Lilia Rodriguez (SBN 313007)
The Law Office of Erika Rodriguez
1450 Frazee Rd, Ste 303
San Diego, CA 92108
Lilia@erlawsd.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAVIER HARO BECERA, Petitioner, V. JEREMY CASEY, et al., Respondent,	Case No.: 26-cv-03074-AGS-SBC PETITIONER'S SUPPLEMENTAL BRIEFING

I. INTRODUCTION

1. On June 15, 2026, the Court ordered simultaneous supplemental briefing on the "abuse of the writ" doctrine, including whether Respondents have waived that argument.

II. ARGUMENTS

THE PETITION IS NOT BARRED BY THE ABUSE OF THE WRIT DOCTRINE

2. The abuse of the writ doctrine generally applies when a petitioner files a subsequent habeas petition asserting claims that were available but unjustifiably omitted from an earlier petition.
3. The Supreme Court has explained that abuse of the writ occurs when a petitioner raises a claim in a subsequent habeas petition that could have been raised in a prior petition. *McCleskey v. Zant*, 499 U.S. 467, 489 (1991).
4. The Ninth Circuit similarly recognizes that abuse of the writ generally bars claims that "were or could have been raised" in a prior habeas proceeding. *Alaimalo v. United States*, 645 F.3d 1042, 1047–48 (9th Cir. 2011); *Hill v. Alaska*, 297 F.3d 895, 898–99 (9th Cir. 2002).
5. Conversely, where the factual basis for a claim did not exist at the time of the earlier petition, the doctrine does not apply. *McCleskey*, 499 U.S. at 489–90.
6. The Ninth Circuit recently reaffirmed that the abuse-of-the-writ doctrine is concerned with claims that were available but omitted from an earlier petition. See *Brown v. Atchley*, 76 F.4th 862, 870–72 (9th Cir. 2023). Where subsequent

events create a new basis for relief, a later petition is not abusive because the claim could not have been previously asserted. Id. That is precisely the circumstance presented here.

7. Petitioner filed the first habeas petition on February 11, 2026. That writ was granted and resulted in bond hearings which were denied due to the Immigration Court's findings that Petitioner presented such an extraordinary flight risk that no amount of bond would be appropriate. Those bond hearings, as argued in second petition did not provide a meaningful or constitutionally adequate opportunity to secure release, see Singhv.Holder, 638 F.3d 1196, 1203–05 (9th Cir. 2011).

A. The Sileiri Doe Decision and Reinstatement of Parole Occurred After Petitioner's Earlier Habeas Proceedings

8. The second petition was filed on May 17, 2026. After the bond hearings but even more importantly after the Sileiri Doe Decision.
9. A central issue in the present Petition concerns the legal effect of Petitioner's reinstated parole pursuant to *Sileiri Doe v. DHS*, No. 1:25-cv-12245 (D. Mass. Mar. 31, 2026). In that case, the district court held that DHS exceeded its statutory authority by categorically terminating CBP One parole grants without the individualized determinations required by 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5(e).
10. The Government concedes that Petitioner is a class member.
11. As a certified class member, Petitioner's parole was subsequently reinstated and remains valid through December 8, 2026. The reinstatement of Petitioner's

parole constitutes a material change in circumstances that did not exist when the earlier habeas petition was litigated. Because Petitioner's current claim is predicated upon a federal court determination restoring his parole status and undermining the legal basis for his detention, the claim could not have been raised previously. As of the filing of this response Petitioner has not received any notice of revocation.

12. Courts consistently recognize that a subsequent habeas petition is not abusive when it relies upon facts or legal developments arising after disposition of the prior action. See *McCleskey*, 499 U.S. at 489–90; *Alaimalo*, 645 F.3d at 1048.

B. Petitioner's Current Challenge to Continued Detention Is Based Upon New and Ongoing Constitutional Violations

13. The instant Petition also challenges Petitioner's continued detention following the passage of significant time and subsequent developments in his immigration proceedings. The prior habeas proceeding could not have challenged the duration of detention presently at issue because the detention had not yet reached its current length. Federal courts routinely recognize that prolonged detention claims become stronger as detention continues and that later-filed habeas petitions challenging continued detention are not barred merely because an earlier petition was filed at a different stage of confinement. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1080–81 (9th Cir. 2006).

14. Petitioner remains detained despite having:

    1. No criminal history in the United States or abroad;

2. A pending appeal concerning the pretermission of his asylum application;
3. A pending immediate-relative visa petition filed by his United States citizen daughter;
4. A potentially available pathway to adjustment of status before USCIS pursuant to 8 C.F.R. § 1245.2(a)(1)(ii) and *Matter of Yauri*, 25 I&N Dec. 103 (BIA 2009); and
5. Reinstated parole valid through December 8, 2026.

C. The present Petition further challenges the constitutional adequacy of Petitioner's prior bond proceedings.

15. A claim attacking defects in a bond hearing cannot be raised until the hearing has occurred and the constitutional deficiencies become apparent. The Ninth Circuit has repeatedly held that due process requires a meaningful opportunity to be heard and an individualized custody determination supported by the record. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011); *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 951–52 (9th Cir. 2008).

16. Petitioner now alleges that the Immigration Judge's determination that no amount of bond could reasonably assure appearance was unsupported by the evidence and failed to meaningfully consider Petitioner's lawful CBP One entry, voluntary compliance with ICE reporting requirements, lack of criminal history, substantial family ties, and pending avenues to lawful status.

17. These constitutional challenges did not exist until after the bond hearing occurred and therefore could not have been asserted in any earlier petition. As a

matter of law, claims that were not ripe at the time of the earlier proceeding cannot constitute abuse of the writ. *McCleskey*, 499 U.S. at 489–90; *Brown*, 76 F.4th at 870–72.

D. Equity Weighs Strongly Against Application of the Doctrine

18. Habeas corpus remains an equitable remedy intended to prevent unlawful executive detention. *Schlup v. Delo*, 513 U.S. 298, 319 (1995); *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008). Petitioner does not seek to relitigate claims previously resolved by this Court. Rather, he challenges new constitutional injuries arising from continued detention, the reinstatement of his parole, and the inadequacy of custody proceedings that occurred after the earlier habeas action.

19. Because the factual and legal predicates for the present claims did not exist at the time of the prior proceeding, the instant Petition does not constitute an abuse of the writ. Accordingly, any motion to dismiss on that basis should be denied.

20. Should the Court find that the abuse of the writ doctrine applies, Petitioner argues that the principal authority is **McCleskey v. Zant**, 499 U.S. 467 (1991). Although the Supreme Court enforced the abuse-of-the-writ doctrine, it also held that a successive habeas petition may proceed where dismissal would result in a **"fundamental miscarriage of justice."** The Court stated:

> "The petitioner may avoid a procedural default by showing cause and prejudice or by demonstrating that failure to consider the claims will result in a

fundamental miscarriage of justice."

McCleskey v. Zant, 499 U.S. 467, 494–95 (1991).

21. The Ninth Circuit has repeatedly recognized this exception. [1]

22. It would be a great miscarriage of justice to deny relief to the parent of a U.S. A citizen who entered the United States lawfully, and is awaiting the approval of his immigrant visa, and should be released may immediately seek his lawful permanent residency. In obtaining his residency he need only request termination of the removal proceedings upon which his detention is currently premised. [2]

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[1] Alaimalo v. United States 645 F.3d 1042, 1047–48 (9th Cir. 2011) The court held that even where abuse of the writ is established, a petitioner may proceed by demonstrating: "cause and prejudice or that a fundamental miscarriage of justice would result from failure to entertain the claim." Hill v. Alaska 297 F.3d 895, 898–99 (9th Cir. 2002) The Ninth Circuit explained that the abuse-of-the-writ doctrine is equitable in nature and is subject to exceptions where strict application would produce a miscarriage of justice. Sanders v. United States 373 U.S. 1 (1963) Although predating McCleskey, this remains one of the strongest equitable habeas cases. The Supreme Court held: "Controlling weight may be given to denial of a prior application ... only if the ends of justice would not be served by reaching the merits of the subsequent application." Sanders, 373 U.S. at 15. This "ends of justice" language is frequently cited when arguing that technical procedural doctrines should yield where liberty interests are at stake.

[2] Petitioner lawfully presented himself at a designated port of entry through the CBP One appointment process and was subsequently paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A). Although parole does not constitute an admission, Congress expressly authorized parolees to seek adjustment of status under INA § 245(a), 8 U.S.C. § 1255(a), which provides that the status of an alien who was "inspected and admitted or paroled into the United States" may be adjusted to that of a lawful permanent resident if the statutory requirements are met.

Furthermore, because Petitioner is presently classified as an arriving alien, jurisdiction over any adjustment application rests exclusively with USCIS notwithstanding the pendency of removal proceedings. The governing regulation provides that immigration judges generally lack jurisdiction to adjudicate adjustment applications filed by arriving aliens and that such jurisdiction remains with USCIS. 8 C.F.R. § 1245.2(a)(1)(ii).

The Board of Immigration Appeals recognized this principle in Matter of Yauri, 25 I&N Dec. 103, 107–10 (BIA 2009), holding that arriving aliens in removal proceedings may pursue adjustment of status before USCIS notwithstanding the existence of ongoing removal proceedings. This fact substantially undermines any contention that Petitioner presents a flight risk. Petitioner has every incentive to continue appearing before immigration authorities and pursuing available relief. The existence of this immediately available pathway to lawful permanent residence further demonstrates the irrationality of Petitioner's continued detention. Petitioner has no criminal history, has complied with immigration authorities, appeared for his ICE appointment as directed, maintains significant family ties in the United States, and possesses a concrete avenue to lawful status. These circumstances strongly support release and weigh heavily against continued detention pending resolution of his immigration proceedings.

23. Accordingly, respectfully, the Court should find that the present habeas petition does not constitute an abuse of the writ. The Court should further conclude that Respondents waived any abuse of the writ defense by failing to timely assert it. The Petition should therefore be considered on its merits.

Respectfully submitted this 22nd day of June, 2026.

Lilia Rodriguez, Esq.
Attorney for Petitioner