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

MOHAMED ELJARAOUY,
Petitioner,
v.

MARYKWAYNE 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-1449-BTM

**Petitioner's Reply in Support of
Motion to Enforce**

1 Mr. Eljaraouy has now been detained for over sixteen months. Though this
2 Court ordered Respondents to provide an individualized bond hearing that
3 satisfied all constitutional requirements, Mr. Eljaraouy did not receive that. In his
4 motion to enforce, Mr. Eljaraouy showed that the immigration judge (“IJ”)
5 deemed Mr. Eljaraouy a flight risk because the only language he speaks fluently is
6 Tarifit. In addition, the IJ ignored the fact that Mr. Eljaraouy would be staying at
7 Casa Marianella if released, a supportive residence for asylum seekers that helps
8 non-English speakers in particular navigate the immigration system. ECF 13 at 2–
9 3.

10 In its response, the government does not address or rebut these arguments
11 relating to the IJ’s improper denial of bond based on Mr. Eljaraouy’s language.
12 All the government does is reprint three paragraphs of the transcript and then state
13 in a conclusory fashion that “the IJ’s denial of bond was well supported and
14 satisfied all of the Court’s other conditions.” ECF 18 at 2–3. Accordingly,
15 Respondents’ failure to engage with Mr. Eljaraouy’s arguments in any meaningful
16 fashion means that they have waived, or at least forfeited, their opportunity to
17 contest the Due Process violations or argue against immediate release. *See United*
18 *States v. Castillo-Marin*, 684 F.3d 914, 919 (9th Cir. 2012) (determining that the
19 government concedes an argument that “was available at the time it filed its
20 answering brief”) (citing *United States v. McEnry*, 659 F.3d 893, 902 (9th Cir.
21 2011)).

22 While Respondents cite the *Guerra* factors, they do not address the fact that
23 the IJ’s finding of a risk of flight was based on Mr. Eljaraouy’s language
24 capabilities, which is very clearly *not* one of those factors. *See* ECF 18 at 3. Case
25 law is clear that IJs must consider and rely on the appropriate factors when
26 making determinations about flight risk. *See Martinez v. Clark*, 124 F.4th 775,
27 783–5 (9th Cir. 2024). When IJs do not “consider highly probative evidence
28 relating to risk of flight and fail[] to apply the *Guerra* factors[,]” courts in this

1 circuit have found abuse of discretion. *Singh v. LaRose*, No. 26-CV-1425-JLS-
2 GC, 2026 WL 1387428, at *11 (May 18, 2026) (collecting cases).

3 Nor do Respondents address Mr. Eljaraouy's authority showing that other
4 rare language speakers have been found not to be flight risks. *See* ECF 13 at 3
5 (citing *Escalante Perez v. Hernandez*, No. C26-0956-TSZ, 2026 WL 1004559, at
6 *2 (W.D. Wash. Apr. 14, 2026) (noncitizen who only spoke Mam, an indigenous
7 Mayan language, deemed not a flight risk and ordered immediately released);
8 Exhibit C, Order, *A.D. v. Leonard Oddo*, No. 25-cv-460-SLH at 7–8 (noncitizen
9 who only speaks a specific dialect of his native language ordered immediately
10 released)). And Respondents never mention the evidence in the record that Casa
11 Marianella provides its residents with case management and transportation
12 specifically "ensure[s] that the individual attends ICE appointments and court
13 dates." Exhibit D, Casa Marianella Sponsorship Letter at 1–2.

14 Because Respondents do not engage with any of the legal or factual
15 arguments in Mr. Eljaraouy's motion, this Court should hold that the IJ failed to
16 provide a constitutionally adequate bond hearing. And at this point, a new bond
17 hearing will do nothing to cure the constitutional violation that has occurred in
18 Mr. Eljaraouy's case. Thus, this Court should order that Mr. Eljaraouy be
19 immediately released subject to reasonable conditions of supervision. *See* ECF 13
20 at 5–6.

21 CONCLUSION

22 As noted in Mr. Eljaraouy's motion to enforce, courts are increasingly
23 ordering release in lieu of a bond hearing. *See, e.g., Hernandez-Garcia v. Warden*,
24 No. 26-cv-1248-JO-BLM, ECF No. 11 (Mar. 26, 2026); *Izquierdo Mendez v.*
25 *Casey*, No. 26-cv-1731-JO-SBC, ECF No. 6 (Mar. 30, 2026). This is especially
26 true where courts are finding issues with the bond hearings conducted before the
27 IJs. *See Zheng v. Rokosky*, No. 26-cv-01689, 2026 WL 800203, at *8 (D.N.J. Mar.
28 23, 2026) (ordering immediate release); *Miri v. Bondi*, No. 26-cv-00698-MEMF-

1 MAR, 2026 WL 622302, at *11 (C.D. Cal. Mar. 5, 2026) (same); *Garcia v. Hyde*,
2 817 F.Supp.3d 112, 131 (D.R.I. Dec. 3, 2025) (same). For the reasons Mr.
3 Eljaraouy identified in his motion to enforce, this Court should order his
4 immediate release subject to reasonable conditions.

5
6 Respectfully submitted,

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8 Dated: June 1, 2026

s/ Hannah Basalone

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