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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BASTIDAS SILVA DIONY, Petitioner, v. CHRISTOPHER J. LaROSE, Facility Administrator of Otay Mesa Detention Facility, Respondent.	Case No.: 26-cv-04072-TWR-DDL **RETURN TO PETITION FOR WRIT OF HABEAS CORPUS**

Before the Court is Petitioner Bastidas Silva Diony's fifth petition for writ of habeas corpus under 28 U.S.C. § 2241. Dkt. 1 (Petition V). On July 16, 2026, the Court ordered Respondents to show cause why Petitioner should not be released from custody based on Petition V, in which Petitioner "alleges for the first time that he was not provided sufficient notice or an opportunity to be heard . . . prior to his re-detention on May 23, 2025." Dkt. 3 (Minute Order). Because Petitioner could have challenged his re-detention in a prior habeas petition, Petition V is an abuse of the writ and Respondents respectfully request that the Court deny the petition accordingly.

The doctrine of abuse of the writ generally "forbids the reconsideration of claims that were or could have been raised in a prior habeas petition." *Calderon v. United States Dist. Ct.*, 163 F.3d 530, 538 (9th Cir.1998) (*en banc*) (overruled in part on other grounds

by *Woodford v. Garceau*, 538 U.S. 202 (2003)). Under the abuse of the writ doctrine, a successive petition must be dismissed unless the petitioner can show (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. *See McCleskey v. Zant*, 499 U.S. 467, 494–95 (1991); *Sanders v. United States*, 373 U.S. 1, 15 (1963). The government bears the burden of showing "with clarity and particularity . . . petitioner's prior writ history, [and] identif[ying] the claims that appear for the first time." *McCleskey*, 499 U.S. at 494.

Here, there is no question that Petitioner's claim for immediate release based on an alleged unlawful re-detention is appearing for the first time. Not only has the Court already identified it as a new claim, Dkt. 3, the Court has already granted Petitioner's previous request for habeas relief by directing Respondents to provide Petitioner with an individualized bond hearing. On March 26, 2026, Petitioner received a bond hearing before an Immigration Judge after the Court partially granted his habeas petition. *See* Minute Order Granting in Part Petition, *Bastidas Silva v. Warden*, Case No. 26-cv-1249 TWR (DDL) (S.D. Cal. entered Mar. 12, 2026), ECF No. 5.

Petitioner subsequently filed a habeas petition seeking review of the Immigration Judge's order denying him bond. The Court denied that petition, finding that Petitioner "has failed to exhaust his administrative remedies by appealing the Board of Immigration Appeals . . . ." *See* Minute Order Denying Without Prejudice Petition, *Bastidas Silva v. LaRose, et al.*, Case No. 26-cv-02555-TWR (DDL) (S.D. Cal. entered May 1, 2026), ECF No. 6. In Petition V, Petitioner now argues that because he was re-detained by ICE without prior notice, he is entitled to immediate release rather than a bond hearing. Nonetheless, Petitioner provides no explanation for why his re-detention in May 2025 was not a basis for habeas relief in any of his previous cases. Because his new theory of entitlement to habeas relief in Petition V could have been raised in a prior petition, Respondents contend Petition V runs afoul of the abuse of the writ doctrine.

Though Petitioner may disapprove of the outcome of his bond hearing, he is not entitled to a clean-slate review by this Court of a successive petition asserting new claims for relief as if the previous petitions don't exist. Nor would it be a fundamental miscarriage of justice for the Court to refuse to entertain this new claim.[1] *See Bastidas Mejias v. Warden*, No. 26-cv-3715-AGS-DEB, ECF No. 8 at 2 (S.D. Cal. July 21, 2026). Because Petitioner has filed a successive petition asserting new claims that could have been made in a prior petition, the Court should dismiss this matter. However, should the Court disagree, Respondents respectfully request seven days to provide a supplemental response.

DATED: July 21, 2026

Respectfully submitted,

ADAM GORDON
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s/ Hunter V. Norton
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[1] In a factually and procedurally similar matter, this Court declined to order the release of a petitioner. *See* No. 26-cv-2967-TWR-DDL.