

Natalia Vieira Santanna,
CA BAR No. 337502
MI BAR No. P76443
SANTANNA LAW OFFICES
PO Box 7528, Oakland, CA, 94601
(510) 922-0154 (Telephone)
(510) 903-4211 (Facsimile)
natalia@santannalaw.com (Email)
Attorney for Petitioner-Plaintiff

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
CALIFORNIA

O.A.C.S.,
Petitioner-Plaintiff,

v.

Minga WOFFORD ET AL,
Respondents-Defendants.

Case No. 1:25-cv-01652-DAD-CSK

**REPLY TO RESPONDENTS'
OPPOSITION TO
PETITIONER'S MOTION TO
ENFORCE AND TRAVERSE**

I. INTRODUCTION

Petitioner, O.A.C.S., by and through his undersigned counsel, hereby files this response to the Respondents' Opposition to O.A.C.S.'s Motion to Enforce.

Respondents claim that Petitioner must exhaust administrative remedies before the Court can enforce its own judgment. In contrast, numerous courts have determined that administrative exhaustion is not required to enforce a prior order. *See Y.S.G. v. Andrews*, No. 2:25-CV-1884-SCR, 2025 WL 2979309, at *7 (E.D. Cal. Oct. 22, 2025); *Mau v. Chertoff*, 562 F. Supp. 2d 1107, 1114 (S.D. Cal. 2008) ("This request for relief relates directly to this Court's prior order and, as

such, there are no administrative remedies to exhaust.”); *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1126 (S.D. Cal. 2008); *Sales v. Johnson*, No. 16-CV-01745-EDL, 2017 WL 6855827, at *7 (N.D. Cal. Sept. 20, 2017). Further, prudential exhaustion does not apply in this case because the petitioner is not seeking review of the IJ’s discretionary determination but rather enforcement of this Court’s prior order. The government relies on *Leonardo v. Clark*, 646 F.3d 1157, 1159 (9th Cir. 2011). However, unlike in *Leonardo*, the petitioner here is not challenging the substance of the bond decision but arguing that the IJ failed to comply with the specific procedural requirements mandated by the Court. Futility exception applies because the BIA lacks authority to determine whether the IJ complied with a federal court order. Moreover, waiting for BIA review would cause irreparable harm through continued unlawful detention, one of the recognized exceptions to prudential exhaustion requirements.

II. ARGUMENT

A. WAITING FOR THE BIA TO ISSUE A DECISION ON THE PETITIONER’S APPEAL OF THE IJ’S DENIAL OF BOND IS NEITHER REQUIRED NOR PRUDENT.

As mentioned *supra*, numerous courts have determined that administrative exhaustion is not required to enforce a prior order. Even assuming administrative exhaustion applies, exceptions to exhaustion permit consideration of Petitioner’s motion to enforce. A court may waive the prudential exhaustion requirement, even if the case weighs in favor of prudential exhaustion, if “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.” *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Where “[l]iberty is the norm; every moment of incarceration should be justified.” See *United States v. Faison*, No. GJH-19-27, 2020 WL 815699, at *1 (D. Md. Feb. 18, 2020). Here, Petitioner demonstrates three factors that warrant waiver of exhaustion in his case: (1) irreparable

harm, (2) inadequate or lack of efficacious administrative remedies, and (3) futility.

1. Petitioner has established irreparable harm if required to exhaust administrative remedies.

This Court has previously determined that Petitioner's detention in immigration custody rose to the level of irreparable harm. ECF 13. Before his detention by ICE, Petitioner had been out of custody for almost two years. ECF 1. Upon his release, O.A.C.S. established a life in Bakersfield, California. O.A.C.S. Aff., ECF 2-1. He presented his asylum petition and has been working as a landscaper. O.A.C.S. has never committed any crimes, nor been arrested for any reason. He is considered a pillar in his community, which includes his family, sister, and friends. *Id.* If he remains detained, he will lose out on employment opportunities, be unable to fulfill his responsibilities, and be prevented from spending time with his family. Accordingly, this case is comparable to numerous cases that have waived prudential exhaustion on grounds of irreparable harm. See e.g., *Y.S.G. v. Andrews*, No. 2:25-CV-1884-SCR, 2025 WL 2979309, *De Paz Sales v. Barr*, No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003 (N.D. Cal. 2018); *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1138 (N.D. Cal. 2018).

2. Waiting for the BIA to render a decision on Petitioner's bond appeal is not efficacious and is futile

Moreover, waiting for the BIA to render a decision on Petitioner's bond appeal is futile and not efficacious. It will likely take three to six months, if not longer, for the BIA to issue a decision on Petitioner's appeal. ECF 16-1. No briefing schedule has even been set for his appeal. Moreover, it would not be efficacious to wait for the BIA to decide the appeal, when the BIA is not a subject matter expert on danger or flight risk, where the administrative record is developed,

there are no contested facts, and where some of the constitutional questions raised in the appeal could not be addressed by the BIA nor entitled to deference. *See Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997) (“[E]ven if we were to perceive a constitutional infirmity in the unambiguous statute before us, we would be without authority to remedy it.”); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024). This Court is the best arbiter for determining whether *Matter of Guerra*’s discretionary framework is the proper standard to apply to protect Petitioner’s liberty interests, or whether the IJ’s bond order violated the constitutional choice doctrine. These are just two examples among others where it would be futile to wait for the Board to adjudicate Petitioner’s appeal.

In fact, the BIA has consistently refused to reach and decide constitutional questions. *See Matter of Fede*, 20 I&N Dec. 35 (BIA 1989) (explaining why neither an IJ nor the BIA have the legal authority to consider constitutional challenges to the immigration regulations they administer); *Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997) (“[E]ven if we were to perceive a constitutional infirmity in the unambiguous statute before us, we would be without authority to remedy it.”). In light of the BIA’s scope of review, administrative remedies in this case are not adequate to resolve petitioner’s due process challenge to the IJ’s bond determination in this case.

For all these reasons, the exhaustion of administrative remedies should be deemed waived in this case. *See Hernandez v. Sessions*, 872 F.3d 976, 988–89 (9th Cir. 2017) (affirming district court decision to waive exhaustion requirement in constitutional challenge to detention hearings); see also *Mau v. Chertoff*, 562 F.Supp.2d 1107, 1113–14 (S.D. Cal. 2008) (finding administrative exhaustion did not preclude a motion to enforce the district court’s prior order because the BIA did not have authority to enforce the federal court’s judgment); *Y.S.G. v. Andrews*, No. 2:25-CV-

1884-SCR, 2025 WL 2979309, at *7 (E.D. Cal. Oct. 22, 2025).

Accordingly, the Court should hold that Petitioner does not need to exhaust administrative remedies. In addition, Respondents largely failed to address Petitioner's legal challenges to the IJ's determination that the government presented clear and convincing evidence of danger and flight risk. ECF 18.

While a hearing was provided, it failed to meet the substantive requirements implied in the Court's order. The IJ's application of the clear and convincing evidence standard was merely perfunctory, as evidenced by the failure to meaningfully evaluate all relevant factors. The Court's authority to enforce its own orders includes ensuring not just technical compliance but substantive compliance with the intended relief. Unlike *Davis v. Garland*, 708 F.Supp.3d 283, 294-95 (W.D.N.Y. 2023), where evidence supported the IJ's findings, here the IJ effectively shifted the burden to the petitioner by requiring him to produce more persuasive evidence, contradicting the clear and convincing standard that places the burden squarely on the government.

The clear and convincing standard requires that evidence must establish "an abiding conviction that the truth of [the] factual contentions at issue is highly probable." *Mondaca-Vega v. Lynch*, 808 F.3d 413, 422 (9th Cir. 2015) (en banc). This standard sets a "high burden and must be demonstrated in fact, not 'in theory.'" *Obregon v. Sessions*, No. 17-CV-01463-WHO, 2017 WL 1407889, at *7 (N.D. Cal. Apr. 20, 2017) (quoting *United States v. Patriarca*, 948 F.2d 789, 792 (1st Cir. 1991) (affirming the district court's conclusion that, although the government had demonstrated the defendant was a Mafia Boss and that, "in theory a Mafia Boss was an intimidating and highly dangerous character," it had failed to show that "this Boss posed a significant danger")). Here, the IJ's reliance on the ISAP violations fails to meet the clear and convincing evidence standard because it ignores critical context and alternative explanations for

those violations. The IJ did not adequately consider the petitioner's evidence explaining the circumstances of the missed check-ins and failed home visits, such as communication barriers, technical issues with monitoring equipment, or other legitimate reasons. *See Nat'l Res. Def. Council, Inc. v. Pritzker*, 828 F.3d 1125, 1135 (9th Cir. 2016) (“An agency acts contrary to the law when it gives mere lip service or verbal commendation of a standard but then fails to abide the standard in its reasoning and decision.”). Moreover, the IJ failed to properly weigh these violations against other relevant factors that mitigate flight risk, including community ties, potential eligibility for relief from removal, and lack of criminal history. This selective consideration of evidence demonstrates that the government did not truly bear the burden of proof. The IJ’s cursory treatment of the Petitioner’s explanatory evidence demonstrates a failure to genuinely engage with all relevant evidence. *See Mau v. Chertoff*, 562 F. Supp. 2d 1107, 1119 (S.D. Cal. 2008) (ordering petitioner’s release when “the evidence before the IJ failed, as a matter of law, to prove flight risk or danger pursuant to the Court’s order”); *Sales v. Johnson*, No. 16-CV-01745-EDL, 2017 WL 6855827, at *7 (N.D. Cal. Sept. 20, 2017) (ordering petitioner’s release under appropriate conditions of supervision when IJ failed to correctly apply clear and convincing standard in violation of court order); *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1036 (N.D. Cal. 2018), vacated and remanded sub nom. *Ramos v. Garland*, No. 18-15884, 2024 WL 933654 (9th Cir. Mar. 1, 2024) (granting motion to enforce and ordering release under appropriate conditions of supervision when government failed to meet clear and convincing burden).

Finally, many far less restrictive alternatives to detention would be sufficient to protect the community from whatever perceived flight risk the government believes Petitioner poses, including a reasonable bond amount or an ankle monitor and the continuance of mandatory check ins. *Obregon v. Sessions*, No. 17-CV-01463-WHO, 2017 WL 1407889, at *7 (N.D. Cal. Apr. 20,

2017) (critiquing the “little attention” given to whether “the least restrictive alternative was not further incarceration”); *Sales*, 2017 WL 6855827, at *7 (ordering immigrant released on conditions “such as an ankle monitor and reporting requirements”).

B. PETITIONER’S RELEASE IS THE PROPER REMEDY.

Respondents have had multiple opportunities to afford Petitioner the due process he is entitled to and have failed to do so at every turn. For that reason, Petitioner seeks this Court’s intervention again. This Court should not permit Respondents to continue violating both Petitioner’s due process rights and the orders of this Court. The Court should instead put an end to the unlawful incarceration of Petitioner by ordering his immediate release. *See Swann v. Charlotte Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15 (1971) (“Once a right and a violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.”)

CONCLUSION

For the foregoing reasons and those stated in Petitioner’s motion to enforce, the Court should (1) grant Petitioner’s motion to enforce; (2) order Petitioner’s immediate release; and (3), grant Petitioner’s writ of habeas corpus.

Dated: February 6, 2026

Respectfully submitted,
/s/ Natalia Santanna
Natalia Vieira Santanna
Attorney for Petitioner