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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PEDRO PABLO EXPOSITO

Petitioner

v.

Kristi NOEM, Secretary, U.S. Department of
Homeland Security;

Todd LYONS, Acting Director, U.S.

Immigration and Customs Enforcement;

Gregory J. ARCHAMBEAULT, Field Office

Director, San Diego Field Office, U.S.

Immigration and Customs Enforcement.

Christopher LAROSE, Senior Warden, Otay

Mesa Detention Center;

Sirce OWEN, Acting Director of the Executive

Office for Immigration Review (EOIR),

U.S. Department of Justice.

Pamela BONDI, Attorney General, U.S.

Department of Justice.

Respondents

Case No.: 25-cv-2399-RSH-DEB

Hon. Robert S. Huie, District Judge

**SUPPLEMENTAL BRIEF IN
SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner Pedro Pablo Exposito respectfully submits this supplemental brief in support of his petition for a writ of habeas corpus under 28 U.S.C. § 2241 (ECF No. 1). On September 24, 2025, the Court granted Petitioner's ex parte application to expedite (ECF No. 3), noting the need for prompt resolution and additional legal analysis beyond *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Mr. Exposito, a lawful permanent resident of nearly three decades, has been detained by Immigration and Customs Enforcement ("ICE") since May 27, 2025. He suffers from progressive and worsening loss of eyesight that requires timely medical intervention to prevent permanent harm. Despite this serious medical vulnerability—and despite a pending parole request submitted by immigration counsel that has received no response—ICE continues to hold him without individualized justification.

On September 23, 2025, Respondents filed their opposition (ECF No. 7). In that filing, they argued that Petitioner is inadmissible under the Immigration and Nationality Act. In the related removal proceedings, however, DHS has expressly acknowledged that Petitioner remains eligible to seek a standalone waiver of inadmissibility under INA § 212(h). That acknowledgment confirms that statutory relief remains viable, that his removal is not reasonably foreseeable, and that detention therefore serves no legitimate governmental purpose.

Respondents attempt to recast this habeas petition as a challenge to conditions of confinement, invoking *Nettles v. Grounds*, 830 F.3d 922 (9th Cir. 2016) (en banc). This mischaracterizes the nature of Petitioner's claim. Petitioner does not allege that Otay Mesa conditions are constitutionally deficient. Rather, Petitioner challenges the legality of his continued confinement itself—given his documented and worsening medical condition, DHS's failure to act on his parole request, and the Government's own concession that statutory relief

1 remains available. See *Zadvydas*, 533 U.S. at 690 (holding that immigration detention is
2 permissible only as long as reasonably necessary to bring about that alien’s removal); *Demore v.*
3 *Kim*, 538 U.S. 510, 527 (2003) (upholding brief mandatory detention during removal
4 proceedings as serving the government’s interest in securing removal).

5
6 The constitutional question presented is therefore straightforward: whether a medically
7 fragile lawful permanent resident may be subjected to prolonged civil confinement when
8 removal is not reasonably foreseeable, where statutory relief remains available, and because
9 DHS has failed to exercise even the most basic discretionary authority to consider parole. Such
10 confinement cannot be reconciled with the constitutional limits articulated in *Zadvydas* and
11 *Demore*.

12
13 **II. PROCEDURAL POSTURE AND GOVERNMENT’S**
14 **ACKNOWLEDGMENT**

15 Petitioner is a lawful permanent resident who briefly traveled abroad from May 25 to
16 May 27, 2025. Upon his return to the United States on May 27, 2025, he was questioned and
17 taken into custody by Immigration and Customs Enforcement (“ICE”). DHS thereafter initiated
18 removal proceedings, charging him in the Notice to Appear with inadmissibility under INA §
19 212(a)(2)(A)(i)(I) (crime involving moral turpitude), based on his 2006 federal conviction for
20 credit card fraud.

21 Crucially, on July 24, 2025, DHS filed a formal statement in Immigration Court expressly
22 acknowledging that Petitioner “is eligible to seek a standalone waiver under INA section
23 212(h).” (Ex. 2, ECF No. 1-2). This official acknowledgment establishes that statutory relief
24 remains legally available notwithstanding the inadmissibility charges.

1 Respondents' opposition to habeas relief (ECF No. 7) emphasized that the 2006
2 conviction did not render Petitioner deportable during his decades of lawful residence, but now
3 contend it supports inadmissibility upon return. Yet in that same filing, Respondents invoked
4 INA § 101(a)(13)(C)(v), which expressly contemplates waiver relief under § 212(h). Taken
5 together, DHS's acknowledgment in Immigration Court and Respondents' reliance on this
6 statutory provision confirm that Petitioner is not categorically removable and that relief remains
7 legally available.

8
9 Where the Government itself acknowledges that removal is uncertain and statutory relief
10 remains open, continued civil detention cannot be justified as reasonably necessary to secure
11 removal.

12 **III. LEGAL STANDARDS**

13 A petition for a writ of habeas corpus under 28 U.S.C. § 2241 is the proper vehicle for
14 challenging the fact or duration of immigration detention. *Preiser v. Rodriguez*, 411 U.S. 475,
15 484 (1973) (habeas corpus addresses the "legality or duration" of confinement); *Zadvydas v.*
16 *Davis*, 533 U.S. 678, 687–88 (2001) (recognizing habeas jurisdiction over immigration detention
17 challenges under § 2241). Although conditions-of-confinement claims must ordinarily proceed
18 under civil rights statutes, habeas is appropriate where, as here, the relief sought is release from
19 custody rather than modification of conditions. See *Nettles v. Grounds*, 830 F.3d 922, 933–34
20 (9th Cir. 2016) (en banc).

21
22 The Due Process Clause of the Fifth Amendment prohibits the Government from
23 depriving any person of liberty except in accordance with constitutionally adequate procedures
24 and for constitutionally permissible purposes. *Zadvydas*, 533 U.S. at 690 (detention must be
25 limited to a period reasonably necessary to bring about that alien's removal); *Foucha v.*
26 *Louisiana*, 504 U.S. 71, 79 (1992) (civil detention must be narrowly tailored to nonpunitive
27

1 purposes). Immigration detention, though civil in nature, constitutes a severe deprivation of
2 liberty and is permissible only so long as it bears a reasonable relation to its purpose of
3 effectuating removal. *Demore v. Kim*, 538 U.S. 510, 527 (2003).

4 While *Zadvydas* established a six-month benchmark as the presumptively reasonable
5 period for immigration detention, the Court made clear that the ultimate inquiry is whether
6 detention remains reasonably necessary to bring about that alien's removal. *Id.* at 699–701
7 (emphasizing that the reasonableness determination depends on circumstances, not a fixed time
8 limit).

9
10 The Ninth Circuit has repeatedly emphasized that prolonged or indefinite immigration
11 detention, without sufficient justification tethered to removal, raises serious constitutional
12 concerns. See *Rodriguez v. Marin*, 909 F.3d 252, 256–58 (9th Cir. 2018); *Diouf v. Napolitano*,
13 634 F.3d 1081, 1086–87 (9th Cir. 2011) (recognizing that prolonged detention without adequate
14 justification implicates due process concerns, abrogated on other grounds by *Jennings v.*
15 *Rodriguez*, 138 S. Ct. 830 (2018)). And critically, “[t]he Due Process Clause requires
16 consideration of less restrictive alternatives to detention.” *Hernandez v. Sessions*, 872 F.3d 976,
17 991 (9th Cir. 2017).

18
19 Although *Jennings* curtailed the Ninth Circuit's statutory interpretation requiring bond
20 hearings after six months, the Court expressly left open constitutional due process challenges to
21 prolonged detention. *Id.* at 851.

22 23 **IV. ARGUMENT**

24 **A. Detention is not reasonably related to removal because DHS acknowledges** 25 **relief is available.**

26 Civil immigration detention, though civil in nature, constitutes a severe deprivation of
27 liberty and is permissible only insofar as it is reasonably related to the government's purpose of

1 effectuating removal. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S.
2 510, 527 (2003). Where removal is not reasonably foreseeable, detention ceases to serve its
3 permissible purpose and instead becomes punitive.

4
5 Here, DHS has expressly acknowledged that Petitioner “is eligible to seek a standalone
6 waiver under INA section 212(h).” (Pet., Ex. 2). Respondents’ opposition likewise
7 acknowledged that, although the 2006 conviction renders him inadmissible upon return, it did
8 not render him deportable while he remained in the United States, and the statute itself
9 contemplates waiver relief. See 8 U.S.C. § 1101(a)(13)(C)(v). This recognition confirms that
10 removal is not inevitable; instead, Petitioner faces ongoing proceedings where statutory relief
11 remains legally available.

12
13 In such circumstances, prolonged detention cannot be justified as reasonably necessary to
14 effectuate removal. See *Rodriguez v. Marin*, 909 F.3d 252, 256–58 (9th Cir. 2018) (recognizing
15 that detention untethered to removal raises serious constitutional concerns); *Diouf v. Napolitano*,
16 634 F.3d 1081, 1092 (9th Cir. 2011) (holding that prolonged detention without adequate
17 justification implicates due process, abrogated on other grounds by *Jennings v. Rodriguez*, 138 S.
18 Ct. 830 (2018)).

19
20 **B. Medical urgency makes continued detention punitive and unlawful.**

21 The Due Process Clause prohibits civil detention that operates as punishment rather than
22 as a narrowly tailored means of advancing legitimate governmental purposes. *Foucha v.*
23 *Louisiana*, 504 U.S. 71, 79 (1992). The Supreme Court has emphasized that “[f]reedom from
24 bodily restraint has always been at the core of the liberty protected by the Due Process Clause.”
25 *Zadvydas*, 533 U.S. at 690 (quoting *Foucha*, 504 U.S. at 80).

1 Petitioner suffers from diabetic macular edema, a progressive condition causing rapid
2 deterioration of his eyesight. Absent timely intervention from a specialist, the risk of irreversible
3 vision loss increases with each passing week. Detention under such circumstances exacerbates
4 his medical vulnerability and transforms civil custody into punitive confinement. See *Jones v.*
5 *Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

6
7 Courts in this Circuit have recognized that where medical vulnerabilities render detention
8 disproportionately harmful, continued confinement violates due process. See *Jones*, 393 F.3d at
9 932; *Zepeda Rivas v. Jennings*, 465 F. Supp. 3d 1028, 1035 (N.D. Cal. 2020) (ordering release of
10 medically vulnerable detainees where detention conditions magnified risk). And critically, the
11 Ninth Circuit has made clear that “[t]he Due Process Clause requires consideration of less
12 restrictive alternatives to detention.” *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017).
13 In Petitioner’s case, alternatives such as supervised release would protect the Government’s
14 interests without exposing him to permanent medical harm.

15 **C. Even Assuming DHS Properly Classified Petitioner as an “Arriving Alien,”**
16 **Prolonged Detention Remains Unconstitutional.**

17 DHS’s decision to charge Petitioner as an “arriving alien” based on his 2006 fraud
18 conviction reflects a statutory exception under 8 U.S.C. § 1101(a)(13)(C)(v). Even if that
19 classification is technically correct, it does not alter the constitutional analysis: civil detention
20 must remain tethered to its legitimate purpose of effectuating removal. *Zadvydas v. Davis*, 533
21 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 527 (2003). Here, removal is not reasonably
22 foreseeable, because DHS has acknowledged that Petitioner is eligible to pursue a waiver of
23 inadmissibility under INA § 212(h).

24
25 Moreover, Petitioner’s equities weigh heavily against indefinite detention. He has lived in
26 the United States as a lawful permanent resident for nearly thirty years, with only a two-day
27

1 absence abroad in May 2025. His 2006 conviction occurred nearly two decades ago, he
2 successfully completed his sentence, and he has demonstrated rehabilitation since that time.
3 Classifying him as an “arriving alien” based on a decades-old offense, while simultaneously
4 acknowledging that statutory relief remains available, underscores the lack of any rational
5 connection between detention and removal.

6
7 Thus, whether DHS labels him as an “arriving alien” or not, the constitutional defect
8 remains the same: prolonged detention untethered to imminent removal, and disproportionately
9 harmful given his medical vulnerability, violates due process under controlling Supreme Court
10 precedent. Ninth Circuit authority further underscores that prolonged immigration detention
11 without adequate justification raises serious constitutional concerns. See *Zadvydas*, 533 U.S. at
12 690; *Diouf v. Napolitano*, 634 F.3d 1081, 1092 (9th Cir. 2011), abrogated in part on statutory
13 grounds by *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), but still persuasive on the
14 constitutional principles at issue.

15
16 **D. Procedural Due Process Principles Under *Mathews v. Eldridge* Confirm**
17 **That Continued Detention Is Unlawful.**

18 Even if the Court frames this case in terms of procedural due process, the result is the
19 same. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), courts weigh: (1) the private
20 interest affected, (2) the risk of erroneous deprivation and the value of additional safeguards, and
21 (3) the Government’s interest.

22
23 Here, Petitioner’s private interest is profound—freedom from bodily restraint coupled
24 with the urgent need for timely medical intervention to prevent irreversible loss of eyesight. The
25 risk of erroneous deprivation is high, because DHS has acknowledged that statutory relief
26 remains available, yet has failed to adjudicate his parole request or provide any individualized
27 justification for detention. Additional safeguards, such as an individualized bond hearing, would

1 substantially mitigate that risk. By contrast, the Government's interest in continued detention is
2 minimal: removal is not reasonably foreseeable, and less restrictive alternatives—such as
3 supervised release—are constitutionally required to be considered. See *Hernandez v. Sessions*,
4 872 F.3d 976, 991 (9th Cir. 2017).

5
6 Balancing these factors, continued detention without relief or an individualized bond
7 hearing violates due process. See *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011)
8 (applying Mathews in the immigration detention context).

9
10 **E. Medical Records Confirm Ongoing Harm.**

11 The constitutional concerns identified above are not abstract: they are substantiated by
12 Petitioner's medical record while in ICE custody. On May 31, 2025, detention medical staff
13 confirmed his history of type 2 diabetes mellitus and diabetic retinopathy, noting that he required
14 ongoing ophthalmologic treatment and had previously received regular injections to preserve his
15 eyesight. (ECF No. 6).

16
17 On July 31, 2025, detention medical staff documented that Petitioner's vision had been
18 deteriorating steadily for five months due to diabetic retinopathy. He reported that he previously
19 received Vabysmo injections every 45 days, but had not received a single injection since being
20 taken into custody. He expressly requested an off-site referral to an ophthalmologist, noting that
21 his vision was worsening without treatment. (ECF No. 6).

22
23 By August 12, 2025, Petitioner reported significant vision loss, persistent headaches,
24 panic attacks, and inability to sleep—all symptoms consistent with deteriorating medical stability
25 and compounding the constitutional harm of his detention. (ECF No. 6).

1 These medical records confirm that Petitioner's detention is not merely a theoretical due
2 process concern but an ongoing, documented harm. The absence of timely ophthalmologic
3 intervention places him at imminent risk of irreversible blindness, transforming civil custody into
4 punitive confinement in direct violation of the Due Process Clause.

5
6 **V. CONCLUSION**

7 Habeas corpus exists to remedy unlawful custody. Where detention ceases to be
8 reasonably related to its purpose and instead violates due process, the proper remedy is release,
9 not merely additional process. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Here, DHS's
10 own acknowledgment that Petitioner remains eligible for relief under INA § 212(h) confirms that
11 removal is not imminent, and his worsening medical condition renders continued detention
12 punitive.

13
14 Accordingly, Petitioner respectfully requests that the Court grant the writ of habeas
15 corpus and order his immediate release under appropriate conditions of supervision. In the
16 alternative, should the Court decline to order release, Petitioner requests an individualized bond
17 hearing at which the Government must bear the burden of justifying continued detention by clear
18 and convincing evidence.

19 Respectfully submitted,

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