citizen children.

2. Paz-Vasquez first entered the United States without inspection around July 2006.

3. He illegally re-entered the U.S. without inspection at an unknown date after his 2010 removal.

4. On October 21, 2025, Paz-Vasquez was arrested by the Phoenix Police Department

for shoplifting over $1,000 worth of merchandise from a Home Depot.

5. The Maricopa County Superior Court ordered his supervised release on his own recognizance for the shoplifting charge.

6. On or about October 22, 2025, Paz-Vasquez was taken into immigration custody by ICE officials pursuant to an ICE hold.

7. On November 4, 2025, DHS initiated new removal proceedings, charging Paz-Vasquez with being present in the U.S. without admission or parole under INA § 212(a)(6)(A)(i).

8. On December 2, 2025, Paz-Vasquez filed an EOIR 42-B Application for Cancellation of Removal and Adjustment of Status for Non-Permanent Residents with the immigration court.

9. In January 2026, an IJ found Paz-Vasquez satisfied the high burden of "exceptional and extremely and unusual hardship" for relief under 8 USC § 1229b, Cancellation of Removal for Non-Permanent Residents. However, despite having met his evidentiary burden, the IJ denied Paz-Vega 42-B relief as a matter of discretion. However, the IJ granted Paz-Vasquez post-conclusion voluntary departure as a matter of discretion.

10. On January 26, 2026, Paz-Vasquez filed an appeal of the IJ's discretionary denial of his 42-B application with the BIA. The appeal is currently pending.

11. As of the filing of this motion, Petitioner has been detained for over six months without receiving a constitutionally adequate hearing before a neutral decisionmaker at which the Government bears the burden of justifying his continued detention by clear and convincing evidence.

12. Petitioner filed his Petition for Writ of Habeas Corpus on April 22, 2026, challenging his prolonged detention as violating substantive and procedural due process under the Fifth Amendment.

ARGUMENT

I. Petitioner Is Likely to Succeed on the Merits of his Habeas Petition.

Pursuant to *Winter v. Nat. Resources Defense Council,* a plaintiff seeking a temporary restraining order must establish that: (1) he is likely to succeed on the merits of his claims; (2) he

is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. 555 U.S. 7, 20 (2008); *Matsumoto v. Labrador*, 122 F.4th 787, 804 (9th Cir.2024).

The Ninth Circuit has adopted a "sliding scale variant of the *Winter* test" called the "serious questions test." *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024) (citing *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)). Under the "serious questions test," a plaintiff is entitled to a temporary restraining order "if it demonstrates (1) serious questions going to the merits, (2) a likelihood of irreparable injury, (3) a balance of hardships that tips sharply towards the plaintiff, and (4) the injunction is in the public interest." *Id.* As to the first element, the "serious questions" standard is "a lesser showing than likelihood of success on the merits." *Id.* (quoting *Alliance for the Wild R*ockies, 632 F.3d at 1217). In addition, when the party opposing injunctive relief is a government entity, the third and fourth factors combine. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

A. Petitioner's Detention Violates Substantive Due Process.

Freedom from government custody, detention, or other forms of physical restraint lies at the core of the liberty protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678 (2001). Substantive due process prohibits civil detention that is punitive in purpose or effect, including civil detention that is excessively prolonged in relation to its purpose. *Id.* at 690. The purpose of civil immigration detention is to effectuate expeditious removal and safeguard the community. *Id.* at 706. Immigration detention that does not bear some reasonable relation to that purpose in nature or duration amounts to punishment and violates the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Zapata v. Kaiser*, 801 F. Supp. 3d 919 (2025); *Hermanowski v. Farquharson*, 39 F. Supp. 2d 148 (1999).

Petitioner has been detained for six months, which constitutes prolonged detention under established precedent recognizing six months as a substantial period of confinement. Petitioner's detention has become excessive in duration relative to the government's interest in continuing to detain him. Petitioner is not detained pursuant to a final order of removal. Petitioner has substantial defenses to removal pending before the Board of Immigration Appeals. There is no defined

timeline for adjudication of Petitioner's pending appeal, meaning his detention is likely to continue for an indeterminate period absent intervention by this Court.

The duration of Petitioner's detention is excessive in relation to the government's detention purpose, particularly given the uncertainty regarding the timeline for resolution of his removal proceedings. Petitioner's continued detention has become punitive and unreasonably prolonged, exceeding the constitutional limits on civil immigration detention. Accordingly, Petitioner is likely to succeed in demonstrating that his continued detention violates substantive due process.

B. Petitioner's Detention Violates Procedural Due Process.

To guard against arbitrary detention and guarantee the right to liberty, due process requires adequate procedural protections that ensure the government's asserted justification for a noncitizen's physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Zhuzhiashvili v. Carter*, 802 F. Supp. 3d 1337 (2025). Where the government detains a noncitizen for a prolonged period while the noncitizen pursues a substantial defense to removal, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. 510, 513 (2003) (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); *cf. Jackson*, 406 U.S. at 733 (detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249–50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685–86 (1978) (observing, in Eighth Amendment context, that "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

Petitioner's detention without review by a neutral arbiter at which the Government bears the burden of justifying detention by clear and convincing evidence violates procedural due process. The bond hearing Petitioner received before an Immigration Judge does not satisfy constitutional requirements because the burden of proof was placed on Petitioner rather than on the Government, and the standard of proof was preponderance of the evidence rather than clear and convincing evidence. Petitioner is entitled to a bond hearing at which the Government must establish by clear and convincing evidence that his continued detention is justified by flight risk or danger to the community. Accordingly, Petitioner is likely to succeed in demonstrating that his continued detention violates procedural due process.

II. Petitioner Will Suffer Irreparable Harm Absent a Temporary Restraining Order

First, the "deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres*, 695 F.3d at 1002 (quoting *Elrod*, 427 U.S. at 373); *Delkash v. Noem,* 2025 WL 2683988 at *6 (C.D. Cal. Aug. 28, 2025). Freedom from imprisonment lies at the heart of the liberty that the Due Process Clause protects. Petitioner is suffering ongoing deprivation of his fundamental liberty interest through continued civil immigration detention. Each day that Petitioner remains in detention without constitutionally adequate process constitutes irreparable harm that cannot be remedied through monetary damages or other relief after the fact.

The conditions of Petitioner's detention in a prison-like facility impose significant hardship and deprivation. Petitioner's continued detention prevents him from being with his United States citizen daughter and other family members. Petitioner's continued detention impairs his ability to effectively pursue his pending appeal. Without immediate relief, Petitioner will continue to suffer irreparable harm to his liberty interests during the pendency of this habeas proceeding.

III. The Balance of Equities and the Public Interest Weigh Strongly in Petitioner's Favor

The balance of the equities and the public interest strongly favor granting Petitioner's requested relief. These two "merge where, as is the case here, the government is the opposing party." *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (citing *Nken v. Holder*, 556 U.S.

418, 435 (2009)). At its core, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002 (internal citation omitted). In cases implicating removal, "there is a public interest in preventing [non-citizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken*, 556 U.S. at 436; *see also Vaskanyan*, 2025 WL 2014208, at *8 (holding and quoting same). In response, the Government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983).

The Ninth Circuit and courts in this district have repeatedly recognized that the irreparable harm suffered by anyone in ICE detention may include "subpar medical and psychiatric care, …economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017); *see, e.g. Sun v. Santacruz*, 5:25-cv-02198-JLS-JC, 2025 WL 2730235, at *7 (C.D. Cal. Aug. 26, 2025) (finding detention would cause irreparable harm as it prevents petitioner from "support[ing] her family financially and emotionally"); *Pinchi v. Noem*, 2025 WL 2084921, at *6 (N.D. Cal. July 24, 2025) ("The likely consequences of [petitioner's] detention—which would prevent her from providing for her family and sever her from existing medical care—are grave and irreparable.").

Petitioner has been in the United States for over a decade and has established significant ties to this country, including a Lawful Permanent spouse and five United States citizen children. The Government's interest in detaining Petitioner is based primarily on a recent arrest for shoplifting.

In addition, it is undisputed that "the public has a strong interest in upholding procedural protections against unlawful detention." *Rodriguez-Flores v. Semaia et al.*, 2:25-cv-6900-JGB-JC, 2025 WL 2684181, at *5 (C.D. Cal. Aug. 14, 2025) (citation modified). Although the public has an interest in the execution of immigration laws, this interest is outweighed by the strong public interest of ensuring due process rights are vindicated, particularly in the context of immigration

detention, and the minimal burden on Respondents in releasing Petitioner from detention. *See Ponce v. Lyons,* No. 2:25-cv-10493-AB-PVC, 2025 LX 542821, at *13 (C.D. Cal. Nov. 7, 2025) (finding Respondents' interest in enforcement of immigration laws "not so compelling as to permit Respondents to violate Petitioner's statutory rights").

A final consideration is the "general public's interest in the efficient allocation of the government's fiscal resources." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). The Ninth Circuit has recognized the "staggering" costs of immigration detention and courts have considered these costs in concluding that the public interest weighs in favor of a noncitizen's release from detention. *Jorge M. F. v. Wilkinson,* No. 21-CV-01434, 2021 U.S. Dist. LEXIS 40823, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021). A "TRO would impose little to no prejudice on the Government, which is free at any time to execute the removal order" by removing Petitioner to Mexico once a removal order becomes final. *J.R. v. Bostock*, 796 F. Supp. 3d 684, 691 (W.D. Wash. 2025).

In sum, —the balance of equities and the public interest—weigh strongly in Petitioner's favor. Granting the requested relief will vindicate important constitutional principles and ensure that Petitioner receives the process to which he is entitled under the Fifth Amendment. Accordingly, the public interest favors granting the requested temporary restraining order

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant this Motion for Temporary Restraining Order and:

1. Issue a Temporary Restraining Order requiring Respondents to immediately release Petitioner from civil immigration detention under appropriate conditions; or, alternatively;
2. Issue a Temporary Restraining Order requiring Respondents to provide Petitioner with a bond hearing before a neutral decisionmaker within seven days at which the Government

bears the burden of justifying Petitioner's continued detention by clear and convincing evidence

3. Enjoin Respondents from transferring Petitioner outside of this judicial district without his consent pending resolution of this matter
4. Grant such other and further relief as the Court deems just and proper

Dated: April 22, 2026.

Respectfully submitted,

/s/ Luciana Galarza

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CERTIFICATE OF SERVICE

On the 22nd day of April, 2026, I, Luciana Galarza, the undersigned, served via certified U.S. Mail, return receipt requested, the foregoing, on each person/entity listed below addressed as follows:

Todd Blanche
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I declare under penalty of perjury that the foregoing is true and correct. Executed on April, 22, 2026, in Phoenix, Arizona.

s/ Luciana Galarza