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

**RAHUL SHARMA,**

Petitioner,

v.

**MARKWAYNE MULLIN**, Secretary of  
the Department of Homeland Security,  
**TODD BLANCHE**, Acting Attorney  
General, **TODD M. LYONS**, Acting  
Director, Immigration and Customs  
Enforcement, **JESUS ROCHA**, Acting  
Field Office Director, San Diego Field  
Office, **JEREMY CASEY**, Warden at  
Imperial Regional Detention Facility,

Respondents.

CIVIL CASE NO.: 26-cv-2680-CAB

**Traverse in Support of  
Petition for a  
Writ of Habeas Corpus**

**INTRODUCTION**

In Mr. Sharma's previous habeas petition, both his prior attorney and Respondents claimed that Mr. Sharma was a class member of *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), and thus eligible for a bond hearing. *See Sharma v. Casey*, 26-cv-00050-CAB-SBC, ECF 1, 5. This was incorrect. Because Mr. Sharma was apprehended on arrival and paroled into the United States, he could *not* have

1 been a *Maldonado Bautista* class member. But this Court, relying on incorrect  
2 representations from prior counsel and Respondents, granted the appropriate relief  
3 for a *Maldonado Bautista* class member—a bond hearing.

4 Mr. Sharma then filed a new habeas petition, and Federal Defenders of San  
5 Diego, Inc., identified the *correct* regulatory and due process violations based on  
6 Mr. Sharma's prior grant of parole and sought the appropriate relief—immediate  
7 release. But in their Return, Respondents do not take responsibility for their prior  
8 incorrect concession. Instead, they blame Mr. Sharma, arguing that this Court  
9 should not consider his claims in this amended petition because they are an abuse  
10 of the writ and Mr. Sharma has not exhausted his administrative remedies. ECF 5.

11 Mr. Sharma should not pay the price for his prior counsel's ineffectiveness  
12 and Respondents' incorrect concession. These errors meet either of the exceptions  
13 to the abuse of the writ doctrine: (1) cause for the successive petition and that  
14 denying it would prejudice the petitioner or (2) a fundamental miscarriage of justice  
15 would result from failure to entertain the claim. *See McCleskey v. Zant*, 499 U.S.  
16 467, 494–5 (1991). Moreover, Mr. Sharma need not have administratively  
17 exhausted an incorrect *Maldonado Bautista* argument that is not applicable.  
18 Accordingly, this Court should apply the correct legal framework and grant the  
19 appropriate relief, which is immediate release.

#### 20 ARGUMENT

21 Because Mr. Sharma's prior counsel and Respondents incorrectly  
22 characterized him as a *Maldonado Bautista* class member, his parole argument is  
23 not an abuse of the writ and need not be exhausted. And because Respondents have  
24 waived any argument on the merits, this Court should grant the petition and order  
25 his immediate release.

#### 26 I. Mr. Sharma's claim is not an abuse of the writ.

27 To understand this case, a brief review of the procedural history is warranted.  
28 On January 5, 2026, Mr. Sharma, represented by prior counsel, submitted a habeas

petition arguing that because his detention was governed by 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b)(2)(A), the BIA's decision in *Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025), did not apply. ECF 1, 26-cv-50-CAB-SBC. The government responded by conceding that Mr. Sharma was a member of the class eligible for relief under *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), and agreeing to provide him a bond hearing. ECF 5, 26-cv-00050-CAB-SBC.

But Mr. Sharma was not a *Maldonado Bautista* class member. *Maldonado Bautista* defined the bond eligible class as follows:

**Bond Eligible Class:** All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) *were not or will not be apprehended upon arrival*; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

*Bautista v. Santacruz*, 813 F. Supp. 3d 1084, 1095 (C.D. Cal. 2025), judgment entered sub nom. *Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025) (emphasis added). But Mr. Sharma was apprehended upon arrival, ECF 8-1 at ¶¶ 1–2, and therefore not a *Maldonado Bautista* class member. He was detained for about a week and then released on parole. *Id.* at ¶ 2. See ECF 1 at 17, 26-cv-00050-CAB-SBC. He was only re-detained unexpectedly—and with no process—after nearly eighteen months on parole. See *id.* at ¶ 6.

But based on prior counsel's ineffective argument and the government's erroneous concession, this Court granted the petition and ordered a bond hearing. ECF 7, 26-cv-50-CAB. Bond was then denied. ECF 8, 26-cv-00050-CAB.

Mr. Sharma then filed a new petition, and this Court appointed Federal Defenders. Federal Defenders amended the petition, raising APA and Due Process Claims based on parole revocation. ECF 8.

1 The government's response does not at all address the merits of the amended  
2 petition's claims. Instead, the government (1) alleges Mr. Sharma's amended  
3 petition is an abuse of the writ, (2) asserts that Mr. Sharma has failed to exhaust  
4 his administrative remedies, and (3) claims Mr. Sharma already received relief in  
5 the form of a bond hearing. None of these points support denying the amended  
6 petition.

7 First, the government argues that Mr. Sharma's amended petition amounts to  
8 abuse of the writ. But Mr. Sharma can meet either of the exceptions to the abuse of  
9 the writ doctrine: (1) cause for the successive petition and that denying it would  
10 prejudice the petitioner or (2) a fundamental miscarriage of justice would result  
11 from failure to entertain the claim. *See McCleskey*, 499 U.S. at 494–5. As  
12 Respondent aptly cites, “The government bears the burden of pleading abuse of the  
13 writ, *McCleskey*, 499 U.S. at 477.” ECF 13 at 2. Once that happens, the burden  
14 shifts to the Petitioner to demonstrate one of the exceptions. *McCleskey*, 499 U.S.  
15 at 477. The record makes clear that Mr. Sharma can show not only cause and  
16 prejudice but also a fundamental miscarriage of justice.

17 Mr. Sharma can show cause through the ineffective assistance of the attorney  
18 who represented him in the prior petition. “The requirement of cause in the abuse-  
19 of-the-writ context is based on the principle that petitioner must conduct a  
20 reasonable and diligent investigation aimed at including all relevant claims and  
21 grounds for relief in the first federal habeas petition.” *Id.* at 498. Ineffective  
22 assistance of counsel occurs when an attorney's performance was deficient such  
23 that the client was deprived of counsel in violation of their Sixth Amendment right,  
24 and the deficient performance caused prejudice to the client. *Strickland v.*  
25 *Washington*, 466 U.S. 668, 687 (1984). Both of those elements are clearly met here,  
26 demonstrating cause for Mr. Sharma's new claims.

27 In the prior petition, Mr. Sharma's attorney did not raise the appropriate  
28 argument: because Mr. Sharma had been on parole, violations of due process and

1 the APA entitled him to immediate release. By January 2026, when the prior  
2 petition was filed, these parole arguments were routinely and successfully made in  
3 habeas petitions across district courts—including this District. *See, e.g., Ortiz Reyes*  
4 *v. La Rose*, No.: 25-cv-2938 JLS-VET, 2025 WL 3171743 (S.D. Cal. Nov. 13,  
5 2025); *Espinoza v. Kaiser*, No. 25-cv-1101 JLT-SKO, 2025 WL 2675785, at \*10–  
6 12 (E.D. Cal. Sept. 18, 2025) (same); *Alegria Palma*, No. 25-cv-1942 BJC (MMP),  
7 ECF No. 14, at \*6 (S.D. Cal. Aug. 11, 2025) (same); *Valdez v. Joyce*, No. 25 Civ.  
8 4627 (GBD), 2025 WL 1707737, at \*4–5 (S.D.N.Y. June 18, 2025) (granting  
9 habeas petition on due process grounds when petitioner was released on his own  
10 recognizance and re-detained without notice, a hearing, or evidence of changed  
11 circumstances); *Gonzalez v. Bostock*, No. 25-cv-1404-JNW-GJL, 2025 WL  
12 2841574, at \*7–9 (W.D. Wash. Oct. 7, 2025) (same); *Y.M.M. v. Wamsley*, No. 25-  
13 cv-2075, 2025 WL 3101782, at \*2–3 (W.D. Wash. Nov. 6, 2025) (same). A simple  
14 search on Westlaw would have laid out the obvious argument to make on  
15 Mr. Sharma’s behalf.

16 Instead, as noted by the government, prior counsel made claims under  
17 *Maldonado Bautista*. *See* ECF 13 at 2. It is inexcusable, then, that the claims  
18 advanced in Mr. Sharma’s prior petition did not include a challenge to the  
19 revocation of his parole. The prejudice this grave error caused is clear: Mr. Sharma  
20 was left to endure several more months in custody, deprived of his liberty. If his  
21 amended petition is dismissed, Mr. Sharma will continue to be detained in violation  
22 of due process and the APA when so many others in this exact same situation have  
23 received the appropriate remedy. Because of this, prior counsel was clearly  
24 deficient in a way that prejudiced Mr. Sharma.

25 Next, it would be a clear miscarriage of justice if Mr. Sharma’s amended  
26 petition were dismissed. “The miscarriage of justice exception to cause serves as  
27 an additional safeguard against compelling an innocent man to suffer an  
28 unconstitutional loss of liberty, guaranteeing that the ends of justice will be served



1 in full.” *McCleskey*, 499 U.S. at 495 (citation omitted). “The miscarriage of justice  
2 standard requires a strong showing of innocence, unfairness, or the like . . . .”  
3 *Sotirion v. U.S.*, 617 F.3d 27, 36 (1st Cir. 2010) (citation omitted). “(F)ederal courts  
4 must be mindful of the ‘ends of justice’ before dismissing a successive habeas  
5 petition.” *Alaimalo v. U.S.*, 645 F.3d 1042, 1050 (9th Cir. 2011). The “fundamental  
6 miscarriage of justice exception[] is grounded in the equitable discretion of habeas  
7 courts to see that federal constitutional errors do not result in the incarceration of  
8 innocent persons.” *Herrera v. Collins*, 506 U.S. 390, 404 (1993). The government  
9 has been unable to show why Mr. Sharma’s detention is constitutional because it is  
10 not. If this amended petition is dismissed, Mr. Sharma will remain detained despite  
11 clear evidence that he is entitled to release like so many others who have succeeded  
12 on the exact same claim.

13 Respondents further claim that Mr. Sharma must be “hoping for a different  
14 forum, or hoping to take advantage of the deluge of habeas petitions confronting  
15 the Court.” ECF 13 at 2–3. This statement attempts to blame Mr. Sharma for his  
16 prior attorney’s failings and fails to mention the government’s own part in  
17 incorrectly characterizing his prior petition as controlled by *Maldonado*. Had the  
18 government identified Mr. Sharma’s case for what it was, Mr. Sharma would not  
19 have had to file a second petition, and he could have been granted the appropriate  
20 remedy of release months ago.

21 Second, Mr. Sharma does not need to exhaust administrative remedies  
22 because he is not challenging the bond order from the first petition—he is  
23 challenging his unconstitutional re-detention. The government spends the bulk of  
24 its reply addressing why this Court should dismiss because Mr. Sharma has not  
25 exhausted administrative remedies, but “[a]n exception to the exhaustion  
26 requirement has been carved for constitutional challenges to . . . [DHS]  
27 procedures.” *Sola v. Holder*, 720 F.3d 1134, 1135 (9th Cir. 2013) (per curiam)  
28 (quoting *Rashtabadi v. INS*, 23 F.3d 1562, 1567 (9th Cir. 1994)). The government’s

1 argument completely ignores the actual issue in Mr. Sharma's amended petition:  
2 that he should be released because of his parole-based claims. To this day, the  
3 government has not identified any justification for re-detention or demonstration of  
4 the processes it was required to follow. This is not an issue for the BIA. He is not  
5 asking this Court to reconsider any bond determination of any IJ—which is the only  
6 determination the BIA could review. *See Venega-Maltez v. Semaia*, No. 5:26-cv-  
7 00525-JAK (AGRx), 2026 WL 846035, at \*7 (C.D. Cal. Mar. 24, 2026) (citing 8  
8 C.F.R. § 1003.1(d)(3)). Mr. Sharma's claims are based on ICE's acts and omission  
9 at his initial arrest in August 2025, not on the IJ's actions in 2026.

10 Moreover, Mr. Sharma is not asking this Court to reconsider its own order in  
11 the prior petition. Due to both the government's and former counsel's erroneous  
12 arguments, this Court's order misidentified Mr. Sharma as a *Maldonado Bautista*  
13 class member. But even taking the order at face value, nothing about it purports to  
14 decide whether the revocation of Mr. Sharma's parole violated the APA or Due  
15 Process. It does not mention parole at all. Thus, the parole-based claims made in  
16 the amended petition are not inconsistent with any order in the prior case.

17 In short, the government's own inaccurate concession and former counsel's  
18 ineffective assistance of counsel persuaded this Court to answer the wrong question  
19 (about *Maldonado Bautista*) and grant the wrong relief (a bond hearing). The  
20 government should not be able to leverage their mischaracterization of the case to  
21 prevent this Court from answering the right question (about parole) and grant the  
22 right relief (release)—relief that this Court has consistently granted in parole re-  
23 detention cases.

24 **II. Because Respondents have waived any argument on the merits, this**  
25 **Court should grant Mr. Sharma immediate release on the regulatory**  
26 **and Due Process violations.**

27 In his amended petition, Mr. Sharma argued his re-detention violated the Due  
28 Process Clause and the APA. He was not provided “proper notice, reasoning, and

1 a pre-deprivation hearing” in violation of his established due process rights. *Salazar*  
2 *v. Casey*, No. 25-CV-2784 JLS-VET, 2025 WL 3063629 at \*5 (S.D. Cal. Nov. 3,  
3 2025). Respondents did not formally revoke Mr. Sharma’s parole, but even if they  
4 had, they ran afoul of the APA by violating their own previously-made parole  
5 decision. A person shall only be “returned to the custody from which he was  
6 paroled” when “the purposes of such parole . . . have been served.” 8 U.S.C.  
7 § 1182(d)(5)(A). “Under the statute and the regulations, the agency may only  
8 revoke parole and re-detain a noncitizen when the parole’s purpose is served, or no  
9 humanitarian reasons warrant it *and* the noncitizen receives written notice.” ECF 8  
10 at 4.

11 Respondents have failed to address or rebut any of these arguments on the  
12 merits. Accordingly, Respondents have waived, or at least forfeited, their  
13 opportunity to contest the regulatory and Due Process violations or argue against  
14 immediate release. *See United States v. Castillo-Marin*, 684 F.3d 914, 919 (9th Cir.  
15 2012) (determining that the government concedes an argument that “was available  
16 at the time it filed its answering brief”) (citing *United States v. McEnry*, 659 F.3d  
17 893, 902 (9th Cir. 2011)). Because this is a textbook example of a parole violation  
18 that this Court and others routinely grant, *see supra* at 5, this Court should grant the  
19 petition and order Mr. Sharma’s immediate release.

20 Respectfully submitted,

21 Dated: May 22, 2026

s/ Kara Hartzler

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