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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 BRIGIDO RODRIGUEZ-MIRALRIO,

12 Petitioner,

13 v.

14 CHRISTOPHER J. LAROSE, WARDEN
OF OTAY MESA REGIONAL
15 DETENTION CENTER, et al.,

16 Respondents.

CASE NO.: 26-cv-2331-AGS-BJW

**Traverse in Support of Amended
Petition for Habeas Corpus**

17 The government raises a single argument in its opposition to granting
18 Mr. Rodriguez's amended petition for habeas corpus: He didn't exhaust remedies
19 before the BIA. But, for reasons discussed below, the government is wrong. And
20 because it has waived every argument on the merits by failing to engage, this
21 Court should grant the Petition. *See United States v. Cabrera*, 796 F. Supp. 3d
22 660, 664 (S.D. Cal. 2025) (recognizing that "a party waives argument when it
23 fails to respond to an argument made to the court" quoting *United States v.*
24 *Caceres-Olla*, 738 F.3d 1051, 1053 n.1 (9th Cir. 2013)).

25 **Mr. Rodriguez did not need to appeal to the BIA**

26 There is no exhaustion provision in 8 U.S.C. § 1226(a) or any other
27 immigration statute regarding bond. *See Picado v. Hyde*, No. 26-cv-65-JJM-PAS,
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1 2026 WL 352691, *5 (D.R.I. Feb. 9, 2026) (explaining this statutory point). As a
2 result, courts have prudential discretion to decide whether to require exhaustion or
3 not as to an immigration judge’s abuse of discretion in a bond hearing. *Id.*

4 Here—when Mr. Rodriguez was detained in violation of due process
5 without any individualized bond hearing before this Court ordered the bond
6 hearing at issue; when the BIA is both overwhelmed with appeals and staffed at
7 half-capacity, such that bond appeals will likely take even longer than the average
8 200-day period from years past; and when it is irreparable harm to continue to be
9 detained in immigration custody when a constitutionally adequate bond hearing
10 could and should result in his release—this Court should not require exhaustion.

11 Courts generally begin their prudential exhaustion analysis as to any agency
12 determination by looking to the so-called *Puga* factors: “1) whether agency
13 expertise makes agency consideration necessary to generate a proper record and
14 reach a proper decision; 2) whether relaxation of the requirement would
15 encourage the deliberate bypass of the administrative scheme; and 3) whether
16 administrative review is likely to allow the agency to correct its own mistakes and
17 preclude the need for judicial review.” *Miri*, 2026 WL 622302 at *10 (citing *Puga*
18 *v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)). “Nonetheless, even if the three
19 *Puga* factors weigh in favor of prudential exhaustion, a court may waive the
20 prudential exhaustion requirement if ‘administrative remedies are inadequate or
21 not efficacious, pursuit of administrative remedies would be a futile gesture,
22 irreparable injury will result, or the administrative proceedings would be void.”
23 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v.*
24 *Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

25 At the outset, none of the three *Puga* factors favor exhaustion. The first
26 *Puga* factor does not favor exhaustion: “the Board of Immigration Appeals is not
27 a ‘fact-finding authority’ and would only be reviewing ‘legal error,’ [so] there is
28 no ‘further development of the record needed’ to resolve the issues.” *Miri*, 2026

1 WL 622302 at *10. “And, in any event, the underlying factual record is
2 straightforward and undisputed.” *Gomes v. Hyde*, 804 F. Supp. 3d 265, 273 (D.
3 Mass. 2025). Indeed, Respondents do not dispute a single fact from the Amended
4 Petition.

5 Neither does the second factor favor exhaustion: whether Mr. Rodriguez is
6 a flight risk is “a mixed question of fact and law” that “resolution by this Court
7 can provide guidance for future detainees.” *Miri*, 2026 WL 622302 at *11. Nor
8 does the third factor favor exhaustion: While the BIA is theoretically capable of
9 correcting its own mistakes, it does not appear likely to do so before it fully
10 resolves the merits of his asylum appeal and would thus significantly prolong his
11 illegal detention by many, many months. *Miri*, 2026 WL 622302 at *11; *see also*
12 Jazmine Ulloa and Hamed Aleaziz, *Deportations Cramp Courts Around U.S.*,
13 N.Y. Times (June 7, 2026), at A1 (describing new backlogs causing cases to
14 languish “for years”).

15 Regardless, even if *all* of the *Puga* factors favored exhaustion, “a court may
16 waive the prudential exhaustion requirement if: (1) ‘administrative remedies are
17 inadequate or not efficacious’; (2) ‘pursuit of administrative remedies would be a
18 futile gesture’; (3) ‘irreparable injury will result’; or (4) ‘the administrative
19 proceedings would be void.’” *Perez Velasquez v. Bondi*, No. 26-CV-01759-GPC-
20 DDL, 2026 WL 1042479, at *3 (S.D. Cal. Apr. 16, 2026) (quoting *Laing v.*
21 *Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

22 Courts have found that those factors favor petitioners like Mr. Rodriguez.

23 First, Mr. Rodriguez “raises a constitutional challenge to the adequacy of his
24 bond hearing, which is better suited to review by the federal courts. *Zarei v. Larose*,
25 No. 26-CV-02335-GPC-MMP, 2026 WL 1415042, at *3 (S.D. Cal. May 19, 2026)
26 (citing *W.T.M. v. Bondi*, No. 2:25-CV-02428-RAJ-BAT, 2026 WL 262583, at *2
27 (W.D. Wash. Jan. 30, 2026), and *Scott v. Wamsley*, No. 2:25-CV-1819, 2025 WL
28 3514304, at *4 (W.D. Wash. Dec. 8, 2025)).

1 Furthermore, public reporting shows that appealing to the BIA would indeed
2 be futile and result in irreparable injury. Again, it is worth noting how long a BIA
3 appeal takes, and the deck that is currently stacked against immigrants at the BIA.
4 “According to data released by the Executive Office for Immigration Review, the
5 average processing time for bond appeals exceeded 200 days in 2024.” *Gomes*, 804
6 F. Supp. 3d at 273 (citing *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248–49
7 (W.D. Wash. 2025)).

8 And that is the case even when the BIA is fully staffed or clogged by recent
9 backlogs. *See* Ulloa & Aleaziz, *supra*. At present, the BIA has been reduced from
10 28 members to 15. What is more, current reporting provides “evidence that BIA has
11 been drastically reshaped within the past year, such that the BIA now functions to
12 rubberstamp IJ bond denials.” *Perez Velasquez*, 2026 WL 1042479 at *3. As NPR
13 reported in late March 2026, BIA decisions “backed Department of Homeland
14 Security lawyers in 97% of publicly posted cases; that’s at least 30 percentage
15 points higher than the average from the last 16 years.” Ximena Vustillo & Rahul
16 Mukherjee, *An immigration court few have heard of is quietly shaping policy*
17 *behind the scenes*, NPR (Mar. 20, 2026).¹

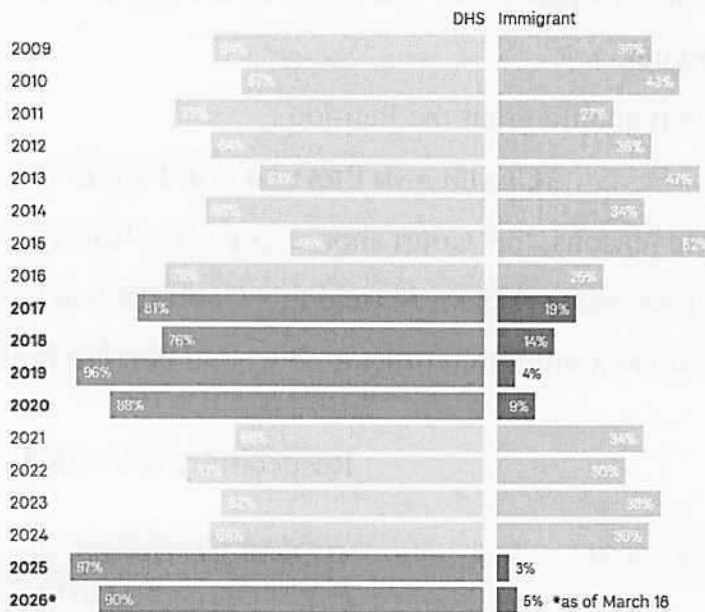
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28 ¹ Available at <https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detention-appeals-board-deportation>.

A graphic of the turn-around at the BIA is striking:

Board of Immigration Appeals has overwhelmingly sided with DHS during the Trump administrations

Percentage of court cases that sided with either the Department of Homeland Security (DHS) or the immigrant, by year

Years in **bold** are during both Trump administrations



Notes

The cases above include only publicly published BIA precedent decisions. Numbers do not add up to 100%. NPR excluded one case in 2026 where the petitioner is appealing the approval of their own spouse's green card, which was referred to U.S. Citizenship and Immigration Services. In other years, other cases were excluded from the analysis because the filings were procedural requests.

Source: NPR analysis of Executive Office for Immigration Review decisions

Credit: Rahul Mukherjee and Ximena Bustillo/NPR

This poses an irreparable injury for Mr. Rodriguez. The Ninth Circuit has recognized “the irreparable harms imposed on anyone subject to immigration detention.” *Hernandez*, 872 F.3d at 995.” Courts have also “found that continued detention after a potentially legally inadequate hearing may constitute such irreparable harm.” *Perez Velasquez*, 2026 WL 1042479 at *4 (collecting cases). For both of these reasons, “district courts in this circuit have routinely waived prudential exhaustion requirements for noncitizens . . . facing prolonged detention while awaiting administrative appeals.” *Rodriguez*, 779 F. Supp. 3d at 1253–54 (collecting cases).

1 At the end of the day, Mr. Rodriguez's petition—a petition arising from
2 standards identified in this Court's prior order identifying a legal violation
3 stemming from his due-process violating detention, and a motion regarding the
4 irreparable harm he has continued to face during his time in immigration
5 detention—is not an appropriate one in which to require exhaustion to the BIA as
6 a prudential matter.

7 This Court should grant the Petition.

8 **CLAIM AND PRAYER FOR RELIEF**

9 For these reasons, this Court should grant Mr. Rodriguez's habeas petition
10 and order his immediate release. Should this Court decline to order immediate
11 release, it should at a minimum order a new bond hearing in front of a different IJ.

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13 Respectfully submitted,

14 Dated: June 8, 2026

s/ Daniel J. Yadron, Jr.

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