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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AYUSH THAKUR, Petitioner, v. JEREMY CASEY, Respondent.	Case No.: 26-cv-3315-BJC-JLB **MOTION TO DISMISS**

This is not Petitioner's first attempt at obtaining federal habeas relief. In fact, he prevailed in an earlier habeas action on the other side of the country when, on December 12, 2025, the United States District Court for the District of New Jersey granted Petitioner's prior application for a writ of habeas corpus after concluding 8 U.S.C. section 1226, rather than section 1225, controlled the terms of Petitioner's immigration detention. *See generally Ayush Thakur v. Luis Soto et al.,* No. 25-17269 (MAS), 2025 WL 3564642, at *1 (D.N.J. Dec. 12, 2025) ("*Thakur I*").[1] The District Court ordered the government to provide Petitioner with a bond hearing under 8 U.S.C. section

[1] This Court is familiar with the dispute as whether aliens present in the country without inspection are subject to mandatory detention under 8 U.S.C. section 1225 or discretionary detention under 8 U.S.C. section 1226. *See, e.g., Otoniel Gomez Lopez v. Christopher LaRose et al.*, 26-cv-3344-BJC-GC, Dkt. 9 (S.D. Cal. June 6, 2026).

1226(a). *Id.* at *1; *see also* Dkt. 1 at 4–5. On December 18, 2025, as ordered by the court in *Thakur I*, Petitioner received a bond hearing. Dkt. 1 at 4; Ex. A.[2] The immigration judge denied bond because Petitioner presented an "extreme flight risk." Ex. A. Petitioner never appealed the bond denial. Dkt. 1 at 4. Instead, Petitioner filed this action, in which he contends he should be immediately released from ICE custody on due process grounds. *See* Dkt. 14.

The Court should dismiss this Petition as an abuse of the writ. Although ordinary res judicata rules do not apply in habeas cases, the "abuse of the writ" doctrine is a judicially created substitute for res judicata in writ proceedings. *Calderon v. United States District Court*, 163 F.3d 530, 537 (9th Cir. 1998), *overruled in part on other grounds*, *Woodford v. Garceau*, 538 U.S. 202, 206 (2003). The doctrine "forbids the reconsideration of claims that were or could have been raised in a prior habeas petition." *Id.* at 538; *accord Efrain Barios-Perez v. Christopher LaRose et al.*, 26-cv-1949-BJC-VET, Dkt. 8 (S.D. Cal. July 6, 2026). Respondents carry the burden of initially showing abuse of the writ, which Petitioner can rebut. *See McClesky v. Zant*, 499 U.S. 467, 477 (U.S. 1991).[3]

The Court may, in the exercise of its broad discretion, dismiss an abusive writ without reaching the merits. *See Campbell v. Blodgett*, 997 F.2d 512, 515–16 (9th Cir. 1992); *Moore v. White*, 1996 WL 478681, at *3 (N.D. Cal. Aug. 19, 1996); *Cruz-Sanchez v. Robinson*, 136 F. Supp. 52, 53–55 (C.D. Cal. 1955). Petitioner can only avoid the re-litigation bar of an abusive writ by showing "(1) cause for bringing a successive petition and that prejudice would result or (2) that a fundamental miscarriage of justice would result from failure to entertain the claim." *Alaimo v. United States*, 645 F.3d 1042, 1049 (9th Cir. 2011).

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[2] All attached documents are true copies of documents obtained from ICE counsel.

[3] The Antiterrorism and Effective Death Penalty Act ("AEDPA") later altered these burdens in prisoner cases governed by 28 U.S.C. sections 2454 and 2455. *See* 28 U.S.C. § 2244; *Thomas v. Superintendent/Woodbourne Correctional Facility*, 136 F.3d 227, 229-30 (2d Cir. 1997). Because this is not an AEDPA case, *McClesky* allocates the burdens of persuasion in an immigration-related habeas proceeding.

Petitioner has already litigated the legality of his detention. *See Thakur I*, 2025 WL 3564642 at *1. There, Petitioner specifically alleged he was re-detained (1) without opportunity to challenge his re-detention; (2) without regard for his substantive liberty interest in being free from detention; and (3) in violation of the agency's procedures for re-detention. *See Thakur I*, No. 25-17269 (MAS), Dkt. 1 at 5–8 (D.N.J. Nov. 6, 2025). Here, Petitioner once again claims his re-detention erroneously deprived him of his liberty interest in remaining at large in the United States. Dkt. 14. Thus, the claims in this case fall squarely within the scope of those claims that "were or could have been raised" before the court in New Jersey, and this action constitutes a prima facie abuse of the writ. The Court should reject this attempt to relitigate the legality of Petitioner's detention because he cannot show either of the exceptions applies.

Petitioner could meet the cause-and-prejudice test by showing he lacked material facts and evidence when he filed his first petition. *See, e.g.*, *McCleskey*, 499 U.S. at 501-02. "Cause," for purposes of rebutting an abuse of the writ showing, "must be an objective external factor that impeded petitioner from raising his claims earlier." *See Mondragon v. Bunnel*, 1993 WL 255531, at *2 (N.D. Cal. June 30, 1993) (citing *McClesky*, 499 U.S. at 493)). Mere failures to articulate an argument or claim in a prior proceeding are not "cause." *See Antone v. Dugger*, 465 U.S. 200, 205–06 (1984).

Both here and in *Thakur I* Petitioner alleged (1) he entered the United States; (2) was subsequently detained and released on his own recognizance; before being (3) re-detained under 8 U.S.C. section 1225(b). *Compare Thakur I*, 2025 WL 3564642, at *1 *with* Dkt. 14 at 1. The material facts of both cases are thus *identical*, and it appears Petitioner simply wants this Court to reach a different legal conclusion than the court did in New Jersey. But a finding of cause-and-prejudice requires newly discovered facts or evidence—not to mention an objective, external force preventing their timely discovery. This case is just a request to have the Court second-guess another court's resolution of the merits. That is not "cause." *See Antone*, 465 U.S. at 205–06.

Petitioner could show a "miscarriage of justice" by demonstrating something as

extreme as being convicted of a non-existent crime. *See, e.g.*, *Alaimo*, 645 F.3d at 1050; *see also McClesky*, 499 U.S. at 502-03 (noting the criminal conviction of a factually innocent person constitutes a miscarriage of justice). This is not such an extreme case. Petitioner has conceded he is removable from the United States. *See* Ex. B at 2. The only issue here is whether he is lawfully detained while the government effects an otherwise lawful removal. *See generally* Dkt. 14. In fact, Petitioner appears to concede that, were he ordered released, the government could re-detain him if it followed what he contends are the proper procedures. *See* Dkt. 14 at 4 (citing *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019)). This case therefore comes nowhere near the kind of "miscarriage of justice" that arises when a factually innocent person is convicted of a crime. This is a case of Petitioner seeking release on narrow, curable procedural grounds only to have the government lawfully re-detain and remove him shortly thereafter. Although that may have justified a court-ordered bond hearing in Petitioner's first case, it is not a "miscarriage of justice" that circumvents a facially abusive writ. The Court should, accordingly, dismiss the Petition as an abuse of the writ.

DATED: July 17, 2026

Respectfully submitted,

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s/ Ian Pike
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