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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LIDIA HERNANDEZ ANCELMO,

Petitioner,

v.

POLLY KAISER, ET AL.,

Respondents.

CASE NO. 1:26-CV-05579-DJC-CSK

**RESPONDENTS' RESPONSE TO MOTION
FOR TEMPORARY RESTRAINING ORDER
AND PETITION FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

Petitioner challenges the conditions of her confinement but neglected to raise that issue in her previous petition. Because Petitioner raises an issue that either is not addressable via habeas or else could have been raised in her previous petition, she is not entitled to relief. Petitioner was removed to Mexico while the Court's order administratively staying removal was in effect, and Respondents are working on coordinating Petitioner's return.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico. Ex 1. On March 6, 2026, the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) took custody of Petitioner for the pendency of removal proceedings. *Id.* On June 10, 2026, an immigration judge ordered Petitioner removed. Ex. 2. On July 7, 2026, this Court denied

1 Petitioner's first habeas petition, finding she was subject to mandatory detention. Ex. 3. On July 16,
2 2026, the Board of Immigration Appeals (BIA) issued a notice that Petitioner's appeal was rejected. Ex.
3 4. On July 18, 2026, Petitioner filed the present petition. ECF No. 1.

4 On July 22, 2026, Petitioner filed a motion for a temporary restraining order. ECF No. 5. On the
5 same date at 5:35 PM, the Court issued an order administratively staying Petitioner's removal pending
6 resolution of the motion. ECF No. 6. At 5:58 PM, undersigned counsel for Respondents sent the order
7 to ERO. Early in the morning of July 23, 2026, ERO removed Petitioner to Mexico. Respondents are
8 working on coordinating Petitioner's return.
9

10 LEGAL ARGUMENT

11 I. Petitioner's claim is not addressable in the habeas context.

12 Petitioner's sole claim is regarding conditions of confinement. Habeas corpus relief is most
13 suited to address whether someone "is in custody in violation of the Constitution or laws or treaties of
14 the United States," not conditions of confinement. 28 U.S.C. § 2254; *see Crawford v. Bell*, 599 F.2d
15 890, 892 (9th Cir. 1979) ("The appropriate remedy for such constitutional violations, if proven, would
16 be a judicially mandated change in conditions and/or an award of damages, but not release from
17 confinement."); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) ("Habeas corpus proceedings are the
18 proper mechanism for a prisoner to challenge the legality or duration of confinement. A civil rights
19 action, in contrast, is the proper method of challenging conditions of confinement." (citation modified));
20 *Brown v. Blanckensee*, 857 F. App'x 289, 290 (9th Cir. 2021) ("[T]he appropriate remedy for these
21 claims lies in a civil rights action under *Bivens* . . . rather than a § 2241 petition.").

22 Because petitioner is seeking relief from her conditions of confinement via habeas, the petition
23 should be denied.
24

25 II. Petitioner's present petition constitutes an abuse of the writ.

26 District judges are not
27
28

1 required to entertain an application for a writ of habeas corpus to inquire into the detention
2 of a person pursuant to a judgment of a court of the United States if it appears that the
3 legality of such detention has been determined by a judge or court of the United States on
4 a prior application for a writ of habeas corpus and the petition presents no new ground not
5 heretofore presented and determined

6 absent such inquiry serving the ends of justice. 28 U.S.C. § 2244(a).

7 The abuse of writ doctrine codified under § 2244(a) applies in § 2241 proceedings. *See Felker v.*
8 *Turpin*, 518 U.S. 651, 664 (1996) (noting in a § 2241 action that § 2244’s restrictions on successive
9 petitions “constitute a modified res judicata rule, a restraint on what is called in habeas corpus practice
10 ‘abuse of the writ’”) (quoting *McCleskey v. Zant*, 499 U.S. 467 (1991)); *Barapind v. Reno*, 225 F.3d
11 1100, 1111 (9th Cir. 2000) (“[Section] 2244(a) prevents a federal inmate from using § 2241 ‘to call into
12 question the validity of a conviction or sentence that has already been subject to collateral review.’”) (quoting
13 *Valona v. United States*, 138 F.3d 693 (7th Cir. 1998)); *Tate v. Borla*, No. 1:25-CV-01704 JLT
14 SKO (HC), 2025 WL 3769421, at *1 (E.D. Cal. Dec. 31, 2025); *Nedd v. On Habeas Corpus*, No. 1:25-
15 CV-01736 JLT SKO, 2026 WL 130392, at *1 (E.D. Cal. Jan. 16, 2026). Under the abuse of the writ
16 doctrine, a court need not entertain a petition that abuses the habeas process. One frequently recognized
17 indicator of abusiveness is whether the petitioner could have asserted his present claims in his prior
18 petition. *See, e.g., Slack v. McDaniel*, 529 U.S. 473, 485–86 (2000); *Zant*, 499 U.S. at 470; *cf. United*
19 *States ex rel. Gregoire v. Watkins*, 164 F.2d 137, 138 (2d Cir.1947) (Swan, J.) (a prisoner may not
20 “again and again call upon a court to repeat the same ruling.”).

21 The proper disposition of such successive petitions is dismissal. *See Del Raine v. Adams*, 58 F.
22 App’x. 762 (9th Cir. 2003) (“The district court properly dismissed Del Raine’s [§ 2241] petition as
23 successive because he raises the same claims raised in a prior habeas petition, and denied on the merits
24 by the Middle District of Pennsylvania”); *Razzoli v. FCI Allenwood*, 200 F. App’x. 166, 168 (3d Cir.
25 2006) (“[T]his claim has already been adjudicated by the Eastern District of New York. Thus, bringing
26 the claim again at this time is barred by the doctrine of abuse of the writ.” (internal citations omitted))
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1 *Brown v. Grondolsky*, No. 08-5811 (NLH), 2009 WL 3030082, at *5 (D. N.J. Sept. 16, 2009)
2 (dismissing § 2241 petition under abuse of writ doctrine because petitioner's sentence computation
3 claim was denied in earlier habeas proceeding where court found that the BOP properly applied credits
4 for time served) (citing inter alia *Razzoli*, 200 F. App'x. at 168).

5
6 Here, Petitioner argues in the present petition issues which, while not raised and conclusively
7 decided in the prior petition, could just as well have been. Petitioner's health condition and the
8 conditions of confinement existed at the time of the previous habeas petition, but Petitioner chose not to
9 raise the issue.

10 Accordingly, there is no case or controversy before this Court that could not have been addressed
11 in the previous petition, and the present petition should be dismissed as an abuse of the writ.

12 **III. Alternatively, the Court may find the claim moot.**

13
14 As the only claim in the petition relates to conditions of confinement, and as Petitioner is no
15 longer in immigration custody, the Court may find this action moot.

16 **CONCLUSION**

17 For the reasons set forth above, Respondents respectfully request that the Court deny the Motion
18 for a Temporary Restraining Order and Petition for a Writ of Habeas Corpus. Respondents do not
19 request a hearing.
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23 Dated: July 23, 2026

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United States Attorney

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25 By: /s/ Sean Davis
SEAN DAVIS
Special Assistant United States Attorney
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