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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE EDUARDO CHAVEZ QUISPE,

Petitioner,

v.

WARDEN OF THE CENTRAL VALLEY
ANNEX DETENTION FACILITY, *et al.*,

Respondents.

No. 1:26-cv-5281 JLT;
1:26-cv-2557-JLT (Related Case)

**RESPONSE TO ORDER TO SHOW CAUSE;
OPPOSITION TO PETITION FOR WRIT OF
HABEAS CORPUS AND DECLARATORY
AND INJUNCTIVE RELIEF**

BACKGROUND

Petitioner previously filed a Petition for Habeas Corpus and Motion for Temporary Restraining Order. Case No. 26-cv-2557, ECF 1, 2. This Court partially granted the habeas petition and ordered a bond hearing. *Id.*, ECF 9. There, an Immigration Judge upheld Petitioner's detention, concluding that he posed a danger and a risk of flight. *Id.*, ECF 15-6. The Court later concluded that the IJ's detention proceedings were adequate under its prior order; it noted that "[c]omplaints about the conclusion the IJ reached must be presented through the normal immigration process." *Id.* at ECF 18. Petitioner has not sought further review of the IJ's bond denial in immigration proceedings.¹

¹ An IJ issued a removal order concerning Petitioner; Petitioner is challenging the removal order via appeal to the Board of Immigration Appeals (BIA). Ex. A (Automated Case Information record, last accessed July 14, 2026).

Petitioner instead filed a second Petition for Habeas Corpus (“Second Habeas Petition”) and a second Motion for a Temporary Restraining Order (“Second TRO Motion”), which were initially assigned to a visiting United States District Judge. Case No. 26-cv-5281, ECF 1, 4. The visiting District Judge ordered the case reassigned to this Court when notified of the prior matter. Case No. 26-cv-5281, ECF 10. The visiting District Judge ordered Respondents to show cause regarding three questions related to his detention. Case No. 26-cv-5281, ECF 7.

Since his last petition was decided, and after the bond hearing was held, Petitioner was ordered removed from the United States. *See* Ex. A (removal order entered May 19, 2026).² Because Petitioner has appealed his removal order to the BIA, it is not administratively final. *See* 8 C.F.R. § 1241.1. Although, Petitioner remains detained under 8 U.S.C. § 1225(b), unless and until the removal order becomes final, the order of removal is a further development that strengthens the justification for detention because it makes his removal more imminent and thus, the risk of flight greater. *See also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (finding petitioner’s private interests are further diminished by the fact he is subject to an order of removal while that order is being appealed).

This Court should dismiss the Second Habeas Petition and Second TRO Motion. Petitioner received a fair review of his detention. Petitioner’s disagreement with the result does not entitle him to further district court review.³ Nor has his detention become so prolonged that its legality should be reconsidered now.

ARGUMENT

The Court should dismiss or deny the Second Habeas Petition and TRO as Petitioner for several reasons.

First, the prior findings and order of the Court should control this petition. The first petition broadly alleged Petitioner’s detention violated Petitioner’s Fifth Amendment right to due process, the Immigration and Nationality Act, and the U.S. constitution. *See* Case No. 26-cv-2557, Dkt. 1. Thus, the

² Because Petitioner was ordered removal, his asylum application even if accepted for consideration, see ECF 1 at p. 6, was necessarily rejected otherwise he would not have been ordered removed.

³ Respondents respectfully submit that the specific issues in the Order to Show Cause are resolved by prior briefings and orders of this Court.

1 Court has fully considered the legality of Petitioner's detention under both the law and the constitution.
2 The Court found due process entitled Petitioner to a bond hearing. Petitioner received a bond hearing.
3 The Court denied Petitioner's motion to enforce judgment and found that after careful review of the
4 record, the process employed for the bond hearing was constitutionally sufficient and that Petitioner
5 could not challenge the sufficiency and accuracy of evidence supporting the immigration judge's bond
6 determination in this Court. *See* Case No. 26-cv-2557, Dkt. 18. Through the instant habeas petition,
7 Petitioner is now effectively asking this Court to overrule the IJ's bond determination and the Court's
8 prior decision.

9 Although a successive habeas petition is not explicitly prohibited by statute, the common law
10 "doctrine of abuse of the writ generally 'forbids the reconsideration of claims that were or could have
11 been raised in a prior habeas petition.'" *Alaimalo v. United States*, 645 F.3d 1042, 1049 (9th Cir. 2011)
12 (citation omitted); *see also Reyes v. Warden of California City Detention Center*, No. 1:26-cv-03747-
13 DAD-AC, 2026 WL 1457377 (E.D. Cal. May 22, 2026) (habeas petition in alien detention case
14 dismissed as successive under abuse of writ doctrine); *Calderon v. Noem*, No. 2:26-CV-00352-BAT,
15 2026 WL 507683, at *2 (W.D. Wash. Feb. 24, 2026)(The abuse of the writ doctrine applied in a federal
16 habeas immigration detention case "because the redetention issue Petitioner again raises was explicitly
17 addressed and rejected by Judge King. . ."). A "successive petition that raises identical grounds for
18 relief as a prior petition must be dismissed unless the petitioner can show (1) cause for bringing a
19 successive petition and that prejudice would result or (2) that a fundamental miscarriage of justice would
20 result from failure to entertain the claim." *Alaimalo*, 645 F.3d at 1049 (citations omitted).

21 The instant petition does not raise new arguments except for (1) complaints about the conditions
22 of confinement and possibly (2) that he cannot continue to be detained without a bond hearing. Both
23 lack merit. First, conditions of confined cannot be considered as part of a petition for a writ of habeas
24 corpus which only reviews the legality of the detention. *See, e.g., Doe v. Garland*, 109 F.4th 1188, 1194
25 (9th Cir. 2024) (finding "*Pinson [v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023)] solidified the rule that
26 a habeas claim is one challenging the fact of confinement, rather than the conditions of confinement.").

27 Petitioner's further contention that an individualized bond hearing is required when detention
28 becomes unreasonably prolonged is also without merit. Petitioner claims that detention beyond six

1 months without a bond hearing is unconstitutional. As an initial matter, the Supreme Court set a six-
2 month benchmark for reasonableness for situations where a petitioner is in removable-but-unremovable
3 limbo, and thus, the detention could potentially be permanent. This case does not raise the same
4 constitutional concerns considered by *Zadvydas v. Davis*, 533 U.S. 678 (2001) because Petitioner's
5 detention is neither prolonged nor indefinite. First, Petitioner's detention is not indefinite. It has a
6 definite end point set by statute. Whether detained under 8 U.S.C. §1225(b) or, as courts in this district
7 have found, 8 U.S.C. § 1226(a), the detention will end once Petitioner's removal order becomes final or
8 he is given relief from removal. Nor has Petitioner's detention become prolonged. Even assuming for
9 the sake of argument that the six-month benchmark set by the *Zadvydas* Court were to apply to pre-order
10 detention, Petitioner been detained four months, not more than six months, and has been afforded ample
11 process during that time period. Prolonged detention typically refers to detention without a bond
12 hearing or other process. *See generally Rodriguez Diaz*, 53 F.4th at 1208 (A court "simply count [the]
13 months of detention . . . [it] must also consider the process received during this time . . . and the fact
14 that [petitioner's] detention was prolonged due to [petitioner's] decision to challenge his removal
15 order."). Here, Petitioner received a bond hearing less than three months ago. Further, during his time
16 in detention, Petitioner has had his removal case heard and adjudicated and has filed an appeal of that
17 order. Petitioner's removal case proceeded in a timely fashion: he was detained in March and ordered
18 removed in May. That Petitioner's detention has been extended due to his decision to appeal his
19 removal order is his right, but it does not turn his detention into a constitutional claim. *Id.* at 1207 (The
20 legal system is replete with situations requiring the making of difficult judgments as to which course to
21 follow,' and, even in the criminal context, there is no constitutional prohibition against requiring parties
22 to make such choices.") (quoting *Demore v. Kim*, 538 U.S. 510, 531 n.4. (2003)); *Prieto-Romero*, 534
23 F.3d at 1063–65 & n.9 (holding that an alien's detention was not unconstitutionally indefinite when it
24 was prolonged by a challenge to his removal order, and distinguishing a case in which the government
25 made an "unusual move" that delayed resolution) (quotations omitted). Petitioner remains capable of
26 being removed—even if it has not yet finally been determined that he should be removed—and so the
27 government retains an interest in 'assuring [his] presence at removal.'" *Prieto-Romero*, 534 F.3d at
28

1 1065 (citing *Zadvydas*, 533 U.S. at 699) (emphasis in original). Thus, his detention directly relates to
2 the legitimate regulatory purpose for detention—preventing flight risk and protecting the public.

3 Further, the petition should be denied because Petitioner failed to exhaust his administrative
4 remedies. Petitioner had the benefit of representation by counsel in his prior habeas case. Petitioner had
5 a full month, until May 26, 2026, to challenge the bond determination through an appeal to the BIA.
6 Petitioner was told of his ability to appeal the bond determination both at the hearing and in the written
7 bond order. *See* Case No. 1:26-cv-2557 (submission of bond hearing records, incorporated by reference
8 here). Petitioner was plainly aware of his appeal rights because he was told of his rights and further,
9 because he appealed the merits of his removal order indicating he is aware of the appeal process. Thus,
10 the conclusion from these facts is Petitioner strategically chose not to appeal his bond determination. He
11 should not now be permitted to ask a district court to do what it would not do in the first instance,
12 overrule the IJ's bond determination. Such relief would invalidate the administrative process and
13 effectively nullify the Court's prior order.

14 “[Courts] require, as a prudential matter, that habeas petitioners exhaust available judicial and
15 administrative remedies before seeking relief under § 2241.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1047
16 (9th Cir. 2001), *abrogated on other grounds*, *Fernandez-Vargas v. Gonzalez*, 548 U.S. 30 (2006). This
17 principle applies where a petitioner attempts a later district court challenge to a custody redetermination
18 by an IJ. *Leonardo v. Crawford*, 646 F.3d 1157 (9th Cir. 2011). *Leonardo*, like this case, involved a
19 bond hearing ordered by the district court. *Id.*, 646 F.3d at 1159. At the bond hearing, an IJ determined
20 that the habeas petitioner was a danger to the community. *Id.* The habeas petitioner sought review of
21 the IJ's bond determination before the same district court instead of the BIA. *Id.* The Ninth Circuit
22 concluded that the district court should have dismissed the habeas petition without prejudice after the
23 bond hearing until the habeas petitioner exhausted his administrative remedies. *Id.* at 1160-61. This
24 Court should dismiss the Second Habeas Petition and Second TRO Motion based on *Leonardo*'s
25 reasoning. *See Maximino B.S. v. Warden et. al.*, No. 1:26-CV-04844-RLP, 2026 WL 1999124, at *3
26 (E.D. Cal. July 10, 2026) (dismissing second habeas petition based on *Leonardo*). *See also Mora v.*
27 *Warden*, No. 1:26-CV-3346 DC CSK, 2026 WL 1651045, at *3 (E.D. Cal. June 8, 2026) (reviewing
28 *Leonardo*; recommending dismissal of habeas petition where petitioner failed to appeal IJ's bond

1 determination to the BIA). This Court should conclude the same and dismiss the Second Habeas
2 Petition (and its request for declaratory and injunctive relief) for failure to exhaust because Petitioner is
3 proceeding in the wrong forum.

4 **CONCLUSION**

5 Petitioner received the process to which he was entitled. The Court should deny the Second
6 Habeas Petition and Second TRO Motion.

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8 Dated: July 14, 2026

Respectfully submitted,

9 ERIC GRANT
10 United States Attorney

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