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

10 MANUEL ALEXANDER
FUENTES GUEVARA,

11 Petitioner,

12 v.

13 CHRISTOPHER LAROSE, Warden of the
Otay Mesa Detention Center, *et al.*,

14 Respondents.
15

Case No.: 26-cv-3540-BAS-DDL

RETURN TO PETITION

16 Petitioner, an alien subject to mandatory detention under 8 U.S.C. section 1231,
17 has filed a second Petition seeking relief under the rules applicable to aliens detained
18 under 8 U.S.C. sections 1225 and 1226. The Court should deny this Petition under the
19 “abuse of the writ” doctrine because nothing has materially changed since Petitioner’s
20 prior, unsuccessful challenge to his arrest and detention. Only two arguably new facts
21 have arisen since Petitioner’s prior habeas case: he did not receive a bond hearing to
22 which he is not legally entitled, and he has been detained slightly longer because his
23 administrative appeal remains pending. Neither fact justifies relief and this Court should
24 deny this second petition.

25 **(I) Background**

26 On January 20, 2026, Petitioner sought a writ of habeas corpus in *Manuel*
27 *Alexander Fuentes Guevara v. Christopher LaRose et al.*, No. 26-cv-342-BAS-DDL
28 (S.D. Cal. 2026) (“*Guevara I*”). In that case, Petitioner admitted he entered the country

1 without inspection, obtained release from custody on parole after his arrest, and an
2 immigration judge later ordered him removed *in absentia* from the United States in
3 2005. *Guevara I*, Dkt. 1 ¶¶ 18-22. On November 7, 2025, Immigration and Customs
4 Enforcement (“ICE”) arrested and detained Petitioner. *Id.* ¶ 28; Ex. A. Appearing before
5 an immigration judge, Petitioner unsuccessfully moved to reopen his removal
6 proceedings, then administratively appealed the denial of his motion to reopen. *Id.* ¶ 35.
7 In *Guevara I*, Petitioner alleged his arrest and detention failed to provide him
8 substantive- and procedural due process; claimed violations of the Administrative
9 Procedure Act; alleged violations of 8 U.S.C. section 1231, the statute that controls
10 detention of aliens subject to a final order of removal; and claimed violation of the so-
11 called *Accardi* doctrine. *See generally id.* ¶¶ 48-78.

12 This Court rejected Petitioner’s claims in his first case, denying the Petition by
13 written order on February 13, 2026. *See Guevara I*, Dkt. 7. The Court correctly noted
14 that, as an alien subject to a final removal order, Petitioner was not statutorily entitled
15 to release, and he had no due process right to any pre-detention process. *See generally*
16 *id.* at 4-5. As to whether Petitioner’s detention had been unlawfully prolonged, the Court
17 ruled it had not because, although ICE could have expeditiously removed Petitioner to
18 El Salvador, ICE had paused removal proceedings so Petitioner could exhaust his
19 administrative appeal. *Id.* at 5. The Court also held Respondents had violated no
20 applicable statutes or rules as part of Petitioner’s detention. *Id.*

21 Petitioner appealed this Court’s judgment to the Ninth Circuit. *Guevara I*, Dkt.
22 9. Although that appeal remains pending, Petitioner filed this case on June 14, 2026.
23 Dkt. 1. Here, he once again alleges his arrest and detention violate both his substantive-
24 and procedural due process rights and the *Accardi* doctrine. The only new, particular
25 factual allegation is that he requested a bond hearing, which the immigration judge
26 denied for lack of jurisdiction on May 28, 2026. *See* Dkt. 1 ¶¶ 33–34.

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1 **(II) Petitioner Has Abused the Writ by Filing a Second Petition**
 2 **Challenging His Arrest and Detention**

3 Although ordinary res judicata doctrines do not apply in habeas corpus
 4 proceedings, the “abuse of the writ” doctrine is a judicially created substitute for res
 5 judicata in writ proceedings. *Calderon v. United States District Court*, 163 F.3d 530,
 6 537 (9th Cir. 1998), *overruled in part on other grounds*, *Woodford v. Garceau*, 538 U.S.
 7 202, 206 (2003). The doctrine “forbids the reconsideration of claims that were or could
 8 have been raised in a prior habeas petition.” *Id.* at 538. Respondents carry the burden
 9 of initially showing abuse of the writ, which Petitioner can rebut. *See McClesky v. Zant*,
 10 499 U.S. 467, 477 (U.S. 1991).¹

11 In *Guevara I*, Petitioner challenged the validity of both his arrest and detention
 12 under various grounds. *See generally Fuentes Guevara I*, Dkt. 1. This Court denied the
 13 Petition. *Fuentes Guevara I*, Dkt. 7. Petitioner now re-raises several claims he
 14 unsuccessfully raised in *Guevara I*, namely that his parole should not have been revoked
 15 without prior notice, that his arrest and detention violated various statutes, and that he
 16 should be entitled to a bond hearing or release on his own recognizance. *See, e.g.* Dkt.
 17 1 at 26-28. But this Court heard and rejected those claims. *See Fuentes Guevara I*, Dkt.
 18 7 at 5. Raising them again in a second petition is prima facie abuse of the writ.

19 Petitioner can only avoid the relitigation bar by showing “(1) cause for bringing
 20 a successive petition and that prejudice would result or (2) that a fundamental
 21 miscarriage of justice would result from failure to entertain the claim.” *Alaimo v. United*
 22 *States*, 645 F.3d 1042, 1049 (9th Cir. 2011). Cause-and-prejudice exists where a
 23 petitioner lacked material facts and evidence when he filed his first petition. *See, e.g.*,
 24 *McCleskey*, 499 U.S. at 501-02. Nothing in this new petition explains why there is good
 25

26 ¹ The Antiterrorism and Effective Death Penalty Act (“AEDPA”) later altered these
 27 burdens in prisoner cases governed by 28 U.S.C. sections 2454 and 2455. *See* 28 U.S.C.
 28 § 2244; *Thomas v. Superintendent/Woodbourne Correctional Facility*, 136 F.3d 227,
 229-30 (2d Cir. 1997). But because this is not an AEDPA case, *McClesky* provides the
 legal standard allocating the burdens of persuasion for this immigration-related habeas
 proceeding.

1 cause for this Court to re-examine the lawfulness of Petitioner's arrest and detention on
 2 the grounds available to him when he filed *Guevara I* because he has done nothing more
 3 than file a second petition alleging the same facts but couched with more legal
 4 conclusions. This does not show cause and prejudice because all these facts were known
 5 to him when he filed *Guevara I*.

6 Petitioner could show a miscarriage of justice by demonstrating something as
 7 extreme as being convicted of a non-existent crime. *See, e.g., Alaimo*, 645 F.3d at 1050;
 8 *see also McClesky*, 499 U.S. at 502-03 (noting the criminal conviction of a factually
 9 innocent person constitutes a miscarriage of justice). But this a garden-variety case of
 10 detention under 8 U.S.C. section 1231. There is no dispute Petitioner is presently
 11 removable from the United States, the only question is whether that removal has been
 12 carried out within the well-defined contours of due process prescribed by the Supreme
 13 Court and the Ninth Circuit. This is not, therefore, in any way equivalent to a case of
 14 wrongful conviction that would amount to a miscarriage of justice. As such, there are
 15 no exceptions to the abuse of the writ doctrine, and the Court should deny the Petition.

16 **(III) Petitioner's Allegations Related to his May 2026 Bond Hearing**
 17 **Request Are Not New Circumstances Providing Him a Claim for Relief**

18 Petitioner continues to claim he is entitled to what he calls a "*Rodriguez* bond."
 19 *See* Dkt. 1 ¶¶ 33, 91. But, as a detainee with a final removal order, Petitioner is not
 20 entitled to a bond hearing because his detention is mandatory, subject only to periodic
 21 custody determinations. *See* 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.4; *see also Guevara*
 22 *I*, Dkt. 7 at 4. Thus, although Petitioner requested a bond hearing, the immigration judge
 23 correctly declined to hold one. *See* Dkt. 1 ¶ 34; *see also id.* at 38–40. What was true in
 24 *Guevara I* remains true in this case—Petitioner has no present right to a bond hearing.

25 That fact might change someday. But Petitioner has no standing to bring an
 26 unripe case. *See Thomas v. Anchorage Equal Rights Comm'n*, 220 f.3d 1134, 1138-39
 27 (9th Cir. 2000). Should Petitioner ultimately prevail in his administrative appeal and
 28 have his removal proceedings reopened, then he would no longer be detained under 8

1 U.S.C. section 1231 because he would no longer be subject to a final removal order,
2 and ICE's authority to detain him would revert to 8 U.S.C. section 1225. This Court is
3 familiar with the dispute as to whether Petitioner would be entitled to a bond hearing
4 under those circumstances. *See, e.g., Enrique Resendiz Badillo v. Markwayne Mullin et*
5 *al.*, No. 26-cv-3029-BAS-JLB (S.D. Cal.). But, at this point, Petitioner is detained
6 subject to 8 U.S.C. section 1231, so his request for a bond hearing is speculative at best,
7 and he lacks standing to assert it.

8 **(IV) Petitioner's Renewed *Zadvydas* Claim Lacks Merit**

9 Although the bulk of Petitioner's new case challenges his arrest and continued
10 detention without a bond hearing, Petitioner also renews his allegation that his detention
11 has been unlawfully prolonged. *See* Dkt. 1 ¶¶ 61–65. Because he is subject to a final
12 removal order, and therefore detained under 8 U.S.C. section 1231, Petitioner may be
13 detained for a reasonable time to effectuate his removal from the country. *See Zadvydas*
14 *v. United States*, 533 U.S. 678, 689 (2001). To justify release, he must convince the
15 Court there is no significant likelihood of removal in the reasonably foreseeable future
16 ("SLRRFF"). *See id.* at 701. He has the initial burden of going forward by showing the
17 Court why there is no SLRRFF. *See Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir.
18 2003). This Court has no basis to evaluate the SLRRFF issue in this case because the
19 Petition—which largely concerns the bond hearing and pre-arrest notice to which
20 Petitioner is not entitled—only references the *Zadvydas* detention standard by way of
21 passing legal conclusions. *See, e.g.,* Dkt. 1 ¶ 40. Nowhere in the Petition does Petitioner
22 suggest, let alone show, there is no SLRRFF.

23 He cannot make that showing because this case does not implicate the SLRRFF
24 rule. *See Pelich*, 329 F.3d at 1059-61. *Zadvydas* and the SLRRFF rule apply in cases
25 "of aliens placed in deportation limbo because their countries of origin had refused to
26 allow them entrance." *Id.* at 1060. As this Court already ruled in Petitioner's earlier
27 habeas proceeding, this is not that kind of case because Petitioner could be expeditiously
28 removed to El Salvador, and "[t]h only reason this removal has not been effectuated is

1 to give Petitioner a chance to appeal the denial of his request to reopen his removal
2 proceedings.” *See Guevara I*, Dkt. 6 at 5 (citing *Pelich*, 329 F.3d at 1060-61). Although
3 Petitioner has now been detained longer than he had been when *Guevara I* was filed, he
4 has not shown how his detention has become “indefinite” such that *Zadvydas* would
5 apply. To the contrary, although the term of Petitioner’s detention under 8 U.S.C.
6 section may be subject to some uncertainty because there is no guarantee of when his
7 pending appeal will be fully resolved, it *will* end when either (1) Petitioner loses his
8 appeal, at which point he will be removed; or (2) Petitioner wins his appeal, at which
9 point his detention authority will revert to 8 U.S.C. section 1225. *Zadvydas* never
10 created a rule mandating release for short-term uncertainty. This Court should deny
11 Petitioner’s renewed *Zadvydas* claim.

12 DATED: June 22, 2026

Respectfully submitted,

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15 s/ Ian Pike
16 IAN PIKE
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18 Attorneys for Respondents
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