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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 VITALII POPOV,

12 Petitioner,

13 v.

14 CHRISTOPHER J. LAROSE, WARDEN
AT OTAY MESA DETENTION CENTER,
15 et. al.,

16 Respondents.

Case No. 26-cv-03639-BAS-BJW

**RESPONSE IN OPPOSITION
TO PETITIONER'S HABEAS
PETITION**

17 **I. INTRODUCTION**

18 Petitioner has filed a second habeas petition seeking an order directing his
19 release. However, the premise of the present petition relies on an incorrect assertion of
20 law. For the reasons below, Respondents ask the Court to deny Petitioner's habeas
21 petition and request for relief.

22 **II. FACTUAL BACKGROUND**

23 Petitioner is a native and citizen of Russia, who applied for admission into the
24 U.S. via the Hidalgo, Texas Port of Entry on November 9, 2023. *See* Exhibit 1 (Notice
25 to Appear). He was paroled into the U.S. and issued a Notice to Appear (NTA). *See*
26 Exhibit 2 (I-213); *see also* Exhibit 1. On February 12, 2024, and immigration judge (IJ)
27 denied Petitioner's applications for relief and was ordered removed to Russia. *See*
28

1 Exhibit 3 (IJ Order dated February 12, 2024). Petitioner timely appealed his removal
2 order to the Board of Immigration Appeals (BIA). *See* Exhibit 4 (BIA Appeal Receipt).
3 On February 18, 2025, the BIA dismissed Petitioner's appeal, making his removal order
4 administratively final. *See* Exhibit 5 (BIA Order dated February 18, 2025); *see also* 8
5 C.F.R. § 1241.1(a) (establishing that an order of removal made by the immigration
6 judge at the conclusion of proceedings shall become final upon dismissal of an appeal
7 by the Board of Immigration Appeals). Petitioner failed to file an appeal of the BIA's
8 February 18 decision to the appropriate circuit court. On April 7, 2025, Petitioner filed
9 a motion to reopen and reissue the BIA's February 18 decision, to allow Petitioner to
10 file a timely petition for review before the appropriate circuit court. *See* Exhibit 6 (BIA
11 Decision dated March 19, 2026).

12 On September 18, 2025, Petitioner was encountered by ICE Enforcement and
13 Removal Operations (ERO) and Secret Service for flying drones near the White House.
14 *See* Exhibit 2. Petitioner was taken into immigration custody to execute his removal
15 pursuant to 8 U.S.C. § 1231(a). *See id.* Petitioner has never been released post final
16 removal order (i.e., he has never been released from custody on an order of supervision
17 pursuant to 8 U.S.C. § 1231 and its implementing regulations). *See id.* Petitioner
18 remained detained pursuant to 8 U.S.C. § 1231(a) as Petitioner did not file for a stay or
19 removal, and no automatic stay of removal applied to the pending motion to reopen. *See*
20 *id.*; *see also* 8 C.F.R. § 1003.23(b)(1)(v) (A motion to reopen that is filed with the
21 immigration court does not automatically stay an order of removal or deportation).

22 On March 19, 2026, the BIA denied Petitioner's motion to reopen and reissue the
23 February 18 decision. Exhibit 6.

24 On April 1, 2026, Petitioner filed his first petition for writ of habeas corpus.
25 *Popov v. Warden, Otay Mesa Detention Center et al*, 26-cv-02519-BAS-BJW (S.D.
26 2026), ECF No.1. Petitioner requested release based on an alleged violation of due
27 process based on prolonged detention and no significant likelihood of removal based
28 on a motion to reopen. *See id.* at 6-7. On May 5, 2025, Respondents filed a notice of

1 intent to execute Petitioner's removal order. *See id.* at ECF No. 5. Respondents were
2 unable to execute his removal order due to Petitioner's failure to comply. *See id.* at ECF
3 No. 12. On June 5, 2026, this Court denied Petitioner's prior habeas petition.

4 On June 22, 2026, Petitioner filed his second petition for writ of habeas corpus.
5 ECF No. 1. On July 8, 2026, Petitioner filed an amended petition. ECF No. 7. The
6 amended petition asserts two claims: (1) in September 2025, when taking Petitioner into
7 custody, Respondents failed to comply with 8 C.F.R. § 212.5(e)(2)(i) in revoking
8 parole; and (2) in September 2025, when taking Petitioner into custody, Respondents
9 violated due process in alleging revoking parole. Both claims incorrectly rely on a
10 statement made within a bond memorandum to claim that at the time of his re-detention
11 he was not subject to a final order of removal, and as such, his parole was improperly
12 revoked. *See id.*, at 3-4; *see also* 8 C.F.R. § 1003.19(d) (Consideration by the
13 Immigration Judge of an application or request of a respondent regarding custody or
14 bond under this section shall be separate and apart from, and shall form no part of, any
15 deportation or removal hearing or proceeding). Such reliance is misplaced and
16 incorrect. At the time of his re-detention in September 2025, and throughout his
17 detention since that time, Petitioner has been subject to a final order of removal and
18 subject to mandatory detention under 8 U.S.C. § 1231(a). For the reasons set forth
19 below, this Court should deny Petitioner's second petition.

20 III. ARGUMENT

21 A. Petitioner's Claims Fail Because Petitioner Is And Has Always Been 22 Subject To A Final Order Of Removal Since The Time Of His Re- 23 Detention

24 "Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
25 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered
26 removed from the United States." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
27 (2022). When an alien has been found to be unlawfully present in the United States and
28 a final order of removal has been entered, the statute provides that the government "shall

1 detain” the alien during the removal period. 8 U.S.C. § 1231(a)(2). The correlating
2 regulations for section 1231 explain when a removal order becomes final:

3 An order of removal made by the immigration judge at the conclusion of
4 proceedings under section 240 of the Act shall become final: (a) Upon
5 dismissal of an appeal by the Board of Immigration Appeals; (b) Upon
6 waiver of appeal by the respondent; (c) Upon expiration of the time allotted
7 for an appeal if the respondent does not file an appeal within that time; (d)
8 If certified to the Board or Attorney General, upon the date of the
9 subsequent decision ordering removal; (e) If an immigration judge orders
an alien removed in the alien's absence, immediately upon entry of such
order; or (f) If an immigration judge issues an alternate order of removal
in connection with a grant of voluntary departure, upon overstay of the
voluntary departure period, or upon the failure to post a required voluntary
departure bond within 5 business days.

10 8 C.F.R. § 1241.1. Here, Petitioner became subject to a final order of removal on
11 February 18, 2025, when the BIA dismissed Petitioner’s appeal. *See* 8 C.F.R. §
12 1241.1(a)

13 As stated above, Petitioner incorrectly claims that because he filed a motion to
14 reopen and reissue its decision with the BIA, that this somehow makes his removal
15 order “not administratively final.” That is not so. Notably, the only authority that
16 Petitioner relies on for this proposition is a bond memorandum. However, custody
17 proceedings are separate and apart from removal proceedings, are not binding on his
18 removal proceedings, and as a consequence do not affect the finality of Petitioner’s
19 removal order. *See* 8 C.F.R. § 1003.19(d) (Consideration by the Immigration Judge of
20 an application or request of a respondent regarding custody or bond under this section
21 shall be separate and apart from, and shall form no part of, any deportation or removal
22 hearing or proceeding). Again, pursuant to 8 C.F.R. § 1241.1 (a), Petitioner’s removal
23 order became final on February 18, 2025, when the appeal of his removal order was
24 dismissed by the BIA. Notably, 8 C.F.R. § 1241.1 makes no reference to the finality of
25 a removal order in relation to a pending motion to reopen proceedings, because a
26 removal order must be final for a motion to reopen to be filed. *See generally id.*

27 As Petitioner was detained by ERO when his removal order was final, Petitioner
28 was subject to mandatory detention under 8 U.S.C. § 1231(a) and Respondents were

1 not required to give any notice regarding revocation of parole since he was detained
2 pursuant to 8 U.S.C. § 1231(a).

3 **B. Petitioner Raising New Challenges To His Re-Detention, That Could**
4 **Have Been Raised In His First Petition Is An Abuse Of The Writ**

5 The doctrine of abuse of the writ generally “forbids the reconsideration of claims
6 that were or could have been raised in a prior habeas petition.” *Calderon v. United States*
7 *Dist. Ct.*, 163 F.3d 530, 538 (9th Cir.1998) (*en banc*) (overruled in part on other grounds
8 by *Woodford v. Garceau*, 538 U.S. 202 (2003)). Under the abuse of the writ doctrine, a
9 successive petition must be dismissed unless the petitioner can show (1) cause for
10 bringing a successive petition and that prejudice would result or (2) that a fundamental
11 miscarriage of justice would result from failure to entertain the claim. *See McCleskey*
12 *v. Zant*, 499 U.S. 467, 494–95 (1991); *Sanders v. United States*, 373 U.S. 1, 15 (1963).
13 The government bears the burden of pleading abuse of the writ, *McCleskey*, 499 U.S. at
14 477.

15 Here, Petitioner previously raised his pending motion to reopen in his first
16 petition. *Popov v. Warden*, ECF 1 at 6. Nonetheless, this Court rightfully dismissed his
17 first petition. Respondents contend this second petition runs afoul of the abuse of the
18 writ doctrine.

19 **IV. CONCLUSION**

20 For the reasons stated herein, Respondents respectfully request the Court to deny
21 the habeas petition.

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23 DATED: July 16, 2026

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