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

12 FEDLIN DEVILMAR,
13
14 Petitioner,

15 v.

16 CHRISTOPHER LAROSE, Senior
17 Warden,
18
19 Respondents.

CIVIL CASE NO.: 26-cv-1748-BTM

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

20 The government's Return is based on a false premise. Judge Simmons
21 granted Mr. Devilmar's previous pro se petition in January 2026 and ordered a bond
22 hearing, but bond was denied. *See* 26-cv-9-JES-MSB. According to the
23 government, this Court should not consider Mr. Devilmar's claims in this new,
24 amended petition because they are "in effect a challenge to Judge Simmons's prior
25 Order granting him a bond hearing and the IJ's decision to deny him bond based on
26 flight risk." Doc. 7 at 2.

27 But that is not true. **Mr. Devilmar does not challenge Judge Simmons's**
28 **prior order or the IJ's bond order. He challenges the revocation of his parole**
under the APA and the Due Process Clause. The government does not respond
to either the APA or the Due Process arguments. And the government does not even
try to explain why the outcome in Mr. Devilmar's previous pro se petition should

1 bar him from raising this distinct, parole-based claim with assistance of counsel.
2 This Court should therefore grant the petition.

3 To appreciate this, a brief review of the procedural history is warranted. On
4 January 2, 2026, Mr. Devilmar submitted a pro se habeas petition challenging his
5 detention. Dkt. 1, 26-cv-9-JES. The government responded by saying that
6 Mr. Devilmar was a member of the class eligible for relief under *Maldonado*
7 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL
8 3289861 (C.D. Cal. Nov. 20, 2025). Dkt. 4, 26-cv-9-JES.

9 That was not true. *Maldonado Bautista* defined the bond eligible class as
10 follows:

11 **Bond Eligible Class:** All noncitizens in the United States without
12 lawful status who (1) have entered or will enter the United States
13 without inspection; (2) *were not or will not be apprehended upon*
14 *arrival*; and (3) are not or will not be subject to detention under 8 U.S.C.
15 § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of
16 Homeland Security makes an initial custody determination.

17 *Bautista v. Santacruz*, 813 F. Supp. 3d 1084, 1095 (C.D. Cal. 2025), *judgment*
18 *entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-
19 BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025) (emphasis added). But
20 Mr. Devilmar was apprehended upon arrival, Doc. 4-1 at ¶¶ 1–2, and he
21 therefore was not a *Maldonado Bautista* class member.

22 Nevertheless, Judge Simmons granted the petition based on the
23 government’s erroneous concession and ordered a bond hearing. Dkt. 5, 26-cv-
24 9-JES. Bond was denied. Dkt. 6, 26-cv-9-JES.

25 Mr. Devilmar then filed a new petition, and this Court appointed Federal
26 Defenders. Federal Defenders amended the petition, raising APA and Due
27 Process Claims based on parole revocation. Doc. 4.

28

1 The government's response does not at all address the merits of the
2 amended petition's claims. Instead, the government (1) complains that
3 Mr. Devilmar's amended petition does not address preclusion,¹ (2) asserts that
4 the amended petition challenges Judge Simmons's habeas order and the IJ's
5 bond order, and (3) points out that Mr. Devilmar also asked for release in his
6 prior petition. None of these points support denying the amended petition.

7 First, "preclusion is an affirmative defense," and the government bears the
8 burden to show that it applies. *Taylor v. Sturgell*, 553 U.S. 880, 907 (2008). The
9 government makes no meaningful argument in favor of preclusion. It cites not one
10 case about preclusion, nor does it identify what kind of preclusion might
11 conceivably apply. It is not Mr. Devilmar's job or the court's to fill the gap. "Issues
12 raised in a brief which are not supported by argument are deemed abandoned."
13 *United States v. Gonzalez-Flores*, 418 F.3d 1093, 1100 n.4 (9th Cir. 2005) (*Kohler*
14 *v. Inter-Tel Technologies*, 244 F.3d 1167, 1182 (9th Cir. 2001)). For this reason
15 alone, this Court should not accept the government's underdeveloped preclusion
16 argument.

17 Second, Mr. Devilmar's amended petition does not challenge the habeas
18 order or the bond order. True, Judge Simmons's order happened to be legally
19 incorrect, due to the government's erroneous concession. But even taking the order
20 at face value, nothing about it purports to decide whether the revocation of
21 Mr. Devilmar's parole violated the APA or Due Process. It does not mention parole
22 at all. Likewise, the amended petition does not challenge the IJ's bond order.
23 Mr. Devilmar's claims are based on ICE's acts and omission at his initial arrest in
24 2025, not on the IJ's actions in 2026. Thus, the parole-based claims made in the
25 amended petition are not inconsistent with any order in the prior case.

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27
28 ¹ To be clear, counsel was unaware of the prior petition when she filed the amended
petition.

1 Third, it does not matter that Mr. Devilmar also requested release in his prior
2 petition. Following the government's lead, the district court construed his petition
3 to arise under *Maldonado Bautista*, and the court therefore determined that the
4 proper relief was a bond hearing. But again, the amended petition raises distinct
5 claims (APA and Due Process based on parole revocation), and—unlike for the
6 *Maldonado* claims adjudicated in the prior petition—the proper remedy for the
7 APA and Due Process claims is release. The government does not even try to
8 explain why Mr. Devilmar should be barred from raising two separate and distinct
9 claims in two separate and distinct cases, just because he asked for release in both.

10 In short, the government own erroneous concession persuaded Judge
11 Simmons to answer the wrong question (about *Maldonado Bautista*) and grant the
12 wrong relief (a bond hearing) while Mr. Devilmar was still acting pro se. The
13 government should not be able to leverage that to prevent this Court from answering
14 the right question (about parole) and grant the right relief (release) now that
15 Mr. Devilmar has counsel. Having heard no developed argument for why
16 preclusion might apply here, and with no opposition to the merits of Mr. Devilmar's
17 claim, this Court should grant the petition.

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19
20 Respectfully submitted,

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s/ Katie Hurrelbrink

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