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12  
13 **UNITED STATES DISTRICT COURT FOR THE**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 Luis Antonio MENDOZA GONZAGA,

16 Petitioner,

17 vs.

18 Christopher J. LAROSE, et al.,

19 Respondents.

Case No.: 3:26-cv-02941-RFL-  
BJW

REPLY IN SUPPORT OF  
MOTION TO ENFORCE  
HABEAS ORDER AND FOR  
IMMEDIATE RELEASE;  
MEMORANDUM OF POINTS  
AND AUTHORITIES

Date: July 28, 2026

Time: 1:30 p.m.

Before: Honorable Judge Rita F.  
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## TABLE OF CONTENTS

|                                                                                                             |    |
|-------------------------------------------------------------------------------------------------------------|----|
| INTRODUCTION .....                                                                                          | 1  |
| ARGUMENT .....                                                                                              | 1  |
| I. Respondents do not defend the IJ’s decision on the merits. ....                                          | 1  |
| II. This Court has jurisdiction to review whether the IJ provided a constitutionally adequate hearing. .... | 2  |
| III. Exhaustion does not bar this Court from reviewing Mr. Mendoza’s claims and granting relief.....        | 3  |
| A. Exhaustion is prudential, not jurisdictional, in habeas proceedings.....                                 | 3  |
| B. The <i>Puga</i> factors do not favor requiring administrative exhaustion.....                            | 4  |
| C. Requiring exhaustion here would be futile, ineffective, and cause irreparable harm.....                  | 7  |
| D. The Court has jurisdiction to review whether a party complied with its own order.....                    | 11 |
| CONCLUSION .....                                                                                            | 11 |

## **INTRODUCTION**

Mr. Mendoza asked this Court for a bond hearing, but implicit in his request was that Respondents would provide a constitutionally compliant hearing. They did not. In the sixteen-minute hearing, the IJ failed to hold the Government to its burden by ignoring ample mitigating evidence including expert testimony, focusing solely on non-violent convictions, and tacitly adopting improper flight-risk arguments. The Government could not have, as a matter of law, satisfied either danger or flight risk. Mr. Mendoza has spent his entire adult life in the United States as an asylee. As a teenager, he turned to substances to cope with childhood trauma—substance use that is now in remission. For ten months, Respondents detained Mr. Mendoza without review and now, through this deficient hearing, have rendered hollow his due process rights. This Court can and should review Respondents’ compliance with its order and grant Mr. Mendoza’s motion to enforce.

## **ARGUMENT**

### **I. Respondents do not defend the IJ’s decision on the merits.**

Respondents did not substantively engage with the IJ’s decision. At most, Respondents allotted one sentence to addressing the incorrect due process violation, not at issue here. Dkt. 11 at 4:3–5. Otherwise, Respondents cast Mr. Mendoza’s multiple claims as “conclusory statements,” and claim he “cannot show that the [IJ] did not consider the evidence presented to him.” Dkt. 11 at 2:25–26.

But Respondents did not contest that the IJ ignored mitigating evidence presented by Mr. Mendoza despite a vague claim that he “consider[ed] all the facts and circumstances.” Dkt. 9, Exh. P at 5. This includes failing to acknowledge: Mr. Mendoza’s decade of asylee status, U.S. citizen son, numerous letters of support, employment history, and a psychological evaluation including a clinical assessment that he posed a “low” risk of recidivism. *See* Exh. M. Respondents did not defend the IJ’s dangerousness finding despite that being the crux of the IJ’s decision and Respondents’ bond arguments. Dkt. 9, Exh. P. Nor did Respondents refute that the

1 IJ's decision is replete with the "red flags" the Ninth Circuit said would undermine  
2 an IJ's blanket assurance that they had considered all evidence. *Martinez v. Clark*,  
3 124 F.4th 775, 785 (9th Cir. 2024) (citation omitted). Respondents wholly fail to  
4 rebut the inadequacy of the IJ's decision. *See Corro-Barrigan v. Holder*, 718 F.3d  
5 1174, 1177 n.5 (9th Cir. 2013) (failure to contest an issue operates as waiver).

6 **II. This Court has jurisdiction to review whether the IJ provided a**  
7 **constitutionally adequate hearing.**

8 Respondents contend that this Court lacks jurisdiction to review an IJ's bond  
9 decision; this is unsupported by the caselaw. Dkt. 11 at 2:9–10; *see, e.g., Tiboko-*  
10 *Tifuh v. Noem*, No. 26-CV-1215-JO-DEB, 2026 WL 1603795, at \*1 (S.D. Cal. June  
11 4, 2026) (finding jurisdiction to review IJ's decision); *Singh v. LaRose*, No. 26-CV-  
12 1425 JLS (GC), 2026 WL 1387428, at \*2 (S.D. Cal. May 18, 2026) (same). Indeed,  
13 Respondents claim that *Martinez* does not stand for what it clearly says: "Under  
14 *Wilkinson*, the district court's review of the BIA's 'dangerousness' determination is  
15 for abuse of discretion." *Martinez*, 124 F.4th at 779 (citing *Wilkinson v. Garland*,  
16 601 U.S. 209 (2024)). So too is the flight risk determination. *Id.*

17 Moreover, this Court has everything it needs to review the IJ's decision  
18 because the IJ made his decision orally at the hearing. *See* Dkt. 9, Exh. P.  
19 Respondents' own citation to EOIR policies supports that the final decision can be  
20 oral. Dkt. 11 at 3:2–3 ("The decision of an Immigration Judge may be rendered  
21 *either orally or in writing*") (emphases added). Further, Mr. Mendoza challenges  
22 the IJ's oral decision, not the form written denial as suggested by Respondents. Dkt.  
23 11 at 2:23–25. Respondents' argument that the IJ "may have documented the  
24 evidence before the immigration court and their ruling more fully had . . . Petitioner  
25 appealed to the BIA" does not undermine the constitutional deficiency of the IJ's  
26 contemporaneous decision. *See* Dkt. 11 at 2:26. Due process requires a  
27 contemporaneous record of the bond proceeding itself. *Singh v. Holder*, 638 F.3d  
28 1196, 1208 (9th Cir. 2011) (finding the IJ's post-hoc written memorandum

inadequate without any transcript or audio of the hearing). A post-hoc rationalization would not satisfy due process. Respondents are asking the Court to allow the agency to backfill reasoning for a decision that was already made. The IJ's oral decision is what Mr. Mendoza contests and what this Court can review.

**III. Exhaustion does not bar this Court from reviewing Mr. Mendoza's claims and granting relief.**

**A. Exhaustion is prudential, not jurisdictional, in habeas proceedings.**

Exhaustion is a prudential, not jurisdictional, requirement. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017); *Singh*, 638 F.3d at 1203 n.3. Courts may require exhaustion when: "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (cleaned up). Even if the *Puga* factors favor exhaustion, courts may still waive prudential exhaustion where: "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (quoting *S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981)).

**B. The *Puga* factors do not favor requiring administrative exhaustion.**

The *Puga* factors do not favor requiring petitioners like Mr. Mendoza to exhaust claims with the BIA. See *Tiboko-Tifuh*, 2026 WL 1603795, at \*3; *Zaira V. Alvarez-Guatibonza v. Adelanto ICE Process Center*, No. 5:26-CV-02157-KS, 2026 WL 1770663, at \*2 (C.D. Cal. June 15, 2026).

**1. The BIA has no expertise necessary to making a proper record.**

The typical rationale for deference, that an agency has "comparative policy expertise, including [] technical, scientific, economic, or subject-matter expertise," does not apply here. See Shoba Sivaprasad Wadhia, Christopher J. Walker, *The*

1 *Case Against Chevron Deference in Immigration Adjudication*, 70 Duke L.J. 1197,  
2 1216 (2021). Unlike in the removal order context, the BIA has no particular subject  
3 matter expertise in assessing danger or flight risk. These are routine decisions that  
4 federal and state judges make all the time under the Bail Reform Act and equivalent  
5 state bail schemes. *See* 18 U.S.C. § 3142. “This is particularly true in this District,  
6 where the Court regularly adjudicates detention and bail determinations involving  
7 noncitizens.” *Tiboko-Tifuh*, 2026 WL 1603795, at \*3.

8 Nor does the Court need the BIA’s expertise to decide the legal question of  
9 whether Mr. Mendoza’s hearing complied with due process. *See Soriano v.*  
10 *Hernandez*, No. 2:26-CV-00900-DGE, 2026 WL 969764, at \*3 (W.D. Wash. Apr.  
11 10, 2026) (finding BIA expertise “unnecessary” because “the actual issue is  
12 whether, as a matter of law, the undisputed evidence presented at the bond hearing  
13 could establish that Petitioner posed a flight risk”); *Alvarez-Guatibonza*, 2026 WL  
14 1770663, at \*2 (waiving exhaustion because the “BIA’s expertise is not necessary  
15 to decide the *legal* questions at issue”) (emphasis in original). “Petitioner here raises  
16 a constitutional challenge to the adequacy of his bond hearing, which is better suited  
17 to review by the federal courts.” *W.T.M. v. Bondi*, No. 2:25-CV-02428-RAJ-BAT,  
18 2026 WL 262583, at \*2 (W.D. Wash. Jan. 30, 2026).

19 Moreover, courts in this Circuit have found that the first *Puga* factor weighs  
20 *against* requiring exhaustion because the immigration court record of a bond  
21 hearing is a sufficient basis for the Court’s review. *See, e.g., Concepcion Lopez*  
22 *Velasquez v. Christopher Chestnut*, No. 1:26-CV-0576-DJC-JDP, 2026 WL  
23 1815483, at \*2 (E.D. Cal. June 24, 2026) (“The immigration judge (“IJ”) provided  
24 a written decision, and respondent has lodged an audio recording of the bond  
25 hearing; it therefore appears that consideration by the [BIA] is unnecessary” for  
26 record purposes). Here, where parties have an audio recording of the hearing and  
27 the IJ has provided both oral and written decisions, the same logic applies. *See* Dkt.  
28 9, Exh. Q.

**2. Waiver would not encourage “deliberate bypass.”**

Waiving exhaustion would not “encourage deliberate bypass of the administrative scheme” because Mr. Mendoza’s bond hearing was held outside the usual agency scheme altogether. *Puga*, 488 F.3d at 815; *see also* Dkt. 1, 5.

The parties agree that Mr. Mendoza is detained pursuant to mandatory detention under 8 U.S.C. § 1226(c). *Accord* Dkt. 1, Dkt. 4 at 4. He has no statutory right to a bond hearing, and was only afforded one by this Court as a matter of due process. By regulation, the BIA has appellate authority solely over bond determinations “as provided in 8 CFR part 1236, subpart A”—notably excluding individuals detained pursuant to 1226(c) authority. 8 C.F.R. § 1003.1((b)(7). In the related context of mandatory detention under 1225(b), courts have recognized that when there is no administrative scheme providing for a hearing, there is nothing to bypass. *See cf. Astafev v. Warden, Otay Mesa Det. Ctr.*, No. 3:26-CV-00313-RBM-AHG, 2026 WL 654247, at \*2 (S.D. Cal. Mar. 9, 2026 (waiving exhaustion since petitioner cannot otherwise obtain a bond hearing due to 1225(b) detention); *Yue v. Noem*, No. 26-CV-1328-JES-SBC, 2026 WL 933975, at \*1 (S.D. Cal. Apr. 7, 2026) (same). *But see Lopez Velasquez*, 2026 WL 1815483, at \*2 (“Granting petitioner’s requested relief would ‘bypass’ the administrative scheme under § 1226(a) and its implementing regulations.”) (quoting *Okoth v. Kaiser*, No. 1:25-CV-01936-KES-SAB, 2026 WL 45199, at \*3 (E.D. Cal. Jan. 7, 2026))). This same reasoning applies to Mr. Mendoza’s mandatory detention under 1226(c).

Any risk of bypass is “further reduced by the fact that district courts will only have jurisdiction in rare cases where future plaintiffs allege a colorable constitutional or legal challenge to the government’s procedures.” *Hernandez*, 872 F.3d at 989 (citation omitted). A ruling here may also be “beneficial to provide the specific immigration court . . . with guidance on the types of circumstances that may lead to a finding of constitutional deficiency.” *Soriano*, 2026 WL 969764, at \*4.

**3. Review is unlikely to let the agency correct its own mistakes.**

1 Finally, requiring administrative review of Mr. Mendoza's bond hearing is  
2 unlikely "allow the agency to correct its own mistakes." *Puga*, 488 F.3d at 815.  
3 Because the primary issue is whether Respondents violated Mr. Mendoza's right to  
4 due process, there is "no reason to delay review in favor of allowing the BIA to  
5 possibly correct an error." *Zaira*, 2026 WL 1770663, at \*2 (quoting *Hernandez*, 872  
6 F.3d at 989); *see also Sola v. Holder*, 720 F.3d 1134, 1135 (9th Cir. 2013)  
7 (exhaustion waived where it "would not address the issue presented"). And in any  
8 event, the BIA will almost certainly not correct defects in the IJ's decision. *See*  
9 *infra; Tiboko-Tifuh*, 2026 WL 1603795, at \*3 ("the Court has serious doubts that an  
10 appeal to the BIA would provide a meaningful opportunity to correct the IJ's  
11 errors"). The Ninth Circuit found this factor *avored* waiving exhaustion where the  
12 agency's position simply did not require consideration of the specific factor at issue  
13 in the petitioner's claims. *See Hernandez*, 872 F.3d at 989 ("In the present case, the  
14 government has implicitly conceded that the BIA's position on the question at issue  
15 is already set by acknowledging that, under *Guerra*, "no single factor is mandatory  
16 or dispositive."). Waiver is similarly appropriate here. *See* Dkt. 11 at 3 ("the *Guerra*  
17 factors are not required by [sic] rather a list of nine factors an IJ may consider  
18 [which] include any or all of the following...") (citations omitted).

19 **C. Requiring exhaustion would be futile and cause irreparable harm.**

20 In the alternative, even if the Court were to find all three *Puga* factors  
21 supported the exhaustion requirement, the Court should waive exhaustion as it  
22 would be futile and cause irreparable harm to Mr. Mendoza. *See Perez Velasquez*  
23 *v. Bondi*, No. 26-CV-01759-GPC-DDL, 2026 WL 1042479, at \*3 (S.D. Cal. Apr.  
24 16, 2026) (finding multiple *Laing* factors applied, declining to weigh the *Puga*  
25 factors, and waiving prudential exhaustion).

26 **1. BIA appeals are an exercise in futility.**

27 An action is futile if the BIA's view is "already set" or the outcome is "very  
28 likely." *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review*, 959

1 F.2d 742, 747-48 (9th Cir. 1991); *see also Vasquez-Rodriguez v. Garland*, 7 F.4th  
2 888, 896 (9th Cir. 2021) (“We will excuse a failure to exhaust if it is very likely  
3 what [the Board’s] result would have been.”) (citation omitted). Here, exhaustion of  
4 Mr. Mendoza’s claims to the BIA would be futile. *See Mendoza v. Noem*, No. CV  
5 25-3227-MWF(AGR), 2026 WL 923311, at \*5 (C.D. Cal. Apr. 1, 2026)  
6 (characterizing BIA appeal as a “futile gesture”).

7 The BIA’s affirmance of the bond denial is a foregone conclusion. *See*  
8 *Mathews v. Eldridge*, 424 U.S. 319, 330 (even where an agency has authority to  
9 change challenged procedures, it is not required where it is “unrealistic to expect”  
10 the agency to do so). At the outset, EOIR bond hearings are structurally flawed. *See*  
11 Karen Musalo et. al., *With Fear, Favor, and Flawed Analysis: Decision-Making in*  
12 *U.S. Immigration Courts*, 65 B.C. L. Rev. 2743, 2755 (2024). IJs are not  
13 independent adjudicators; they are career attorneys who report to the Attorney  
14 General, making them “very susceptible to pressure from above to decide cases in  
15 a certain way.” *Id.* at 2755. Only if a noncitizen appeals to the BIA do the judges  
16 give a “post hoc rationalization for the prior denial.” Mary Holper, *Discretionary*  
17 *Immigration Detention*, 74 Duke L.J. 961, 976 (2025). Yet BIA review does not  
18 “play a corrective role[,] because [the Board] is subject to essentially the same  
19 institutional constraints as IJs.” Musalo, 65 B.C. L. Rev. at 2756; *see also Espada*  
20 *Hernandez v. Warden of Adelanto ICE Processing Center*, No. 5:26-CV-02231-  
21 AJR, 2026 WL 1362396, at \*5 (C.D. Cal. May 11, 2026) (crediting report showing  
22 97% of BIA published decisions in 2025 were in favor of DHS).

23 Bond appeals are, empirically, a sham. The BIA has “largely ceased  
24 functioning as a meaningful check on lower-level agency errors.” *See Tiboko-Tifuh*,  
25 2026 WL 1603795, at \*3. In the last year, the BIA has been “drastically reshaped”  
26 such that it “now functions to rubberstamp IJ bond denials and facilitate noncitizen  
27 removal.” *Perez Velasquez*, 2026 WL 1042479, at \*3. Indeed, in the last two  
28 quarters, the BIA has sustained *zero* bond appeals filed by noncitizens in ICE

1 detention according to analysis of EOIR’s own data by Zabdi Salazar, PhD  
2 candidate at UC Berkeley School of Law. *See* Authenticating Decl. of Counsel,  
3 Exh. R, Decl. of Zabdi J. Salazar at ¶ 19; *see also Espada Hernandez*, 2026 WL  
4 1362396, at \*5 (crediting that from May to August 2025, the BIA did not sustain a  
5 single noncitizen-filed bond appeal); *Perez Velasquez*, 2026 WL 1042479, at \*3  
6 (“statistics support the position that the reconstituted BIA” is less likely to provide  
7 efficacious relief). A drawn-out remedy producing no wins for a detained petitioner  
8 is futile. *See Vasquez-Rodriguez*, 7 F.4th at 896–97 (finding the BIA’s position  
9 appeared “already set” and appeal would “very likely” be futile).

10 Even if Mr. Mendoza would win a needle-in-a-haystack reversal at the BIA,  
11 that would fail to remedy his ongoing detention and instead “perpetuate the very  
12 harm the Court’s order was designed to prevent.” *Tiboko-Tifuh*, 2026 WL 1603795,  
13 at \*4; *see Babuadze v. Chestnut*, No. 1:26-CV-01499-KES-CDB (HC), 2026 WL  
14 797926, at \*7 (E.D. Cal. Mar. 23, 2026), report and recommendation adopted, No.  
15 1:26-CV-01499-KES-CDB (HC), 2026 WL 896159 (E.D. Cal. Apr. 1, 2026)  
16 (waiving exhaustion due to futility).

17 **2. Exhaustion would cause Mr. Mendoza irreparable harm.**

18 Not only is appealing to the BIA futile, but it would cause Mr. Mendoza  
19 irreparable harm. Many courts, including in this district, have waived prudential  
20 exhaustion where continued detention constitutes irreparable harm. *See, e.g., Singh*  
21 *v. LaRose*, 2026 WL 1387428, at \*3–\*4; *Perez Velasquez*, 2026 WL 1042479, at  
22 \*4–\*5; *Villa v. Mullin*, No. 5:26-CV-01690-JDE, 2026 WL 1583941, at \*3–\*4  
23 (C.D. Cal. June 2, 2026); *see also Espada Hernandez*, 2026 WL 1362396, at \*5.

24 According to Respondents’ own data, the “median processing time [of BIA  
25 bond appeals] rose from 87 days in Q4 2025 to 200 days in Q1 2026.” *See* Exh. R  
26 at ¶ 12. With this recent slowdown, “the typical completed appeal took more than  
27 twice as long” as it did previously. *Id.* That means that, on average, it will take over  
28 seven months for the BIA to resolve a bond appeal. *See id.* Such a delay would

1 cause Mr. Mendoza severe harm. Respondents do not dispute that Mr. Mendoza is  
2 the father of a young U.S. citizen son and that if released, would be able to  
3 emotionally and economically support him. *See Singh v. LaRose*, 2026 WL  
4 1387428, at \*4 (finding that “the collateral harms to children of detainees whose  
5 parents are detained” is a relevant consideration) (citation omitted). Respondents  
6 also did not contest that Mr. Mendoza has medical and psychiatric needs that are  
7 exacerbated in detention. *See* Dkt. 1, Petition, Exh. A at ¶ 29 (“Being detained—  
8 without knowing what will happen with my case or how my son is doing—causes  
9 me a great deal of stress and anxiety. I struggle to sleep and become deeply  
10 depressed.”). At Otay Mesa, Mr. Mendoza receives only the bare minimum of  
11 treatment, medication, but could benefit from additional, unavailable supports. *See*  
12 *id*; *see also Hernandez*, 872 F.3d at 995 (recognizing “subpar medical and  
13 psychiatric care in ICE detention facilities”).

14 Respondents do not dispute lengthy processing times. Courts have credited  
15 similar statistics where such evidence was unrebutted by the Government, *see*  
16 *Espada Hernandez*, 2026 WL 1362396, at \*5, and have waived exhaustion due to  
17 the length of bond appeals. *See, e.g., C.A.R.V. v. Wofford*, No. 1:25-CV-01395-JLT-  
18 SKO, 2026 WL 241823, at \*5 (E.D. Cal. Jan. 29, 2026); *W.T.M.*, 2026 WL 262583,  
19 at \*3. Moreover, Respondents claim that “detention alone is not an irreparable  
20 injury.” Dkt. 11 at 6:17. But several courts have “found that continued detention  
21 after a potentially legally inadequate hearing may constitute such irreparable harm.”  
22 *See Perez Velasquez*, 2026 WL 1042479, at \*4 (“inherent delays in the current  
23 appeals process support a finding that Petitioner will suffer irreparable injury if he  
24 is required to wait for BIA adjudication of his bond denial”) (collecting cases).

25 Finally, courts have waived exhaustion even where the appeal deadline had  
26 passed. *See, e.g., Villa v. Mullin*, 2026 WL 1583941, at \*3–\*4; *Sales v. Johnson*,  
27 No. 16-CV-01745-EDL, 2017 WL 6855827, at \*7 (N.D. Cal. Sept. 20, 2017)  
28 (excusing exhaustion although “it is too late for administrative review”); *Gil*

1 *Epsana v. Nessinger*, No. 26-cv-014-JJM-PAS, at \*9 (D.R.I. Mar. 25, 2026)  
2 (waiving exhaustion as it was “futile to require Mr. España to go before the BIA  
3 because his appeal would almost certainly be dismissed as being untimely filed”).

4 Here, this Court ordered a bond hearing wherein Respondents had the burden  
5 of justifying Mr. Mendoza’s detention. “That hearing has not occurred by the date  
6 ordered—perhaps in form, but not in substance—meaning each additional day  
7 Petitioner spends at Otay Mesa Detention Center constitutes further irreparable  
8 injury of unconstitutional detention.” *Tiboko-Tifuh*, 2026 WL 1603795, at \*4.

9 **D. The Court has jurisdiction to review compliance with its own order.**

10 Alternatively, this Court simply has jurisdiction to assess whether  
11 Respondents complied with its order. A court has “continuing jurisdiction to  
12 enforce [its] [orders]. . . one that extends to reviewing whether an IJ correctly  
13 applied the legal standard ordered by the Court at a bond hearing.” *Tiboko-Tifuh*,  
14 2026 WL 1603795, at \*1 (citation omitted). Respondents agree that this Court can  
15 evaluate “whether the requirements of its order were followed.” *See* Dkt. 11 at 2:20–  
16 22. “It should not fall to the BIA to review Respondents’ compliance with this  
17 Court’s judgment.” *See Mau v. Chertoff*, 562 F. Supp. 2d 1107, 1114 (S.D. Cal.  
18 2008) (“This request for relief relates directly to this Court’s prior order and, as  
19 such, there are *no administrative remedies to exhaust.*”) (emphasis added).

20 **CONCLUSION**

21 For the foregoing reasons, this Court should grant Mr. Mendoza’s motion to  
22 enforce and order Respondents to immediately release him.

23 Dated: July 15, 2026

Respectfully submitted,

24 /s/ Meredith Sullivan  
25 Meredith Sullivan

26 *Attorney for Petitioner*  
27  
28