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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JEFRY GILBERTO RAMIREZ PEREZ *Petitioner*, v. JEREMY CASEY, Facility administrator at the Imperial Regional Detention Facility, PATRICK DIVVER, Director of the U.S. Immigration and Customs Enforcement San Diego Field Office, TODD LYONS, acting Director of U.S. Immigration and Customs Enforcement, MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security, and TODD BLANCHE, Acting U.S. Attorney General.	Case No.: 26-cv-4201-CAB-DEB **Traverse in Support of petition for Habeas Corpus**

Introduction

In its Return to Mr. Ramirez Perez's habeas petition, the government argues that the Petition should be dismissed under the Abuse of the Writ Doctrine, without addressing the merits of Petitioner's argument that he should be immediately released because his arrest was unlawful. The Abuse of the Writ Doctrine does not bar Petitioner's second petition, however, because it raises a distinct claim: that he was arrested without a warrant and his arrest was therefore unlawful. Moreover, the government only turned over the I-213, which provides evidence of the warrantless arrest, after this Court granted Petitioner's first habeas petition and ordered a bond hearing.

In addition, the government argues that Mr. Ramriez Perez must exhaust administrative remedies by appealing the immigration judge's denial of bond to the Board of Immigration Appeals. However, Respondent is not asking this Court to review the merits of the immigration judge's decision at the bond hearing. He maintains that this Court should grant immediate release because it is impossible for him to get a fair and impartial hearing before the immigration court, given the drastic changes that have been implemented at the Executive Office for Immigration Review (EOIR) since 2025 by the Trump Administration.

Statement of Facts

Mr. Ramirez Perez was arrested by Border Patrol on April 25, 2026, at 8:30 a.m. He filed an initial habeas petition alleging violations of due process and the Immigration and Nationality Act when Respondents denied him access to a bond hearing. In its Return to the first habeas petition, the government indicated that it did not oppose an order from this Court directing a bond hearing be held pursuant to 8 U.S.C. §1226(a). *See* 26-cv-4201-CAB-DEB, Dkt. No. 6. This Court granted the Petitioner's first habeas petition and ordered an individualized bond hearing to happen within 14 days of the order. *Id.* at Dkt. No. 6.

The bond hearing occurred before the immigration court on June 17, 2026. At that hearing, Mr. Ramirez-Perez was represented by Guelda Hadley Bajramovic. *See* Dkt. No. 6, Ex. 5. The immigration judge denied bond based on risk of flight and gave the following reasons:

> Respondent entered the United States illegally. The Respondent has lived in the United States for three years but has not obtained work authorization or a valid driver's license. He has no family in this country who could assist him with the legalization of his status. His proposed sponsor, his cousin's wife Diana Reyes, has insufficient income to support herself and her family, much less the Respondent. Additionally, the Respondent has limited relief available to him, given that he arrived in the U.S. in 2023 and did not file an I-589 until 2026, thereby subjecting himself to the one-year asylum bar. *Id.*

Thus, Petitioner has remained detained for almost four months, despite having no criminal history, three years' residence in the United States and a stable residence to which he could return to live with his domestic partner.

The day before the bond hearing, Respondents filed form I-213 with the immigration court. Immigration counsel provided a copy of the I-213 to undersigned counsel on July 10. The I-213 contains no reference to a warrant. *See* Dkt. No. 6, Ex. 2.

Petitioner then filed a second habeas petition on July 22, 2026, arguing that he was arrested on April 25, 2026, at 8:00 a.m. without a warrant and should be immediately released because his arrest violated the Fourth Amendment and 8 U.S.C. §1226(a). In Response to Mr. Ramirez Perez's second petition, the government produced an administrative warrant that was served on Mr. Ramirez Perez after he was arrested, on April 25, 2026, at 8:05 p.m. The government's position is that Petitioner's new claims are without merit because Petitioner was arrested pursuant to an administrative arrest warrant. However, this warrant was issued after Mr. Ramirez Perez was arrested. They did not produce a warrant prior to his arrest as required by the Fourth Amendment.

Mr. Ramirez Perez was arrested without a warrant in violation of the Fourth Amendment

Ordinarily, immigration officials must first obtain an administrative warrant before effectuating the arrest of a noncitizen. *See Arizona v. U.S.,* 567 U.S. 387, 408 (2012) (2012) ("If no federal warrant has been issued, those officers have more limited authority.") *Id.* Pursuant to 8 U.S.C. §1226(a), the arrest of a noncitizen must be made "[o]n a warrant issued by the Attorney General." *Id.* Moreover, the INA permits a warrantless immigration arrest only if the officer "Has reason to believe that [1] the alien so arrested is in the United States in violation of any...law or regulation and [2] is likely to escape before a warrant can be obtained for his arrest. *Escobar Molina v. U.S. Dep't of Homeland Sec.,* 811 F. Supp. 3d 1, 30 (D.D.C. 2025). 8 C.F.R. § 287.8(c)(2)(ii) provides: "A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." Therefore, "immigration enforcement officers may conduct a warrantless civil immigration arrest only if they have probable cause to believe that a person is both in the United States unlawfully *and* an escape risk." *Escobar Molina*, 811 F. Supp. 3d at 30 (italics in original).

Respondents have failed to provide any evidence that they arrested Petitioner pursuant to a warrant or that he posed a risk of escape. The I-213 form does not mention any warrant, or any exigent circumstances. According to the I-213, Border Patrol agents "encountered" Mr. Ramirez-Perez and "determined that he had unlawfully entered the United States from Mexico, at a time and place other than as designated by the Unite States Attorney General." Dkt. No. 6, Ex. 2. It appears that he answered questions and provided the agents with his U.S. address and biographic information, including information about his citizenship and health. *Id.* He was then arrested without incident. At the time of his arrest, he was not fleeing,

was not committing a crime, and was not a danger to the community.

The warrant produced by Respondents was issued after Mr. Ramirez Perez was arrested. Dkt. No. 6, Ex. 3. Petitioner was arrested on April 25, 2026, at 8:30 AM and this warrant was issued after Petitioner was arrested at 8:05 PM. *Id.*, Ex. 2,3. Based on the government's own evidence, it is clear that Petitioner was arrested before a warrant had been issued in his case.

The Court should conclude that Respondents violated 8 U.S.C. §§ 1375(a)(2) and 1226(a), when they arrested Petitioner without a valid warrant and without probable cause to believe that he posed a risk of escape. When Petitioner was arrested by border patrol agents without a warrant and without exigent circumstances, his seizure violated his Fourth Amendment right to be free from "arbitrary and oppressive interference by enforcement officials" with his privacy and personal security. *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976). The fact that Mr. Ramirez Perez was afforded a bond hearing after he was unlawfully detained by DHS does not cure the initial constitutional violation. *See Urias v. Semaia*, No. 5:26-cv-02753-DTB, slip op. at *11-12 (C.D. Cal. Jun. 10, 2026) (where petitioner was not arrested with "a pre-arrest warrant" and "given no notice of his impending arrest" even a bond hearing held after the unlawful arrest cannot "retroactively cure the unconstitutional deprivation of a protected liberty interest that occurred without notice or a hearing" and ordering immediate release).

Given such violations, "Petitioner's release is necessary to return him to the status quo." *Nazarian v. Noem*, Case No. 5:25-cv-KK-DSR, 2025 WL 3236209, at *7 (C.D. Cal. Nov. 3, 2025). The status quo is "the last uncontested status which preceded the pending controversy." *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (internal quotation marks omitted). "Accordingly, Petitioner's release from custody is the appropriate remedy." *Nazarian*, 2025 WL 3236209, at *7; see *Esmail v. Noem*, Case No. 2:25-cv-8325-WLH-RAO, 2025 WL 3030590, at *6 (C.D. Cal. Sept. 12, 2025) ("Providing Petitioner an interview ex

post facto, while keeping him detained in ICE's custody, would not remedy the apparent constitutional violation that Petitioner has suffered in being re-detained without any measure of due process. The fact that he was not given an interview renders his detention unlawful in the first place, necessitating his release.").

The abuse of writ doctrine does not bar Petitioner's habeas petition

Generally, the abuse of the writ doctrine forbids the reconsideration of claims that were or could have been raised in a prior habeas petition. *Petrocelli v. Angelone*, 248 F.3d 877, 884 (9th Cir. 2001) (quoting *Calderon v. United States Dist. Ct.*, 163 F.3d 530, 538 (9th Cir. 1998) (en banc)). The Ninth Circuit has recognized that the common law abuse of the writ doctrine may apply to successive § 2241 habeas petitions challenging immigration detention. *Alaimalo v. United States*, 645 F.3d 1042, 1049 (9th Cir. 2011) (Under the abuse of the writ doctrine, a successive petition that raises identical grounds for relief as a prior 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 that claim.). In *McCleskey*, the Supreme Court examined the scope and procedure of the abuse of the writ doctrine. When a prisoner files a second or subsequent habeas petition, the government bears the burden of pleading abuse of the writ by noting, with clarity and particularly, petitioner's prior writ history, identifies the claims that appear for the first time, and alleges that petitioner has abused the writ. 499 U.S. 467, 494-95 (1991). The burden to disprove abuse then shifts to petitioner. *Id.* If petitioner cannot show cause, the failure to raise the claim in an earlier petition may nonetheless be excused if he or she can show that a fundamental miscarriage of justice would result from a failure to entertain the claim. *Id.*

Petitioner's second habeas petition raised a different argument than the first petition. Second habeas petitions for immigrant detainees are permissible when the

claims have yet to be reviewed. Here, at the time of the first habeas petition, undersigned counsel did not have a copy of the I-213 from Petitioner's arrest on April 25, 2026. The I-213 was filed with the immigration court by DHS on June 16, 2026, the evening before the bond hearing that occurred on June 17, 2026. Counsel for Petitioner at the bond hearing provided a copy of the I-213 to undersigned counsel on July 10, 2026. Upon review of the I-213, undersigned counsel noted that there was no indication that DHS had obtained an arrest warrant at the time that Mr. Ramirez Perez had been arrested. Counsel thus filed the second habeas petition on July 22, 2026, raising the warrantless arrest argument. Because the circumstances of the arrest were not clear at the time of the first petition, the first petition did not make an argument regarding unlawful arrest.

Moreover, it would be a miscarriage of justice to not entertain Mr. Ramirez Perez's claim. He has been in immigration detention for four months despite there being no evidence that he is a danger or a flight risk. Moreover, any concerns the immigration judge had regarding flight risk could be ameliorated by placing Mr. Ramirez Perez in the alternatives to detention program and requiring that he wear a GPS ankle monitor. There is no reason to require that he remain in detention while his immigration case proceeds. However, as articulated in Mr. Ramirez Perez's second habeas petition, EOIR has implemented policy directives that adjudications in immigration court favor the government over non-citizens. The immigration courts are thus not neutral decision-makers but rather a tool for the current administration to advance its deportation agenda and immigration policy objectives. A bond hearing before the immigration court will not provide a remedy to the unlawful government action in this case.

Exhaustion of Administrative Remedies is not Required

Respondents argue that this Court must dismiss the petition because Mr. Ramirez Perez has failed to exhaust his administrative remedies by appealing the

denial of bond to the Board of Immigration Appeals (BIA). In the immigration context, "exhaustion of remedies is statutorily required only for appeals of final orders of removal." *See Quintana Casillas v. Sessions*, Civ. 17-01039-DME-CBS, 2017 WL 3088346, at *8 (D. Col. Jul. 20, 2017) (citing *Hoang v. Comfort*, 282 F.3d 1247, 1254 (10th Cir. 2022), *cert. granted and judgment vacated on other grounds sub nom. by Weber v. Phu Chan Hoang*, 538 U.S. 1010 (2003)).

Because exhaustion is not jurisdictional, courts "have discretion to waive a prudential requirement." *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). "[A] court may waive the prudential exhaustion requirement if 'administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.'" *Hernandez v. Sessions,* 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). Accordingly, whether to require exhaustion is committed to sound judicial discretion. *L.G. v. Choate*, 744 F.Supp.3d 1172, 1181 (D. Col. 2024).

Mr. Ramirez Perez argues in his Petition that he should be released because he was arrested without a warrant. The government argues that he is attempting to bypass the administrative scheme by not pursuing an appeal of his bond denial to the Board of Immigration Appeals. However, such an endeavor would be futile because the Board of Immigration Appeals has been reshaped to "escalate mass detention and deportations."[1] According to an article published this year by NPR, "in 2025, the BIA backed the Department of Homeland Security lawyers in 97% of publicly posted cases." *Id.* In one of the two cases in which the BIA did not side with the government in 2025, DHS attorneys failed to appear at the hearing. *Id.* Moreover, "the board has made it harder for immigration courts to offer immigrants

[1] *See* Ximena Bustillo and Rahul Mukherjee, *An immigration court few have heard of is quietly shaping policy behind the scene*, NPR (Mar. 20, 2026) https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detentionappeals-board-deportation.

bond in lieu of detention. It has made it easier to deport migrants to countries other than their own. And a new proposed regulation would make it harder for people to appeal their immigration decisions at all." *Id.* This change to the BIA has been brought about by the firing of BIA judges who were not seen as sufficiently in line with the Trump administration's positions on immigration. The BIA had 25 members at the beginning of the Trump administration in January 2025.[2] The administration quickly fired all nine judges appointed during the Biden administration and the Board was left with 15 members, all but one who were appointed during the first or second Trump administrations. The Administration has made "no secret of its preference for adjudicators aligned with its enforcement priorities." *Id.* Moreover, "a similar ideological ouster has also occurred at the IJ level." *Id.*

For these reasons, it would be futile for Mr. Ramirez Perez to appeal the immigration judge's denial of bond to the BIA because the BIA will simply rubber stamp the decision of the immigration judge denying bond.

Because Mr. Ramirez Perez was subject to a warrantless arrest and because he will not be given a fair hearing by a neutral and independent arbiter in immigration court, this Court should grant the petition and order his immediate release.

Respectfully submitted,

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Date: August 12, 2026

[2] Jason A. Cade, *Welcome to the Trump Administration's Board of Immigration Appeals. The Immigrant Always Loses.* 136 Yale L.J. Forum (forthcoming 2026), at p. 3.