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11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14

15 EFRAIN AGUSTIN PEREZ,

16 PETITIONER,

17 vs.

18 CHRISTOPHER LAROSE, ET AL.,

19 RESPONDENTS.
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Case No.: 25-CV-02323 RMB DEB

PETITIONER'S REPLY BRIEF

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20 Counsel has filed, in conjunction with this reply brief, a motion to stay habeas
21 corpus proceedings. In the alternative, Petitioner submits this reply to Respondents'
22 response. Respondents, in their response to the Court's Order to Show Cause
23 ("OSC"), have stated that because they released Petitioner, this case is moot.
24 Petitioner argues this case is not moot, since (a) it is capable of repetition yet has
25 evaded review, and (b) the collateral consequences doctrine applies.
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I. INTRODUCTION

Petitioner Efrain Agustin Perez (“Efrain” or “Petitioner”) is a native and citizen of Guatemala, having resided in the United States since 1994. He was previously detained by Immigration and Customs Enforcement (“ICE”) on July 19, 2025, then filed a petition for a writ of habeas corpus (“Habeas Petition”) pursuant to 28 USCS § 2241, thus challenging the legality of that detention. After Petitioner filed the Habeas Petition, ICE released Petitioner from detention on September 17, 2025. The Department of Homeland Security (“DHS”) has appealed the IJ’s decision that the Petitioner is eligible for bond and is subject to detention under 8 U.S.C. section 1225(b) to the Board of Immigration Appeals (“BIA”), which is currently pending. Respondents now assert that Petitioner’s Habeas Petition is moot.

Petitioner was detained by ICE on July 19, 2025. He then sought a bond redetermination before the Immigration Court. There, the Immigration Judge (“IJ”) granted Petitioner a bond of \$7,500. DHS then appealed the IJ’s decision. That appeal is currently pending before the BIA.

II. ARGUMENT

Respondents contend that Petitioner’s release from detention renders Petitioner’s Habeas Petition moot and deprives this court of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). This assertion is

1 incorrect. First, Petitioner's habeas claims are not moot because his unlawful
2 detention is capable of repetition but has evaded review, because the Government
3 released Petitioner in order to defeat his habeas claims. Second, Petitioner's habeas
4 claims are not moot because he continues to suffer collateral consequences of his
5 unlawful detention by the Government.
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8 This court has the authority under the All-Writs Act to maintain jurisdiction
9 over this matter to prevent the government from evading judicial review of its
10 detention practices and to protect Petitioner from the collateral consequences
11 stemming from his unlawful detention. 28 USCS § 1651. It should do so here – and
12 reject the Government's assertion that Petitioner's habeas claim is moot – in order
13 to (1) restrain the Government from re-detaining Petitioner unlawfully in the future;
14 (2) preclude the Government from evading review of its unlawful detention of
15 Petitioner; (3) ensure Petitioner does not continue to suffer collateral consequences
16 stemming from his unlawful detention; and (4) clarify the legal standard applicable
17 to the habeas claim made by Petitioner and similarly situated individuals.
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22 **A. Petitioner's Habeas Petition is Not Moot Because It is Capable of**
23 **Repetition but Has Evaded Review**
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25 Petitioner's Habeas Petition is not moot because his claim therein is capable
26 of repetition but have thus far evaded review. This well-established exception to
27 mootness applies when (1) the challenged action is in its duration too short to be
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1 fully litigated prior to cessation or expiration, and (2) there is a reasonable
2 expectation that the same complaining party will be subject to the same action again.

3
4 *Hubbart v. Knapp*, 379 F.3d 773, 777-8 (9th Cir. 2004).

5 First, ICE released Petitioner before he was able to fully litigate his due
6 process claim. Respondents claim that Petitioner's release makes his Habeas Petition
7 moot; however, Petitioner's habeas claim is still live for adjudication because his
8 constitutional rights were violated as a result of his detention, even though his
9 detention was too short to be fully litigated prior to its cessation. "A claim evades
10 review if the underlying action is almost certain to run its course before [a district
11 court] or the Supreme Court can give the case full consideration." *Biodiversity Legal*
12 *Found. V. Badgley*, 309 F.3d 1166, 1173 (9th Cir. 2002). Here, there is no dispute
13 that neither this court nor the Supreme Court has given Petitioner's habeas claims
14 full consideration, and it seems likely that the Government released the Petitioner so
15 that he would not be able to fully litigate the constitutionality of his detention. The
16 Supreme Court has recognized that "many deep and abiding constitutional problems
17 are encountered primarily at a level of offenses which carry only short sentences"
18 and has stated "we do not believe that the Constitution contemplates that people
19 deprived of constitutional rights at this level should be left utterly remediless and
20 defenseless against repetitions of unconstitutional conduct." *Sibron v. New York*, 392
21 U.S. 40, 52-53 (1968). Although Petitioner's past detention was short, he should not
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1 be left without recourse simply because his recent release gave him no time to have
2 his day in federal court.
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4 Second, the action underlying Petitioner's habeas claims – his unlawful
5 detention by ICE – is capable of repetition. Federal courts have recognized that, in
6 the immigration context, release from detention does not automatically moot a
7 habeas petition where the petitioner remains subject to the same underlying removal
8 proceedings and could be re-detained. *Diouf v. Mukasey*, 542 F.3d 1222 (9th Cir.
9 2008). Here, Petitioner continues to be subject to the same immigration proceedings
10 that led to his initial detention, particularly given the government's prior
11 determination that detaining him was warranted. The petitioner also faces the
12 possibility of being re-detained because the legal issues regarding his authority to
13 detain him remain unresolved. Because the Government has the ability to re-detain
14 and re-release Petitioner at any time, the legality of his detention could perpetually
15 evade judicial review so long as the Government is allowed to "moot" his
16 constitutional claims simply by releasing him before a court can adjudicate them.
17
18 *See Rodriguez v. Hayes*, 591 F.3d 1105, 1117-18 (9th Cir. 2010) (holding that the
19 petitioner's claim was not moot when the petitioner could be re-detained at the
20 government's discretion, without a hearing before a neutral decisionmaker). *Alam v.*
21 *Carter*, 843 F. App'x 953, 954 (9th Cir. 2021).
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1 Thus, under this exception to mootness – that Petitioner’s habeas claim is
2 capable of repetition but has thus far evaded review – Petitioner’s case is still live
3 before this court.
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5 **B. Petitioner’s Habeas Petition is Not Moot Because Petitioner Continues**
6 **to Suffer Collateral Consequences from his Detention**
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8 Under the “collateral consequences” exception to mootness, a habeas petition
9 is not moot after a petitioner is released from custody when the petitioner
10 alleges collateral consequences that continue after expiration of his sentence. To this
11 end, a petitioner must demonstrate “some concrete and continuing injury other than
12 the now-ended incarceration or parole—some ‘collateral consequence’ of the
13 conviction”—to avoid dismissal on mootness grounds. *See Spencer v. Kemna*, 523
14 U.S. 1, 7 (1998).
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18 Petitioner’s habeas claims are not moot – as the Government claims – because
19 he is suffering, and will continue to suffer, collateral consequences stemming from
20 his unlawful detention by DHS and ICE. Specifically, DHS, in conjunction with the
21 Department of Justice (DOJ), appears to suggest that Petitioner was detained
22 pursuant to 8 U.S.C. section 1225(b) and thus that the Immigration Court has no
23 jurisdiction to review bond determinations for individuals caught within the US.
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25 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Given this erroneous
26 approach to detention, Petitioner’s risk of being re-detained is high, unless this court
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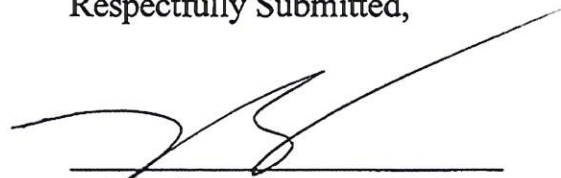
1 provides a declaratory judgment by determining under which statute Petitioner is
2 being detained – 8 U.S.C. section 1226(a) or 8 U.S.C. section 1225(b). The first
3 allows an IJ to grant a bond, while the second deprives the IJ of jurisdiction to review
4 bond determinations. Without this clarity, Petitioner is forever subject to DHS's
5 whims of whether to detain him without notice or changed circumstances, or not.
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8 **III. CONCLUSION**

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10 WHEREFORE, Petitioner respectfully requests that this Court: (1) maintain
11 jurisdiction over Petitioner's Habeas Petition and deny Respondents' claim that
12 Petitioner's habeas case is moot; (2) adjudicate the merits of Petitioner's habeas
13 claims; and (3) grant such other and further relief as this Court deems just and proper
14 in order to validate Petitioner's constitutional rights and prevent the future unlawful
15 detainment of Petitioner.
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21 Dated: 9/30/2025

Respectfully Submitted,

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25 Mitchell H. Shen, Esq.
26 Attorney for the Petitioner
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