TIMOTHY COURCHAINE
United States Attorney
District of Arizona
TRACY RILEY
Special Assistant United States Attorney
Arizona State Bar No. 027318
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
Fax: (602) 514-7760
Email: tracy.riley@usdoj.gov
Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Enrique Paz-Vasquez,

Petitioner,

v.

Todd Blanche, *et al.*

Respondents.

No. CV-26-02821-PHX-SHD (JFM)

RESPONSE PETITION FOR WRIT OF HABEAS CORPUS

Respondents, by and through undersigned counsel, hereby respond to the Petition for Writ of Habeas Corpus (Doc. 1) and the Court's Order (Doc. 5).

I. FACTUAL BACKGROUND

Petitioner entered the United States in or around July 2006 and was later removed in 2010. Doc. 1 at ¶ 12-13. He re-entered sometime after his removal without inspection, admission or parole. *Id.* at ¶ 13. Shortly after entry, United States Border Patrol encountered Petitioner. *Id.* Petitioner was arrested by the Phoenix Police Department on October 21, 2025, for felony shoplifting. *Id.* at ¶ 14. On October 22, 2025, Petitioner was taken into immigration custody after release from local custody. *Id.* at ¶ 16. On November 4, 2025, Petitioner was placed into removal proceedings with the issuance of a Notice to Appear charging him as inadmissible under Immigration and Nationality Act §

212(a)(6)(A)(i). *Id.* at ¶ 17. On January 6, 2026, an Immigration Judge denied Petitioner's application for relief but granted post-conclusion voluntary departure. *Id.* at ¶ 19. Petitioner timely appealed and that appeal remains pending. *Id.* at ¶ 20.

On March 6, 2026, Petitioner received a bond hearing before the Immigration Judge. Ex. A, Order of the Immigration Judge. The Immigration Judge held that Petitioner was subject to mandatory detention under 8 U.S.C. § 1226(c) due to his criminal history and the Laken Riley Act. *Id.* In the alternative, the Immigration Judge held that he would deny bond on the grounds of flight risk. *Id.*

II. THE HABEAS PETITION SHOULD BE DENIED

A. Petitioner is required to appeal the bond decision to the BIA.

The Ninth Circuit has held that a Petitioner should exhaust administrative remedies by appealing a bond order to the BIA prior to filing a habeas petition. *Leonardo v. Crawford,* 646 F.3d 1157, 1160 (9th Cir. 2011)(citing *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003)("a petitioner 'must exhaust administrative remedies before raising… constitutional claims in a habeas petition when those claims are reviewable by the BIA on appeal.")). If there is no exhaustion, "a district court should ordinarily either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo*, 646 F.3d at 1160. Where the BIA is empowered to reverse or remand a finding of an IJ, the proper avenue is to appeal first at the BIA. *Sharma v. Archembrault*, 26-C513-BAS-SBC, 2026 WL 381611, at *2 (S.D. Cal. Feb. 11, 2026). Bypassing this already established procedure encourages detainees who disagree with their bond outcome to directly appeal these determinations from the IJ to the federal district court. *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013 at *2; See also *Fernandes v. Warden, Otay Mesa Det. Ctr.*, 2026 U.S. Dist. LEXIS 81800 at *6 (S.D. Cal Apr. 14, 2026).

Petitioner should be required to appeal to the BIA prior to filing with the District Court as the BIA are subject-matter experts in this field. Petitioner should not be allowed to bypass the well-established procedures of the BIA, and therefore this petition should be

dismissed.

B. Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c).

Petitioner argues that his detention is unlawful under 8 U.S.C. § 1226(c). However, Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c) and the Laken Riley Act, Pub. L. no. 119-1, 139 Stat. 3 (2025) ("LRA") due to his criminal history. Section 1226 is generally the authority that directs the arrest and detention of aliens pending their removal. *Jennings v. Rodriguez,* 583 U.S. 281, 288 (2018). While Section 1226(a) states the general rules, Section 1226(c) "carves out a statutory category of aliens who may *not* be released under § 1226(a). *Id.* at 289. On January 29, 2025, President Donald Trump signed the LRA into law which amended those categories of aliens subject to mandatory detention and codified those changes within the INA. As relevant here, the LRA specifically expanded 8 U.S.C. § 1226(c) by adding 8 U.S.C. § 1226(c)(1)(E) requiring the Secretary of Homeland Security to detain any alien who:

> (i) is inadmissible under paragraph (6)(A) or (7) of Section 212(a); and
>
> (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, [or] larceny…

The LRA further indicates that the crimes listed "have the meanings given such terms in the jurisdiction in which the acts occurred." 8 U.S.C. § 1226(c)(2).

In this case, it is undisputed that the Petitioner was arrested for felony shoplifting on October 21, 2025. Doc. 1 at ¶ 14. Petitioner was charged with INA §§ 212(a)(6)(A)(i) and has been arrested for Petit Theft, which is a crime that falls squarely under the definition of aliens subject to mandatory detention under the LRA. The *Jennings* Court found that Section 1226(c) authorized continued detention under its authority pending a decision on removal of the alien unless the Attorney General decided certain, specific conditions were met, and that such detention was constitutional. 583 U.S. 281 at 303, 305-306. Therefore, Petitioner's habeas should be dismissed.

C. Petitioner's claim is not a "case or controversy".

Petitioner has already been granted a bond hearing with individualized findings. Indeed, the immigration judge in this case made an individualized finding that Petitioner is not entitled to bond because of the danger he presents to the community. Ex. A. Because the only relief Petitioner is entitled to, a bond hearing, has taken place, there is no further relief this Court can order. This Petition is moot.

Federal courts have jurisdiction only over "Cases and Controversies." *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 395 (1980) (internal quotation marks omitted). "The case or controversy requirement of Article III admonishes federal courts to avoid premature adjudication and to abstain from entangling themselves in abstract disagreements." *Cardenas-Leal v. Lucero*, 2017 U.S. Dist. LEXIS 168043 at *7–8 (D. Ariz. Sept. 7, 2017) (quoting *U.S. West, Inc. v. Tristani*, 182 F.3d 1202, 1208 (10th Cir. 1999)). To present a court with a case or controversy, a party "must demonstrate an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Bishop Paiute Tribe v. Inyo Cty.*, 863 F.3d 1144, 1153 (9th Cir. 2017) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)) (internal quotation marks omitted). When a habeas petitioner has already received the "primary relief sought in his habeas corpus petition," the petitioner's case no longer presents a justiciable case or controversy. *Munoz v. Rowland*, 104 F.3d 1096, 1097–98 (9th Cir. 1997). Specifically, an immigration detainee who seeks a bond hearing and has already been granted one no longer has a justiciable claim. *Flores-Torres v. Mukasey*, 548 F.3d 708, 710 & n. 3 (9th Cir. 2008); *Mendez-Galdamez v. Gurule*, 2018 U.S. Dist. LEXIS 223610 at *3–4 (D. Ariz. May 22, 2018).

At any stage of the proceeding a case becomes moot when "it no longer present[s] a case or controversy under Article III, § 2 of the Constitution." *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). The test for mootness is whether the court can give a party any effective relief if it decides the matter on the merits in their favor. *Reimers v. Oregon*, 863 F.2d 630, 632 (9th Cir. 1989). A case loses its quality as a live controversy and becomes moot when

the court can no longer issue effective relief. *Feldman v. Bomar*, 518 F.3d 637, 642-43 (9th Cir. 2008); *see also Picrin-Peron v. Rison*, 930 F.2d 773, 775 (9th Cir. 1991) ("if it appears that [the court is] without power to grant the relief requested, then the case is moot.").

This case puts at issue under what conditions an alien who enters the United States without inspection is to be detained based on his criminal history. Either the alien is subject to mandatory detention without bond under 8 U.S.C. § 1226(c), or they are subject to detention under 8 U.S.C. § 1226(a), which explicitly permits release on bond. However, under both positions, it is indisputable that an alien, at a minimum, *may* be detained and receive a bond hearing. 8 U.S.C. § 1226(a) (stating that an alien "may be arrested and detained pending a decision on whether the alien is to be removed"). Although Petitioner requests release as an alternative, the underlying issue is actually the result of the bond hearing.

However, Petitioner has already received a bond hearing. On March 6, 2026, an immigration judge denied Petitioner's Bond Redetermination Request. Ex. A. The immigration judge denied bond based on Section 1226(c), but the immigration judge also found in the alternative that Petitioner would not be granted release on bond under Section 1226(a) based on an individualized finding that he is a flight risk. *Id.* In other words, Petitioner has already received the individualized determination that he seeks from the Court in this action, and the Court should therefore dismiss the Petition as moot.

D. Petitioner challenges the finding of flight risk, which is unreviewable.

Although Petitioner's argument is couched in language regarding due process and prolonged detention, the ultimate argument is that he disagrees with the outcome of the bond hearing. Petitioner argues that mandatory detention under § 1226(c) is prolonged and unconstitutional based on the denial of bond. However, Petitioner disagrees with the findings by the Immigration Judge and is attempting to have the decision overturned.

An immigration judge's discretionary bond determination is not reviewable in federal court. *See* 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set

aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole. Petitioner argues that the burden of proof in any further bond hearing be on the government.

To the extent that an alien establishes that his detention under § 1226 has become prolonged in violation of the Due Process Clause due to articulable deficiencies in his individual bond proceedings (*i.e.*, through an as-applied challenge to his detention under INA § 236(a)), the Ninth Circuit has suggested that those procedural deficiencies are best remedied "through means short of major changes to the burden of proof". *Id.*, at 1214, citing *Miranda v. Garland*, 34 F.4th 338, 361 (4th Cir. 2022). An alien's objection to the outcome of a bond hearing does not establish that the procedures governing the proceeding at which bond was denied violated due process. *Rodriguez Diaz*, 53 F.4th at 1189, 1213, quoting *Ching v. Mayorkas*, 725 F.3d 1149, 1156 (9th Cir. 2013) ("It is process that the procedural due process right protects, not the outcome."). In asking the District Court to review the IJ bond order and compel a second bond hearing at which the Government must bear the burden of proof (ostensibly because he disagreed with the outcome of the first court-ordered proceeding), an alien "comes close to asking [the District Court] to directly review the IJ's bond decision, a task Congress has expressly forbidden [federal courts] from undertaking." *Rodriguez Diaz*, 53 F.4th at 1212-13, quoting *Borbot v. Warden*, 906 F.3d 274, 279 (3rd Cir. 2018).

Petitioner does not identify an error in the bond redetermination process other than his disagreement at the outcome and that the burden should not have been on him. However, these arguments are foreclosed on by regulation and case law and therefore should be denied.

For the foregoing reasons, Respondents respectfully request that this Court deny the Petition for Habeas Corpus (Doc. 1).

RESPECTFULLY SUBMITTED this 21st day of May, 2026.

TIMOTHY COURCHAINE
United States Attorney
District of Arizona

s/ Tracy Riley
TRACY RILEY
Special Assistant United States Attorney
Attorneys for the United States