UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Enrique Paz-Vasquez, Petitioner -vs- Todd Blanche, et al., Respondents.	CV-26-2821-PHX-SHD (JFM) **Report & Recommendation on Petition for Writ of Habeas Corpus**

I. MATTER UNDER CONSIDERATION

Petitioner has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 (Doc. 1). The Petitioner's Petition is now ripe for consideration. Accordingly, the undersigned makes the following proposed findings of fact, report, and recommendation pursuant to Rule 8(b), Rules Governing Section 2254 Cases, Rule 72(b), Federal Rules of Civil Procedure, 28 U.S.C. § 636(b) and Rule 72.2(a)(2), Local Rules of Civil Procedure.

II. RELEVANT FACTUAL & PROCEDURAL BACKGROUND

Immigration History - The pertinent factual background and procedural history is largely undisputed. Petitioner is a native and citizen of Mexico who last entered the United States without inspection sometime after his 2010 removal resulting from a 2006 uninspected entry.[1] Petitioner has since resided in the United States with his wife and five U.S. citizen children. On October 21, 2025 he was arrested for shoplifting, and was released the next day into the custody of Immigrations and Customs Enforcement (ICE)

[1] Respondents describe Petitioner's arrest in October 2025 as being "shortly after entry." (Response at 1.) However, Respondents cite only the Petition to support this contention, and the Petition does not suggest the interval was short. The undersigned assumes arguendo in Petitioner's favor, that the interval was substantial enough that Petitioner must be deemed to have been residing in the interior of the United States.

officials.

Removal Proceedings and Detention - Petitioner was placed in removal proceedings and on December 2, 2025 he filed an application for Cancellation of Removal and Adjustment of Status. His application was denied and he was ordered removed but granted voluntary departure. On January 26, 2026 Petitioner filed an appeal with the Board of Immigration Appeals (BIA), which appeal remains pending.

Petitioner sought release on bond, which was denied on March 6, 2026 on the basis that he was mandatorily detained due to his criminal history, and alternatively because he was a flight risk.

Petition - On April 22, 2026 Petitioner commenced this habeas proceeding by filing his Petition (Doc. 1) which alleges his continued detention is a denial of substantive due process due to its "punitive nature and length." Petitioner argues that the Laken Riley Act (LRA), adopting 8 U.S.C. § 1226(c)(1)(E), as applied to him is unconstitutional because it mandates his detention based solely on having been charged with a crime. Petitioner argues his detention is also a denial of procedural due process because the mandatory detention under the LRA is imposed without any showing of the need for detention by the Government. Petitioner seeks release or a new bond hearing with the Government bearing the burden of justifying his continued detention.

Answer – On May 21, 2026, Respondents filed their Response (Doc. 9) arguing: (1) Petitioner failed to exhaust his administrative remedies by appealing the IJ's detention decision to the BIA; (2) Petitioner's detention is mandatory under the statute; (3) Petitioner's claim is moot because he had a detention hearing which included an individualized determination that he is a flight risk; and (5) the flight risk determination is made unreviewable under 8 U.S.C. § 1226(e).

Reply – On June 1, 2026, Petitioner replied (Doc. 10) arguing: (1) exhaustion would be futile given the mandatory nature of his detention under the LRA; (2) his claim is not moot because the immigration judge applied mandatory detention; (3) § 1226(e) does not strip jurisdiction over constitutional claims; (4) his detention is unconstitutional

because it has become prolonged and punitive; (5) the record shows he is not a flight risk; (6) unproven criminal charges do not justify detention; (7) any finding of flight risk was insufficient because there was no explicit finding on the burden of proof on flight risk.

III. APPLICABLE LAW

A. MOOTNESS

"Article III of the Constitution limits federal 'Judicial Power,' that is, federal-court jurisdiction, to 'Cases' and 'Controversies.'" *U.S. Parole Commission v. Geraghty,* 445 U.S. 388, 395 (1980). This limitation restricts the jurisdiction of the federal courts to cases where there is a possible judicial resolution. *Id.* A moot action is not subject to a judicial resolution.

A moot action or claim is one in which the parties lack a legally cognizable interest in the outcome. The test for mootness is whether the court can give a party any effective relief in the event that it decides the matter on the merits in their favor. "That is, whether the court can 'undo' the effects of the alleged wrongdoing." *Reimers v. Oregon*, 863 F.2d 630, 632 (9th Cir. 1989).

In particular, a claim or case loses its quality as a live controversy and becomes moot when petitioner has already received the relief he has requested. *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 to a bond hearing. *Flores-Torres v. Mukasey*, 548 F.3d 708, 710 & n. 3 (9th Cir. 2008).

B. EXHAUSTION

Ordinarily, an immigration habeas petitioner is required to exhaust available administrative remedies before pursuing a claim on habeas, as a matter of judicial prudence. *Castro-Cortez v. I.N.S.*, 239 F.3d 1037 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 36 and n. 5 (2006).

An exception to the exhaustion requirement has been carved out for constitutional challenges, because the BIA has no jurisdiction to adjudicate constitutional challenges to

the immigration statutes. Thus petitioners may raise such claims for the first time in the courts. *Rashtabadi v. I.N.S.*, 23 F.3d 1562, 1567 (9th Cir. 1994). However, if the claim is merely an allegation of procedural error which is correctable by the BIA, couched in constitutional terms (e.g. a denial of due process), then exhaustion would be required. *See Rashtabadi*, 23 F.3d at 1567.

This is part of the larger principle that "exhaustion of administrative remedies is not required where exhaustion would have been futile." *Leorna v. U.S. Dep't of State*, 105 F.3d 548, 552 (9th Cir. 1997). This can apply "where the agency's position on the question at issue "appears already set," and it is "very likely" what the result of recourse to administrative remedies would be." *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 747 (9th Cir. 1991).

IV. APPLICATION OF LAW TO FACTS

At the outset, the Court must determine whether it reads the Petition as effectively challenging the flight risk determination, or as solely challenging the imposition of mandatory detention.

To the extent Petitioner challenges only the mandatory detention requirement, the case is moot because Petitioner received an individualized detention determination, which justified his continued detention based on flight risk.

To the extent the Court reads the Petition as also challenging the flight risk determination, then Petitioner has failed to exhaust his administrative remedies on that claim by appealing that IJ's flight risk decision to the BIA.

Petitioner's Petition asserts that his detention is founded solely upon mandatory detention under § 1226(e) (the LRA). (Petition at 1, ¶¶ 21, 25, 29.) Indeed, nowhere in the Petition does Petitioner acknowledge that a flight risk determination was made. Petitioner's substantive due process arguments proceed on the basis that his mandatory detention has not been individually justified and thus is unconstitutionally punitive. His procedural due process is founded upon the same contention, *i.e.*, that he was not afforded

an individualized determination on the justifications for his detention.

To be sure, in his Reply, Petitioner attempts to pivot to avoid the mootness argument by asserting, for the first time, that the flight risk determination (as opposed to the mandatory detention determination) was procedurally defective. (Reply at 2-3.)

Ordinarily, the Court might rely on the principle that claims raised for the first time in a Reply are not properly raised. "The district court need not consider arguments raised for the first time in a reply brief." *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). This is usually based in part on the lack of opportunity for the Respondent to be heard on the new claims. But here, Respondents have raised the flight risk determination issues in their Response. *See Koerner v. Grigas*, 328 F.3d 1039, 1049 (9th Cir. 2003) (exceptions where raised in responding brief or no prejudice).

Accordingly, the Court treats the challenge to the flight risk determination as properly before the Court. But having read that as a basis for Petitioner's claims then the Court must conclude that Petitioner has not properly exhausted his administrative remedies. Petitioner provides no reason to conclude that a challenge to the flight risk determination (including the applicable burden of proof, and who bore the burden[2]) could not properly be raised to the BIA.

Moreover, Petitioner fails to show that raising the matter to the BIA would have been futile. It is true that the BIA might again also rely on mandatory detention under § 1226(e). But Petitioner proffers nothing to suggest that would preclude meaningful review by the BIA on the flight risk determination. Further, Petitioner proffers nothing to suggest that the BIA would refuse to consider the challenge, based *solely* on § 1226(e). If that were the case, then the operative agency decision would be the BIA's removing the flight risk determination from the equation.

Under these circumstances, the prudential purposes of administrative exhaustion

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[2] *Cf. Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1212 (9th Cir. 2022) (suggesting in case addressing detention under 8 U.S.C. § 1226(a), that burden of proof on "future dangerousness or flight risk" might properly be placed on the alien in immigration proceedings).

are served by providing the BIA the first bite at the apple of deciding the propriety of the IJ's flight risk determination. That the IJ bothered to go the second step in making a flight risk determination suggests that, at least at present, the Government is taking a belt-and-suspenders approach to detention questions. Requiring exhaustion of administrative remedies on the suspenders (the individualized determination) may avoid needless judicial intervention in such determinations, and avoid deciding constitutional questions that could otherwise be avoided.

To the extent that exhaustion of Petitioner's constitutional challenge to § 1226(e) is unnecessary, that claim is moot because Petitioner received an individualized release determination.[3]

V. RECOMMENDATION

IT IS THEREFORE RECOMMENDED Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) be **DISMISSED WITHOUT PREJUDICE** for failure to exhaust administrative remedies on his challenge to the sufficiency of his individualized release determination, and as moot on his challenge to the lack of such a determination.

VI. EFFECT OF RECOMMENDATION

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment.

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[3] Ordinarily, the undersigned might as a matter of expediency, proceed to the merits of Petitioner's claims as an alternative basis for disposing of the Petition. But here, the central issue appears to be the sufficiency of the IJ's flight risk determination. Because that determination was not acknowledged in the Petition, and was first raised in the Response, no real record has been developed to allow this Court to evaluate the burden of proof applied. Indeed, the Court has only the IJ's single line determination, and Petitioner's one page of reply that appears based solely on that determination with no other supporting factual allegations. (Reply at 8-9.) The undersigned is not convinced that the IJ's decision was required to explicitly lay out the burdens of proof applied, leaving it necessary to develop a record on what burdens were applied. *See supra,* n. 2 (discussing *Rodriguez Diaz* and burdens of proof). Thus, if the Court is inclined to reject the recommendations herein, the undersigned would suggest the matter be again referred to develop the arguments and record on the IJ's determination, and to prepare a second Report & Recommendation.

However, pursuant to Rule 72(b), Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the Court. *See also* Rule 8(b), Rules Governing Section 2254 Proceedings. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any findings or recommendations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the issues, *see United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(en banc), and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the recommendation of the Magistrate Judge, *Robbins v. Carey*, 481 F.3d 1143, 1146-47 (9th Cir. 2007).

In addition, the parties are cautioned Local Civil Rule 7.2(e)(3) provides that "[u]nless otherwise permitted by the Court, an objection to a Report and Recommendation issued by a Magistrate Judge shall not exceed ten (10) pages."

Dated: June 9, 2026

James F. Metcalf
United States Magistrate Judge

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