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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Enrique Paz-Vasquez

Petitioner,

v.

Todd Blanche, et al.

Respondents.

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

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, by and through undersigned counsel, hereby replies to Respondent's Response to Petition For Writ of Habeas Corpus (Doc. 9). For the reasons set forth below, this Court should grant the Petition and order the government to promptly provide Petitioner with a constitutionally adequate bond hearing.

ARGUMENT

I. THRESHOLD JURISDCTIONAL ISSUES DO NOT BAR RELIEF

A. Exhaustion of Administrative Remedies Is Not Jurisdictional and Is Excused Here

Respondents' exhaustion argument fails. When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Administrative exhaustion may be waived when "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies

would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

Paz-Vasquez's constitutional challenge to prolonged detention under the mandatory detention scheme is precisely the type of claim for which exhaustion is futile and therefore excused. The Board of Immigration Appeals ("Board") cannot invalidate the Laken Riley Act, Pub. L. no. 119-1, 139 Stat. 3 (2025) ("LRA") or provide the core constitutional remedy Paz-Vasquez seeks, namely, a constitutionally adequate hearing with proper procedural safeguards and an appropriate allocation of burdens. The Board's authority is limited to reviewing the Immigration Judge's application of existing law; it cannot declare a federal statute unconstitutional or provide relief that requires judicial intervention. Moreover, where it is very likely what the BIA's result will be, the exhaustion requirement is excused. *Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021).

Requiring Paz-Vasquez to exhaust administrative remedies would prolong the alleged constitutional violation—ongoing detention without adequate constitutional process. The liberty interest at stake demands immediate judicial review. Paz-Vasquez has been detained for approximately seven months with no end in sight, and the pending Board appeal on the cancellation issue has no set timeline. Requiring an additional administrative appeal of the bond denial would further delay judicial review of whether that detention violates the Constitution.

The cases Respondents cite concern routine bond order review where the Board can provide meaningful relief by reconsidering discretionary factors or correcting legal errors in applying existing statutory standards. This case is fundamentally different: Paz-Vasquez challenges the constitutionality of the detention scheme itself, and the adequacy of the process afforded, not merely the Immigration Judge's application of discretionary factors within an otherwise valid framework.

B. Paz-Vasquez's Habeas Petition Is Not Moot

Respondents' mootness argument fails because Paz-Vasquez remains in custody and the Court can grant effective relief. 28 U.S.C. § 2241. Paz-Vasquez was in custody when this petition was filed and remains in custody. The fact that Paz-Vasquez received a bond hearing on March 6,

2026, does not render the petition moot.

A case becomes moot only when the court is no longer in a position to grant effective relief because the dispute has been resolved or the claim has become stale. *Feldman v. Bomar*, 518 F.3d 637, (9th Cir. 2008). Here, the dispute is not resolved. Paz-Vasquez seeks release or, in the alternative, a constitutionally adequate hearing with proper procedural safeguards-including a meaningful opportunity for release and appropriate allocation of burdens and standards of proof. The March 6 hearing did not provide this relief. The Immigration Judge applied mandatory detention based on an arrest or charge for felony shoplifting without affording Paz-Vasquez the constitutional protections he seeks.

A prior hearing does not moot a claim that continued detention is unconstitutional. The Court retains the power to order Paz-Vasquez's release or to remand for a hearing that comports with constitutional requirements. This is precisely the type of effective relief that prevents mootness in habeas cases. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998).

C. Section 1226(e) Does Not Strip Habeas Jurisdiction Over Constitutional Claims

8 U.S.C. § 1226(e) does not bar this petition. That provision states that the Attorney General's discretionary judgment regarding detention or release shall not be subject to review. However, Paz-Vasquez is not asking this Court to reweigh discretionary factors or to set aside a discretionary bond denial. Rather, Paz-Vasquez challenges the legality and constitutionality of continued detention under the mandatory detention scheme and the adequacy of the process afforded. Section 1226(e) contains no explicit provision barring habeas review of constitutional questions. Paz-Vasquez is not challenging a discretionary judgment by the Attorney General but rather attacking the statutory framework allowing detention without bail and the constitutional adequacy of the process provided.

Moreover, habeas review is not limited to evaluating the lawfulness of detention when first imposed but is also available to challenge whether, at some point, ongoing detention has become unlawful. Executive detention orders, which occur without the procedural protections required in courts of law, call for the most searching review. Section 1226(e) does not eliminate this core habeas function.

II. PAZ-VASQUEZ'S CONTINUED DETENTION VIOLATES PROCEDURAL DUE PROCESS, WARRANTING REVIEW BY A NEUTRAL ARBITER WHERE DHS MUST PRESENT CLEAR AND CONVINCING EVIDENCE JUSTIFYING HIS CONTINUED DETENTION.

A. Due Process Protects Liberty of All Persons and Limits Civil Detention

The Fifth Amendment Due Process Clause protects the liberty interests of all persons within the United States, including noncitizens facing removal. *Zadvydas v. Davis*, 533 U.S. 678 (2001). Civil detention must remain reasonably related in nature and duration to its nonpunitive purpose. As detention lengthens beyond reasonable bounds, the liberty interest strengthens and the government must demonstrate increasingly compelling justification. *Id.* At some point, continued civil confinement becomes unconstitutional regardless of the statutory authorization for its initiation. *United States v. Torres*, 995 F.3d 695, 710 (9th Cir. 2021).

The Supreme Court has recognized that even where Congress possesses broad authority over immigration matters, that power remains subject to important constitutional limitations. *Zadvydas v. Davis*, 533 U.S. 678 (2001). Specifically, indefinite or permanent confinement raises constitutional concerns. *See Singh v. Holder*, 638 F.3d 1196, 1207 (9th Cir. 2011) (citing *Zadvydas*). Even where prolonged detention is permissible, "due process requires 'adequate procedural protections' to ensure that the government's asserted justification for physical confinement 'outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 1203. The distinction is critical: temporary detention pending removal serves a legitimate civil purpose, but prolonged detention that has become an alternative to removal crosses the constitutional line into punishment.

The constitutional principle is clear: due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). When civil detention becomes excessively prolonged relative to its purpose, it violates substantive due process. Detention that is mandatory and categorical rather than individualized and calibrated to actual risk raises heightened constitutional concerns. *Jones v. Blanas*, 393 F.3d 918, 936 (9th Cir. 2004). When the government

detains based on a categorical rule without regard to individualized circumstances, the detention is more likely to become excessive and punitive in effect.

B. Paz-Vasquez's Detention Has Become Excessive and Punitive

Paz-Vasquez has been detained for seven months, from October 22, 2025, through May 21, 2026. This duration alone triggers heightened scrutiny. *Diaz v. Garland*, 53 F.4th 1189, 1199 (9th Cir. 2022). The Ninth Circuit has recognized that detention becomes prolonged after six months, significantly increasing the individual's liberty interest. *Id.*at 690.

Paz-Vasquez's Board appeal is pending with no defined end date. The removal case involves a discretionary denial of cancellation of removal, and the appeal process offers no predictable timeline. This absence of a foreseeable endpoint is precisely the circumstance that renders detention unconstitutional. Unlike detention pending a removal hearing that will occur within weeks or months, Paz-Vasquez faces indefinite confinement while appellate proceedings continue without defined conclusion.

The Immigration Judge's mandatory detention finding rests on Paz-Vasquez's arrest and charge for felony shoplifting. Critically, this is not a conviction. Paz-Vasquez has not been adjudicated guilty of any crime. The constitutional problem is acute: the government seeks to confine Paz-Vasquez for an extended period based on unproven allegations. This is fundamentally different from detention of a noncitizen convicted of a specified crime, where the conviction itself establishes the factual predicate for detention.

The state court's decision to release Paz-Vasquez on his own recognizance on the shoplifting charge is a real-world indicator that less restrictive measures can adequately address concerns about appearance and public safety. If the state court determined that Paz-Vasquez poses no unmanageable risk when released on his own recognizance, the government's assertion that only incarceration can ensure his appearance at removal proceedings is undermined.

Paz-Vasquez has strong family ties that weigh heavily against the necessity of detention. He has a lawful permanent resident spouse and five United States citizen children. These ties to the community provide substantial assurance of appearance and undermine any claim that only incarceration can serve the government's interests. The categorical nature of mandatory detention

fails to account for these individualized circumstances that render detention excessive.

Mandatory detention is categorical and prison-like. It does not permit individualized assessment of whether the particular noncitizen poses a danger or flight risk. When detention is not calibrated to individualized risk but instead imposed categorically, and when that detention extends for months without foreseeable endpoint, the detention becomes punitive in effect rather than civil in purpose.

C. *Demore v. Kim* Does Not Authorize Prolonged Detention Based on Charges

Respondents rely on *Demore v. Kim*, 538 U.S. 510 (2003) to defend mandatory Petitioner is subject to mandatory detention. But that case is distinguishable on multiple grounds. In *Demore*, the Supreme Court upheld mandatory detention during removal proceedings for a limited class of deportable aliens, including those convicted of aggravated felonies. *Id. Demore* does not support mandatory detention of people arrested in the United States based solely on unproven accusations. Prior criminal process resulting in a finding or admission of guilt was a core premise of *Demore's* reasoning. *See* 538 U.S. at 513 (petitioner did "not dispute the validity of his prior convictions, which were obtained following the full procedural protections our criminal justice system offers.").

Demore emphasized that the mandatory detention period lasts a month and a half in the vast majority of cases and about five months in the minority of cases in which the alien chooses to appeal. Paz-Vasquez's detention has already exceeded the outer bound of the *Demore* framework. Moreover, *Demore* involved detention of an alien convicted of a specified crime; here, Paz-Vasquez faces detention based on an arrest and charge, *not* a conviction. The constitutional distinction is significant: a conviction establishes guilt; an arrest and charge do not. Additionally, *Demore* contemplated detention during removal proceedings that would conclude within a defined timeframe. Paz-Vasquez's Board appeal has no defined endpoint, rendering the detention indefinite in practical effect.

The Supreme Court in *Demore* distinguished cases addressing detention that did not serve its purported immigration purpose because removal was no longer practically attainable. Here, Paz-Vasquez's removal case involves a pending discretionary appeal with no foreseeable resolution. His detention increasingly resembles the situation where detention does not serve its

immigration purpose because the endpoint is indefinite and removal is not reasonably foreseeable.

The LRA disregards these important constitutional limitations applicable to immigration detention. Specifically, the LRA purports to move noncitizens who meet certain inadmissibility criteria (essentially, undocumented people) from Section 1226(a) to the mandatory detention category of Section 1226(c) based solely on the fact that the person "is charged with" or "is arrested for" certain crimes, including theft, larceny, and misdemeanor shoplifting. See 8 U.S.C. § 1226(c)(1)(E) (new LRA mandatory detention grounds).

There is no requirement that the charge be adjudicated in any court or that the charge results in a conviction. *Id.* Nor is there any express exception for arrests that did not result in charges, or for charges that were dismissed or otherwise favorably disposed, or even for charges that were tried and resulted in a finding of not guilty. *Id.* Unlike those subjected to mandatory detention under the preexisting 1226(c), people in mandatory detention under the new "arrested" or "charged" provisions of the LRA will never receive any due process anywhere—no criminal proceeding to adjudicate guilt, and no immigration bond hearing to find flight risk or dangerousness. *Id.* Instead, their detention is based purely on the existence of an unproven accusation. *Id.*

D. Jennings Does Not Address Constitutional Limits on Detention Duration

Respondents cite *Jennigs v. Rodriguez* as authority for mandatory detention under the Laken Riley Act. 583 U.S. 281 (2018). However, Jennings resolved a question of statutory interpretation regarding the scope of Section 1226(c). It did not address, and does not answer, the as applied substantive due process question presented here: whether prolonged detention of this noncitizen, based on an arrest and charge rather than a conviction, with no defined endpoint due to a pending appeal, violates due process.

Statutory authorization for detention does not immunize that detention from constitutional scrutiny. *Zadvydas v. Davis*, 533 U.S. 678 (2001). The fact that Congress has authorized detention does not mean that detention can be prolonged indefinitely without constitutional limit. *Jennings* does not hold that indefinite or prolonged detention without constitutional limits is permissible. It addresses only the statutory scope of mandatory detention authority, not the constitutional boundaries on how long that detention may continue.

E. The March 6 Hearing Did Not Provide Constitutionally Adequate Process

First, the mandatory detention framework eliminated meaningful judicial review. The Immigration Judge's primary rationale rested on mandatory detention under Section 1226(c) as amended by the LRA. Under this framework, the Immigration Judge treated detention as non-discretionary based on the alleged offense. This approach fundamentally undermines the individualized assessment that due process demands.

When an Immigration Judge proceeds on the assumption that detention is mandatory, the hearing does not function as a meaningful check on continued confinement. The detainee cannot meaningfully contest the factual predicate for release because the legal framework forecloses release as a possibility. When an Immigration Judge approaches a hearing with the predetermined conclusion that detention is mandatory, the detainee's opportunity to be heard is illusory. The hearing becomes a formality rather than a genuine adjudication.

Second, the hearing lacked proper burden allocation. Constitutional due process requires that once detention becomes prolonged, the government must justify its continuation. The Ninth Circuit has held that the government must establish flight risk or danger by clear and convincing evidence to justify continued detention. *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

Respondents may argue that the Immigration Judge's alternative finding on flight risk provides an independent basis for detention and thus cures any defect in the mandatory detention analysis. This argument fails. The alternative findings rationale was not developed with the procedural rigor that constitutional due process demands for prolonged detention. The Immigration Judge did not explicitly state that the government had met its burden by clear and convincing evidence on the flight risk issue. The hearing record does not reflect that the Immigration Judge applied the heightened standard appropriate for prolonged detention or that the government bore the burden of justification.

F. Due Process Protects Against Arbitrary Detention, Not Merely Unfavorable Outcomes

Respondents contend that Paz-Vasquez merely challenges an unfavorable result and that process, once provided, cannot be revisited. This conflates the provision of some process with the provision of adequate process. Congressional authority over immigration is subject to important

constitutional limitations, including the requirement that detention procedures be constitutionally permissible. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Paz-Vasquez does not challenge the outcome of the March 6 hearing simply because it was unfavorable. Rather, Paz-Vasquez challenges the adequacy of the process itself. The hearing did not place the burden on the government to justify continued detention, did not require the government to meet an elevated evidentiary standard, did not afford a genuine opportunity for release based on individualized assessment, and did not ensure that a neutral decisionmaker with authority to order release conducted the review. A hearing that fails to provide these protections does not satisfy constitutional requirements, regardless of whether some hearing occurred.

CONCLUSION

For the foregoing reasons, Petitioner Enrique Paz-Vasquez respectfully requests that this Court grant his Petition for Writ of Habeas Corpus.

RESPECTFULLY SUBMITTED this 1st day of June, 2026.

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