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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

26-cv-3540-BAS-DDL

MANUEL ALEXANDER FUENTES
GUEVARA
Plaintiff and Petitioner,

vs.

LaROSE et al,
Defendants and Respondents

**PETITIONER'S TRAVERSE
TO FEDERAL RESPONDENTS'
ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS**

I. Petitioner Manuel Alexander Fuentes Guevara, by and through undersigned counsel, submits this Traverse in reply to Respondents' Return to Petition (ECF No. 7) ("Return"). Petitioner incorporates by reference his Petition for Writ of Habeas Corpus (ECF No. 1) ("Petition") in its entirety, including all facts, exhibits, and legal claims. For the reasons set forth below, the Return's arguments are without merit, the Petition states cognizable claims for relief, and this Court should

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1 grant the writ and order Petitioner's immediate release under appropriate
2
3 conditions of supervision.
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5 II. THE PETITION IS NOT SUCCESSIVE OR AN ABUSE OF THE
6 WRIT AS THE CLAIMS ARE DISTINCT FROM THOSE IN THE
7 PRIOR HABEAS PETITION
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9
10 Respondents argue that this is a successive petition constituting an abuse of
11 the writ under *McCleskey v. Zant*, 499 U.S. 467 (1991), because Petitioner
12 previously filed a habeas petition *Guevara I* (No. 26-cv-342-BAS-DDL), which
13 this Court denied on February 13, 2026. See Answer at 1, 3. This argument
14
15 fundamentally misapprehends both the record and the law.
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18

19 The abuse-of-writ doctrine is founded on the equitable nature of habeas
20 corpus. *Kuhlmann v. Wilson*, 477 U.S. 436, 444 n.6 (1986) (plurality opinion),
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22 *superseded by statute*, § 2244; *see also United States v. Camacho-Bordes*, 94 F.3d
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24 1168, 1173 (8th Cir. 1996); *McCleskey v. Zant*, 499 U.S. 467, 489 (1991). Under
25
26 28 U.S.C. § 2244, successive habeas petitions from petitioners subject to criminal
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28 custody are generally barred, except in rare circumstances. *See, e.g., Boumediene v. Bush*, 553 U.S. 723, 774 (2008). As one court recently observed “[n]either case law nor statutes expressly define what constitutes a second, successive, or subsequent habeas petition.” *See Haidari v. Scott*, No. 2:26-CV-01146-TL, 2026 WL 1194634, at *1 (W.D. Wash. May 1, 2026)(citing *Barapind v. Reno*, 225 F.3d 1100, 1111–12 (9th Cir. 2000)). Thus, a second habeas corpus filing is not without more necessarily a “second, successive, or subsequent” habeas petition.

1 “When a [detainee] files a second or subsequent application, the government bears
2 the burden of pleading abuse of the writ,” which it may satisfy by pleading “with
3 clarity and particularity” the petitioner's writ history, identifying the claims that
4 appear for the first time, and alleging that the petitioner has abused the
5 writ. *McCleskey*, 499 U.S. at 494. “The burden to disprove abuse then becomes
6 petitioner's,” which she may do by showing “cause — *e.g.*, that he was impeded by
7 some objective factor external to the defense” — “for failing to raise [the claim]
8 and prejudice therefrom.” *Id.* Petitioner can rebut by showing cause (*e.g.*, new
9 material facts or objective factors external to the defense) and prejudice, or that a
10 fundamental miscarriage of justice would result from failure to entertain the
11 claims. *Id.* at 501-02; *Alaimo v. United States*, 645 F.3d 1042, 1049 (9th Cir.
12 2011).

13 Here, two material facts arose after *Guevara I* and could not have been fully
14 litigated in that proceeding. First, on May 28, 2026, Petitioner requested a
15 *Rodriguez/Diouf* bond hearing before an immigration judge, and the immigration
16 judge denied the request for lack of jurisdiction. Second, Petitioner's detention has
17 continued beyond the period considered in *Guevara I* and has now become
18 constitutionally prolonged. These post-judgment developments supply the factual
19 basis for the claims asserted here and distinguish this Petition from the prior habeas
20 action.

1. On May 28, 2026, Petitioner requested a *Rodriguez* bond hearing before an
immigration judge. The IJ denied the request for lack of jurisdiction. This is
a concrete, post-*Guevara I* event on which the *Guevara II* is grounded.

1 2. Petitioner’s detention has now become constitutionally prolonged. He was
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3 arrested on November 7, 2025. *Guevara I* was denied in mid-February 2026.
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5 This new petition was filed in mid-June 2026, and detention continues with
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7 no end in sight because of the pending administrative appeal. What may
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9 have been “reasonable” detention in February has hardened into prolonged,
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11 potentially indefinite detention.

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13 Evolving circumstances and new facts alone can render a subsequent habeas
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15 petition non-successive. The prior petition in *Guevara I* focused on the initial
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17 arrest, parole revocation, and detention under 8 U.S.C. § 1231 as they existed then.
18
19 This Petition challenges the continued detention in light of the new bond-hearing
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21 denial and the now-substantially longer period of confinement, which has crossed
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23 into territory implicating substantive due process, *Zadvydas v. Davis*, 533 U.S. 678
24
25 (2001), and—critically—the Ninth Circuit’s mandated bond hearing requirements.
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27 The first petition in *Guevara I* terminated with a judgment on the merits, but the
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abuse-of-the-writ doctrine is not a rigid bar where new facts create distinct claims
or where the nature of the detention has materially changed. *See Barapind v. Reno*,
225 F.3d 1100, 1112 (9th Cir. 2000). Petitioner has shown cause: the bond denial
and extended duration (now well over seven months) are new objective facts.
Prejudice is manifest—continued unlawful detention causing ongoing harm.

Substantive due process prohibits civil detention that is punitive in purpose
or in effect, including civil detention that is excessively prolonged in relation to its
purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Put otherwise, “due
process requires that the nature and duration of commitment bear some reasonable
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1 relation to the purpose for which the individual is committed”; otherwise, the
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3 commitment amounts to punishment. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir.
4
5 2004) (quoting *Jackson*, 406 U.S. at 738). Moreover, even while the Constitution
6
7 permits mandatory detention for certain categories of noncitizens in removal
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9 proceedings, such confinement may become punitive when it is “excessively
10
11 prolonged.” *United States v. Salerno*, 481 U.S. 739, 474 n.4 (1987). Thus, as a
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13 detained person’s time in custody increases, so too does their liberty interest. *See*
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15 *Zadvydas*, 533 U.S. at 699–700. “[F]or detention to remain reasonable,” greater
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17 justification is needed “as the period of confinement grows.” *Id.* at 701. 64.
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19 Accordingly, “at some point, regardless of the risks, due process will require that
20
21 [a person subject to prolonged civil confinement] be released.” *United States v.*
22
23 *Torres*, 995 F.3d 695, 709–10 (9th Cir. 2021) (noting that federal government had
24
25 conceded this point); *see also United States v. Briggs*, 697 F.3d 98, 103 (2d Cir.
26
27 2012) (stating that “for every set of circumstances, due process does impose some
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limit” on civil confinement).

III. PETITIONER’S UNCONTROVERTED ALLEGATIONS
REGARDING THE MAY 2026 BOND HEARING STATE A
COGNIZABLE CLAIM — THE NINTH CIRCUIT MANDATES A
RODRIGUEZ/DIOUF BOND HEARING THAT CONFERS
JURISDICTION ON THE IMMIGRATION JUDGE.

Respondents correctly note that, as a § 1231 detainee with a final removal order, Petitioner is subject to mandatory detention and generally not entitled to a *Rodriguez*-style bond hearing in the same manner as certain pre-final-order detainees. However, this argument ignores controlling Ninth Circuit precedent that directly applies here and vests the immigration judge with jurisdiction. In *Diouf v. PETITIONER’S TRAVERSE TO FEDERAL RESPONDENTS’ ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS* - 5

1 *Napolitano* (Diouf II), 634 F.3d 1081 (9th Cir. 2011), the Ninth Circuit construed 8
2 U.S.C. § 1231(a)(6) to require an individualized bond hearing before an
3 immigration judge after six months of detention for aliens subject to post-removal-
4 order detention. *See also Casas-Castrillon v. Dep't of Homeland Security*, 535
5 F.3d 942, 949-51 (9th Cir. 2008). At that hearing, the government must prove by
6 clear and convincing evidence that the detainee is a danger to the community or a
7 flight risk. The Court held that prolonged detention under § 1231 raises serious due
8 process concerns, and the hearing must be meaningful, with the IJ considering all
9 relevant factors, including the length of detention. This right was expressly
10 preserved and relied upon in the landmark *Rodriguez v. Robbins* litigation. *In*
11 *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015) (Rodriguez III), the Ninth
12 Circuit affirmed the requirement of automatic bond hearings after six months (with
13 the government bearing the clear-and-convincing burden and the IJ required to
14 consider the length of detention) for subclasses detained under §§ 1225(b),
15 1226(a), and 1226(c). Although the Court reversed the injunction as to the specific
16 § 1231(a) subclass in that class action—because the class definition excluded
17 individuals with final removal orders not “pending completion of removal
18 proceedings”—the Ninth Circuit made clear that it was not disturbing or limiting
19 *Diouf II*. *See Ramos*, 2018 WL 1317276, at *3 (“Jennings . . . left untouched the
20 Ninth Circuit’s requirement of such hearings for immigrants detained under section
21 1231(a)(6).”). The opinion repeatedly cites and relies on *Diouf II* as establishing
22 the bond hearing right for § 1231 detainees. *See Rodriguez III*, 804 F.3d at 1086-
23 87. Thus, *Diouf II* remains binding precedent in this Circuit for individuals in
24 PETITIONER’S TRAVERSE TO FEDERAL RESPONDENTS’ ANSWER TO PETITION
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1 Petitioner's position. In fact, following the Supreme Court decision in *Rodriguez*,
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3 Respondents agreed that the class-wide permanent injunction entered by the
4
5 district court in *Jennings* for detainees held in the Central District of California
6
7 "remains in place in the Central District of California until it is vacated by some
8
9 further action by [the district court] or the Ninth Circuit." See Joint Status Report,
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11 *Rodriguez v. Marin*, No. CV 07-3239, at *2 (C.D. Cal. Mar. 5, 2018) (ECF No.
12
13 478) and *Rodriguez v. Holder*, No. CV 07-3239, 2013 WL 5229795, at *1 (C.D.
14
15 Cal. Aug. 6, 2013) (order granting permanent injunction). Although the injunction
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17 is limited to the Central District, the legal premises on which it was granted should
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19 apply outside of the district. Petitioner has been detained for well over six
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21 months—more than seven months as of the filing of this Petition. He properly
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23 requested a bond hearing on May 28, 2026. The immigration judge's denial for
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25 "lack of jurisdiction" was legal error. The Ninth Circuit's construction of §
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27 1231(a)(6) in *Diouf II* (and the related *Rodriguez* line of cases) vests the
28
immigration judge with the jurisdiction and authority to conduct the mandated
bond hearing. The statutory and constitutional entitlement to this hearing
necessarily confers jurisdiction upon the IJ to adjudicate whether continued
detention is justified. To hold otherwise would nullify the right recognized in *Diouf*
II and left unaffected after *Rodriguez*. In *Singh v. Holder*, 638 F.3d 1196 (9th Cir.
2011), the Ninth Circuit held that due process requires that the government (1) bear
the burden of justifying continued detention by clear and convincing evidence at a
prolonged detention hearing and (2) provide a contemporaneous recording of that
hearing so there is an adequate record for appeal. *Id.* at 1203-09 (citing, inter alia,
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1 *Addington v. Texas*, 441 U.S. 418, 427 (1979), and *Mathews v. Eldridge*, 424 U.S.
2
3 319, 335 (1976)). *Singh* remains good law after Jennings and disposes of
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5 Respondents' arguments. *Rodriguez v. Marin* ("Rodriguez IV"), 909 F.3d 252, 256
6
7 (9th Cir. 2018)("grave doubts that any statute that allows for arbitrary prolonged
8
9 detention without any process is constitutional...."); *Mansoor v. Figueroa*, No.
10
11 3:17-cv-01695-GPC (NLS), 2018 WL 840253, at *4 (S.D. Cal. Feb. 13, 2018)
12
13 ("The Court finds the IJ is uniquely qualified and situated to make neutral
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15 administrative determinations about Petitioner's eligibility for release on bond
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17 and/or placement in a supervised release program such as ISAP.").

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19 Additionally, Petitioner has a pending administrative appeal of the denial of
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21 his motion to reopen his removal proceedings. Petitioner possesses a clear statutory
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23 right to file a motion to reopen his removal proceedings. Under 8 U.S.C. §
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25 1229aI(7), an alien ordered removed has the statutory right to file one motion to
26
27 reopen. The Supreme Court in *Kucana v. Holder*, 558 U.S. 233 (2010),
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emphatically confirmed that this right is meaningful and judicially enforceable,
recognizing that motions to reopen serve an important function in ensuring
fairness, particularly in cases involving in absentia orders (as here, from 2005).
Here Petitioner is actively and lawfully exercising this statutory right. He filed a
motion to reopen, which was denied. He then timely appealed that denial to the
Board of Immigration Appeals (BIA). That appeal remains pending. He is also
preserving his right to petition for judicial review in the Ninth Circuit if the BIA
denies relief. These are not frivolous or dilatory actions; they are the very
procedures Congress and the Supreme Court have recognized as essential to
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1 correcting potential errors in removal orders. The right to pursue reopening and to
2 petition for review is not merely procedural—it is protected by due process.
3
4 Meaningful access to administrative and judicial review is a core component of
5 due process in immigration proceedings. *See, e.g., INS v. St. Cyr*, 533 U.S. 289
6
7 (2001) (recognizing the historical and constitutional importance of habeas and
8
9 judicial review in immigration); *Boumediene v. Bush*, 553 U.S. 723 (2008)
10
11 (emphasizing the fundamental nature of the right to seek review of executive
12
13 detention). Detaining an individual for a prolonged period—now well over seven
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15 months—solely because he is exercising these rights effectively burdens and chills
16
17 the very rights *Kucana* and § 1229aI(7) were meant to protect.
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21 The Return itself acknowledges the direct link between Petitioner’s exercise
22
23 of these rights and his continued detention: ICE has paused removal proceedings
24
25 “so Petitioner could exhaust his administrative appeal.” Return at 5. Yet
26
27 Respondents simultaneously argue that this same ongoing appeal does not justify
28
any individualized custody review or bond hearing. This position is untenable. It
turns Petitioner’s lawful exercise of statutory and constitutional rights into the very
justification for his indefinite mandatory detention under § 1231. Such a regime
effectively punishes individuals for seeking to vindicate their rights to reopening
and review¹. This reality strengthens Petitioner’s claims under both *Zadvydas v.*

¹ Petitioner’s right to petition the courts for redress of a grievance is also a
fundamental aspect of his First Amendment rights. *See Cruz v. Beto*, 405 U.S. 319,
321-22 (1972) (discussing a Buddhist inmate’s Constitutional right to remedial
court access based on allegations of religious discrimination) *Bill Johnson’s*
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1 *Davis*, 533 U.S. 678 (2001), and *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir.
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3 2011). The uncertainty and prolongation of detention are caused by Petitioner's
4
5 good-faith pursuit of reopening—not by any refusal of his home country to accept
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7 him or by any inherent danger or flight risk that has been individually determined.
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9 In a *Diouf* bond hearing (which Petitioner was wrongly denied jurisdiction to
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11 receive), the immigration judge would be required to consider the length of
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13 detention and all relevant circumstances, including that Petitioner is actively
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15 litigating his right to reopening. Continued detention without such a hearing while
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17 Petitioner exercises these rights violates substantive due process by imposing
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19 punishment for the assertion of legal rights. The government cannot have it both
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21 ways: it cannot rely on the pendency of Petitioner's appeal to justify pausing
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23 removal while simultaneously using that same pendency to justify prolonged,
24
25 unreviewed detention that burdens the exercise of the very rights being pursued.
26
27 Due process and the statutory scheme post-*Kucana* require that Petitioner's rights
28
to move to reopen and to petition for review be given practical effect—not
rendered hollow through indefinite detention without an individualized
determination. Accordingly, this Court should grant habeas relief by ordering
Petitioner's release or, at minimum, directing that he receives a prompt
Rodriguez/Diouf-compliant bond hearing before an immigration judge. At any
such hearing, the government must bear the burden of proving by clear and

Restaurants, Inc. v. NLRB, 461 U.S. 731 (1983); *Borough of Duryea v. Guarnieri*,
564 U.S. 379 (2011).

1 convincing evidence that continued detention is justified, and the immigration
2 judge must consider Petitioner's ongoing, good-faith exercise of his statutory
3 reopening and review rights as a significant factor weighing in favor of release on
4 reasonable conditions.
5
6
7

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9 This further renders his removal order not immutable for detention
10 purposes. If the appeal succeeds, his detention authority will revert to 8 U.S.C. §
11 1226, under which bond hearings are routinely available. This fluidity further
12 supports—and in fact requires—an immediate individualized bond determination
13 under *Diouf II* standards. The denial of the requested hearing without reaching the
14 merits therefore violates Petitioner's statutory rights under the Ninth Circuit's
15 construction of § 1231 and his Fifth Amendment due process rights. This claim is
16 distinct from those litigated in *Guevara I* and provides an independent basis for
17 habeas relief.
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27 IV. PETITIONER'S RENEWED *ZADVYDAS* CLAIM NOW HAS MERIT
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Respondents argue that Petitioner has not shown “no significant likelihood of removal in the reasonably foreseeable future” under *Zadvydas*. See *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (per curiam) (finding the six-month presumptively reasonable period “must have expired at the time [the alien's] § 2241 petition was filed in order to state a claim under *Zadvydas*”). This Court previously held in *Guevara I* that removal to El Salvador could occur expeditiously but was paused for the administrative appeal. That was true in February 2026. It is no longer an accurate description of the current reality. Petitioner has now been detained for approximately seven months and counting. The only reason removal
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1 has not been effectuated is the pending appeal, whose resolution timeline is
2
3 uncertain and could extend detention significantly further. If Petitioner loses the
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5 appeal, he faces removal; if he wins, detention authority shifts. Either way, the
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7 current § 1231 detention has no fixed end date and has become indefinite in
8
9 practical effect. The *Diouf II* bond hearing right (discussed above) provides an
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11 additional mechanism to address this prolonged detention. Petitioner meets his
12
13 initial burden under *Pelich v. I.N.S.*, 329 F.3d 1057 (9th Cir. 2003), by showing the
14
15 detention has become prolonged and its end uncertain in light of the new facts. The
16
17 government has not carried its burden to justify continued detention.

18
19 V. EVOLVING CASE LAW ALSO SUPPORT PETITIONER'S
20 RENEWED DUE PROCESS CLAIMS.

21 Evolving circumstances or evolving caselaw can render a new petition non-
22
23 successive. A clear and growing body of 2025–2026 district court authority now
24
25 holds that due process requires notice and a pre-deprivation hearing before the
26
27 government may seize or re-detain a noncitizen who has been at liberty or is
28
otherwise entitled to process after release on prior humanitarian or conditional
parole. *See, e.g., Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025)
("The lengthy duration of his conditional release as well as the meaningful
connections Petitioner seems to have made with his community during that time
create a powerful interest for Petitioner in his continued liberty."); *Garcia v.*
Andrews, 2025 WL 1927596, at *4 (E.D. Cal. July 14, 2025) ("The length of time
and the connections Petitioner made with his community during that time create a
powerful interest for Petitioner in his continued liberty.").

1 This evolving body of law—applying *Mathews* to require pre-deprivation
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3 safeguards in immigration detention contexts—was not fully developed or litigated
4
5 in the prior petition. This Court’s own decisions in *Gao* are illustrative. In *Gao* this
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7 Court recently permitted exactly this type of renewed habeas petition raising pre-
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9 deprivation due process claims even after an earlier denial and while the prior
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11 denial was on appeal to the Ninth Circuit. In *Yuxing Gao v. Markwayne Mullin et*
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13 *al.*, No. 3:26-cv-02671-BAS-AHG (S.D. Cal.), Petitioner Yuxing Gao first joined a
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15 habeas petition in *Sebastian et al. v. Casey et al.*, No. 3:26-cv-00306-BAS-AHG
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17 (S.D. Cal.), which this Court denied as to her on February 10, 2026, on the ground
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19 that she was subject to mandatory detention under 8 U.S.C. § 1231. *See* Feb. 10,
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21 2026 Order at 2 (denying petition “because Petitioner Yuxing Gao has already had
22
23 her asylum petition denied and has been ordered removed”). While the appeal was
24
25 pending, Gao then filed a new habeas petition. In the May 20, 2026 order granting
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27 her amended petition, this Court explicitly acknowledged the prior denial but
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nevertheless entertained and granted relief on her claim that she had been re-
detained without notice or an opportunity to be heard and without any showing of
materially changed circumstances from her prior parole release. *Yuxing Gao v.*
Mullin, No. 3:26-cv-02671-BAS-AHG, slip op. at 2–4 (S.D. Cal. May 20, 2026).
The Court held that Gao’s re-detention “without notice or an opportunity to be
heard and without noticeable changed circumstances, violates Petitioner’s Due
Process rights.” *Id.* at 3. It further ruled that once DHS had released her on parole,
it could not simply re-arrest her “merely because [she is] subject to removal
proceedings” without providing notice and a prompt hearing before an
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1 Immigration Judge. *Id.* (quoting *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176
2 (N.D. Cal. 2017)). These two cases demonstrate that a pre-deprivation hearing /
3
4 procedural due process claim concerning the manner of arrest and detention can be
5
6 re-asserted in a subsequent habeas petition, even after an earlier denial, particularly
7
8 where the petitioner presents the claim in light of the ongoing nature of the
9
10 detention. The Court did not treat *Gao*'s second petition as an abuse of the writ.
11
12 The same principle applies here: Petitioner was released from custody under
13
14 section 212(d)(5) and re-detained without a notice, opportunity to rebut, or a pre-
15
16 or post-deprivation hearing before a neutral adjudicator. Petitioner's claims
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18 regarding the lack of any pre-deprivation notice or hearing before his arrest and
19
20 detention on November 7, 2025, and the continued denial of process, are properly
21
22 before the Court in this second petition.
23

24
25 In sum, under the abuse-of-the-writ doctrine, Respondents cannot meet their
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27 burden to show abuse. Petitioner has shown (at minimum) that these claims
28
involve distinct issues, newly evolved facts, and intervening developments in the
law mandating pre-deprivation process. Any other result would penalize Petitioner
for the government's own evolving and increasingly aggressive detention
practices. The claims are not successive. This Court should reach the merits and
grant the writ.

VI. ON THE MERITS, PETITIONER'S DETENTION VIOLATES THE
FIFTH AMENDMENT.

Petitioner's detention is unlawful as a pre-deprivation hearing was required
but was withheld: no warrant was served at the time of arrest; Petitioner was

1 provided no notice of the revocation of his prior parole and release, an opportunity
2
3 to respond and present evidence, and be heard before a neutral adjudicator. This
4
5 constitutes a clear violation of procedural due process. The Due Process Clause
6
7 requires “some kind of a hearing before the State deprives a person of liberty.”
8
9 *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). Applying the *Mathews v. Eldridge*,
10
11 424 U.S. 319 (1976), balancing test:

- 12
13 • Private interest: Petitioner has a powerful liberty interest in remaining free,
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15 strengthened by his prior parole, pending motion to reopen, and life built in
16
17 the United States. See *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D.
18
19 Cal. 2025); *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1030 (N.D.
20
21 Cal. 2025)
- 22
23 • Risk of erroneous deprivation: Extremely high—Petitioner had no
24
25 opportunity to contest the basis for detention before being seized. No
26
27 individualized assessment of flight risk or danger occurred at arrest or at any
28
time after.
- Government interest: Minimal. Providing notice and a pre-deprivation
hearing (or at minimum a prompt post-arrest determination) imposes at most
a minimal burden, as custody hearings are routine. See *Hernandez v.*
Sessions, 872 F.3d 976, 994 (9th Cir. 2017).

Petitioner is not a danger to the community or a flight risk. His detention
serves no legitimate non-punitive purpose and has become punitive and arbitrary.
Zadvydas, 533 U.S. at 690–92; *Demore v. Kim*, 538 U.S. 510, 531–32 (2003)

(Kennedy, J., concurring). Detention exceeding six months without a final order is
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1 presumptively unlawful. Respondents cannot show a “special justification”
2
3 outweighing Petitioner’s liberty interest. *Kansas v. Hendricks*, 521 U.S. 346, 356
4
5 (1997).

6
7 Indeed, the Fourth Amendment, which applies to seizures by immigration
8
9 authorities, prohibits such re-arrests, which courts have long held could result in
10
11 “harassment by continual rearrests.” *United States v. Holmes*, 452 F.2d 249, 261
12
13 (7th Cir. 1971) (Stevens, J.) (prohibiting rearrest without change in circumstances
14
15 in criminal context); *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying
16
17 Fourth Amendment principles from criminal context to “limit” scope of
18
19 immigration agents’ seizure authority); *Gonzalez v. United States Immigr. &*
20
21 *Customs Enf’t*, 975 F.3d 788, 817 (9th Cir. 2020) (Fourth Amendment limits apply
22
23 equally to seizures in criminal and civil immigration context).

24
25 The Supreme Court has repeatedly emphasized that “[h]abeas is at its core a
26
27 remedy for unlawful executive detention,” and “[t]he typical remedy for such
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detention is, of course, release.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (citing
Preiser v. Rodriguez, 411 U.S. 475, 484 (1973) (“[T]he essence of habeas corpus is
an attack by a person in custody upon the legality of that custody, and that the
traditional function of the writ is to secure release from illegal custody.”))

The Ninth Circuit has similarly held that “the purpose of habeas remedies is
to ‘put the [petitioner] back in the position he would have been in if the
[constitutional] violation never occurred.’” *Lujan v. Garcia*, 734 F.3d 917, 935
(9th Cir. 2013) (quoting *Nunes v. Mueller*, 350 F.3d 1045, 1057 (9th Cir. 2003));
accord Chioino v. Kernan, 581 F.3d 1182, 1184 (9th Cir. 2009). Thus, “[a]s has
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1 been found in countless similar cases in this Circuit, the appropriate remedy in
2
3 such cases is to order Petitioner placed in the position he would have been absent
4
5 the due process violation—that is, he should be released from custody on the
6
7 conditions that were initially imposed." *Iurii Mazurov v. Desert Annex Det.*
8
9 *Facility*, No. 5:26-CV-02236-BFM, 2026 WL 1365164, at *4 (C.D. Cal. May 8,
10
11 2026) (citing cases); see also *Changoluiza Corrales v. D. Marin*, No. EDCV 26-
12
13 01716-KK-RAOX, 2026 WL 1047934, at *6 (C.D. Cal. Apr. 15, 2026) (citing
14
15 *Pablo Sequen v. Albarran*, 806 F. Supp. 3d 1069, 1089 (N.D. Cal. 2025)); *Morales*
16
17 *v. U.S. Immigr. & Customs Enf't*, No. 5:26-CV-01404-DOC-MAR, 2026 WL
18
19 1026234, at *7 (C.D. Cal. Apr. 15, 2026) ("join[ing] numerous of its sister courts
20
21 in finding that Petitioner's detention is unlawful" due to unlawful parole revocation
22
23 and ordering release notwithstanding prior TRO providing a bond hearing and
24
25 collecting cases); *Gutierrez v. Semaia*, No. 5:26-CV-01181-HDV, 2026 WL
26
27 916773, at *2 (C.D. Cal. Mar. 27, 2026).
28

Petitioner is therefore entitled to immediate release. *See Yao v. Almodovar*,
No. 25-cv-9982 (PAE), 2025 WL 3653433, at * 11 (S.D.N.Y. Dec. 17, 2025)
("Although [Petitioner]'s release today cannot cure his loss of liberty . . ., this
remedy, relative to the procedural one of ordering a bond hearing, is the one that
comes closest to doing so."); *Rodriguez Cabrera v. Mattos*, 2025 WL 3072687,
*11 (D. Nev. 2025) (finding that petitioner's "liberty interest is particularly strong
given his initial release from detention in 2022, and the fact that Respondents did
not seek his return to custody upon the expiration of his parole in December 2022,
or in the three years since."); *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130
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(W.D. Wash. 2025) (granting TRO and ordering that petitioner, who was re-detained months after the expiration of his parole, “should be released and only re-detained after a hearing in front of an immigration judge”); *Rodriguez Cabrera v. Mattos*, No. 2:25-CV-01551-RFB-EJY, 2025 WL 3072687, at *15 (D. Nev. Nov. 3, 2025) (granting habeas petition where petitioner was re-detained three years after the expiration of his parole, and enjoining the government “from re-detaining Petitioner in connection with his current removal proceedings without an individualized bond hearing”); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (“In the context of revocation of civil release, an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing.”) (internal quotation marks omitted).

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Respectfully Submitted by

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