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20 **UNITED STATES DISTRICT COURT**
21 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

22 M.M.,
23 Petitioner,

24 vs.

25 CHRISTOPHER J. LAROSE, Warden,
26 Otay Mesa Detention Center;
27 PATRICK DIVVER, San Diego Field
28 Office Director; TODD M. LYONS,
Acting Director of U.S. Immigration
and Customs Enforcement;
MARKWAYNE MULLIN, Secretary
of the U.S. Department of Homeland
Security,

Respondents.

Case No. 3:26-cv-02346-BJC-BJW

**PETITIONER'S OPPOSITION TO
RESPONDENTS' MOTION TO
DISMISS**

1 Respondents filed a document characterized on the docket as an “ex parte” motion
2 to dismiss, though they did not provide notice to M.M.’s counsel, made no attempt to
3 follow the procedures for ex parte applications mandated in Local Rule 83.3(g)(2) and
4 Chambers Rule V, and the filing does not argue that Respondents meet the high standard
5 to receive “special treatment” in the form of ex parte relief. *Mission Power Eng'g Co.*
6 *v. Cont'l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995). For each of those reasons,
7 the Court should deny Respondents’ procedurally deficient motion. Should the Court
8 choose to address the motion’s substance, the Court should deny the motion because
9 M.M.’s petition is not moot and the Court can (and should) still grant M.M. relief.

10 Petitioner M.M. was released from immigration detention at the Otay Mesa
11 Detention Center on May 12, 2026, after being granted release on bond on May 11, 2026
12 and posting bond on May 12, 2026. Less than 24 hours after his release and before M.M.
13 could provide notice of this development to the Court, Respondents filed their motion
14 asking the Court to dismiss this case. While the immigration court judge reached the
15 correct decision in granting M.M. release on bond based on findings that M.M. is neither
16 a flight risk nor a danger to the community, M.M.’s release does not remedy the
17 significant harms he has suffered (and will continue to suffer) from Respondents’
18 decision to illegally detain him.

19 M.M. still needs a writ from this Court to protect his legal and constitutional
20 rights. A habeas petition “continue[s] to present a live controversy after the petitioner’s
21 release” where there is “some remaining ‘collateral consequence’ that may be redressed
22 by success on the petition.” *Abala v. I.N.S.*, 488 F.3d 1061, 1064 (9th Cir. 2007). To
23 dismiss M.M.’s petition, Respondents must show the Court could no longer provide any
24 “effective relief” to M.M. *Phan v. Becerra*, 2026 WL 622201, at *2-3 (E.D. Cal. Mar.
25 5, 2026) (denying motion to dismiss habeas petition for released individual because
26 “respondents have not satisfied their ‘heavy burden of establishing that there is no
27 effective relief remaining for a court to provide.’”) (citing *GATX/Airlog Co. v. U.S. Dist.*
28 *Ct. for N. Dist. of Cal.*, 192 F.3d 1304, 1306 (9th Cir. 1999)), *recommendation adopted*,

1 2026 WL 927930, at *1 (E.D. Cal. Apr. 3, 2026). Respondents make no attempt to meet
2 this standard—they cite no legal authority for their motion and simply conclude that
3 release moots M.M.’s petition, which significantly understates the harms they continue
4 to cause M.M. and misunderstands the relief M.M. seeks through his habeas petition.

5 M.M.’s release on bond does not moot his petition for a writ of habeas corpus
6 because M.M.’s petition specifically seeks relief beyond release, including an order that
7 Respondents may not re-detain him absent a violation of any reasonable conditions of
8 supervision as proven by ICE at a pre-deprivation hearing. *See* Dkt. 1 at 20. This is not
9 a speculative fear—Respondents have made a regular practice of re-detaining
10 individuals previously released, without adequate due process. This Court alone has
11 granted multiple habeas petitions for individuals re-detained without due process. *See*,
12 *e.g.*, *Aliev v. Mullin*, 26-cv-2123-BJC-BLM, 2026 WL 1005076 (S.D. Cal. Apr. 14,
13 2026); *Seidulla v. Larose*, No. 26-cv-1555-BJC-MSB, 2026 WL 821172 (S.D. Cal. Mar.
14 25, 2026); *Singh v. Noem*, No. 26-cv-1081-BJC-DDL, 2026 WL 686313 (S.D. Cal. Mar.
15 11, 2026); *Abdullah v. Noem*, No. 26-cv-176-BJC-BLM, 2026 WL 559774 (S.D. Cal.
16 Feb. 27, 2026).

17 And the conditions of M.M.’s bond allow Respondents to exercise a high level of
18 monitoring of M.M., which demonstrates both that (1) his petition is not moot because
19 he remains exposed to “collateral consequence[s]” of his illegal detention (*Abala*, 488
20 F.3d at 1064) and (2) his fear of illegal re-detention is not speculative. Even though
21 M.M. was illegally detained, he has now had to post a bond to be released and will have
22 to comply with requirements set by Respondents—including onerous ankle monitoring,
23 ICE check-ins, and other measures that Respondents may choose to impose that increase
24 the risk of Respondents illegally re-detaining M.M. Release under these conditions
25 cannot moot M.M.’s petition, because they remain a “strict limitation[] on [M.M.]’s
26 freedom” and because Respondents could revoke M.M.’s release on bond. *Rodriguez v.*
27 *Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) (individual’s release on bond while subject
28 to ankle monitor and potential illegal re-detention did not moot habeas petition). And

1 Courts have repeatedly found that the risk of illegal detention—even in disobedience of
2 direct court orders—is one reason that habeas petitions are not moot even after the
3 petitioner is released from immigration detention. *See, e.g., M.V.F. v. Santacruz*, 2026
4 WL 127740, at *2-4 (C.D. Cal. Jan. 6, 2026) (collecting cases); *Orellana-Batres v.*
5 *Casey*, No. 3:26-cv-00801-RBM-MSB, 2026 WL 1075655, at *2 (S.D. Cal. Apr. 20,
6 2026) (finding that the government’s re-detention policies made “relief prohibiting
7 further detention . . . necessary”). The Court can and should remedy the ongoing harms
8 caused by Respondent’s decision to illegally detain M.M.—and can and should prevent
9 Respondents from illegally re-detaining M.M.—by granting the petition.

10 The Court should deny Respondents’ motion to dismiss, grant M.M.’s petition,
11 and issue all appropriate relief.

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13 Dated: May 14, 2026

Respectfully submitted,

14 By: Neema Jalali

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