Honorable Theresa L. Fricke

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SAMUEL RAMIREZ VILLAGOMEZ, **Petitioner,** **vs** **JULIO HERNANDEZ**, et al., **Respondents.**	Case No.: 2:26-cv-02730-TLF **PETITIONER'S TRAVERSE AND RESPONSE TO RESPONDENTS' RETURN MEMORANDUM** Note on Motion Calendar: August 24, 2026

INTRODUCTION

Petitioner Samuel Ramirez Villagomez files this Traverse in response to the August 17, 2026, Federal Respondents' Return. Petitioner, through counsel Bart Klein, withdraws the claim that a transcript was not made of the hearing. The hearing was listened to by this counsel, and it is true that the bond counsel, Mark Nerheim, asked whether the bond hearing was being recorded, and bond hearing recording, unlike earlier DORs of applicant, is clear. To the extent the lack of bond hearing recording was a cause of action, that is withdrawn. Counsel obtained access to the recording through access of the bond counsel to the recordings tonight , and has only done one bond hearing in 49 years of practice, and will not make the mistake again. He just assumed the usually non-recording of bond hearings.

But a bond appeal within time to the BIA was made, with personal service, and

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Attachment A is what was filed with the BIA (noting the stamped BIA receipt), but it was later rejected since an EOIR-27 Notice of Appearance was submitted, and it required an online ECAS filing. Counsel tried to correct but the EOIR 27 to file the bond appeal was not accepted by the BIA until June 10, 2026, and then Exhibit A was then filed on ECAS but rejected days later. Exhibit C.

ARGUMENT

Exhaustion is not required, as this Court's caselaw resoundingly demonstrates, applying *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

Respondents contend that exhaustion via an appeal to the Board of Immigration Appeals (BIA) is required, citing *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003). *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

. According to Respondents, the first *Puga* factor—agency expertise—favors requiring exhaustion because "a written bond memorandum . . . is 'necessary to develop the record, to clarify the IJ's reasoning, and for the parties and this Court to discern whether any constitutional error or harm transpired.'" Dkt. 6 at 5 (quoting *Lueth v. Scott*, No. 2:26-cv-01170-SKV, Dkt. No. 14 at 7 (W.D. Wash. May 1, 2026)).

To rebut this first Puga factor, is that, unlike *Lueth* or the other authorities Respondents cite, the Court has access to the DAR, which is a clear recording, which outlines the IJ's reasons for denying bond. In his briefing, Petitioner has pointed to the reasons—namely, petitioner's criminal history that the Immigration Judge used to deny. This is no different than a written decision, which would simply reiterate that the IJ believes petitioner has not sufficiently rehabilitated and, therefore, is considered a danger, pointing to his dismissed juvenile allegations

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and his two reckless driving convictions. This is not an assault charge or other intentional crimes, where danger can be presumed. Still, "second" habeas to release has been granted with such assaults.

Moreover, USCIS granted Petitioner DACA for years despite the dismissed juvenile allegations and one reckless-driving conviction. Petitioner's DACA renewal included both reckless-driving convictions, and Exhibit B shows that the renewal was denied only because he was detained, as stated in the Petition. The Immigration Judge gave no weight to USCIS's assessment that Petitioner was not dangerous.

Nor was Petitioner found to be a flight risk, given the overwhelming evidence submitted. Notably, in cases involving similarly situated individuals—longtime residents with deep ties to this country—this Court has repeatedly rejected IJ reliance on comparable factors in written decisions. *See, e.g., Lima Soriano v. Hernandez*, 830 F. Supp.3d 1071, 1080–81 (W.D. Wash. Apr. 10, 2026) (rejecting reliance on similar factors); *Segura Serrano v. Scott*, No. 2:26-CV-01268-LK, 2026 WL 1674357, at *8–9 (W.D. Wash. May 26, 2026) (similar); *Fletes-Velasquez v. Hernandez*, No. C26-1908 TSZ, 2026 WL 1871890, at *3–4 (W.D. Wash. June 30, 2026) (similar); *Rodriguez-Pineda v. Hernandez*, No. C26-2367-MLP, 026 WL 2321531, at *4–5 (W.D. Wash. Aug. 11, 2026) (similar).

After not requiring exhaustion in these cases, Judges Cartwright and Estudillo went on to grant the habeas petitions, faced with records of overwhelming positive equities. *Garcia-Merino v. Hernandez*, No. 26-CV-1911, 2026 WL 2137819, at *4 (W.D. Wash. July 24, 2026); *see also Vasquez v. Scott*, No. 2:26-CV-02515-DGE, 2026 WL 2285535, at *4 (W.D. Wash. Aug. 7, 2026) (similar). Here is no different, as "[e]ven in the absence of a contemporaneous record of

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Petitioner's bond hearing, . . . it is clear from the existing record in this case that the IJ's bond denial was constitutionally deficient, because there are no circumstances in which the IJ could plausibly establish that Petitioner posed a flight risk." *W.T.M. v. Bondi*, No. 2:25-CV-02428-RAJ-BAT, 2026 WL 262583, at *4 (W.D. Wash. Jan. 30, 2026). Just substitute "danger" in this case.

With regard to the second Puga factor, petitioner did not to avoid filing an appeal to the BIA; it was just not successful and the BIA prevented correction, rebutting the second argument to require agency exhaustion, Dkt. 6 at 6. Exhibit A and Exhibit C.

Lastly Respondents provide a one sentence argument that the third *Puga* factor also favors them. Dkt. 6 at 5. But this factor also favors Petitioner, given the constitutional issues at stake and the BIA's long delays in issuing custody decisions. *See, e.g, Garcia Miranda*, 2026 WL 1328227, at *2; *Miri v. Bondi*, No. 5:26-cv-00698-MEMF-MAR, 2026 WL 622302, at *11 (C.D. Cal. Mar. 5, 2026) (holding this factor favored the petitioner because "the prolonged nature of appeals before the [BIA]" means "requiring Miri to appeal . . . would result in unreasonable and unconstitutional continued detention"). There has been almost eight months of detention, and will be longer since the EOIR42 cancellation of removal and I-589 relief was denied as a matter of discretion and is on appeal since June 8, 2026. Dkt. 7 at 2. It takes over a year for a bond appeal to resolve, and most detainee's claims are mooted by adjudication of their adjudication in their removal proceedings. Dkt 1 at 18. In other words, BIA bond appeals are futile, and in that the length of time to adjudicate prevents any chance for administrative review to correct any mistakes. Respondents did not even try to rebut these time-frames as listed in the petition.

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Specific irreparable harms exist here that independently warrant waiving exhaustion

Regardless of whether the *Puga* factors warrant requiring exhaustion, specific irreparable harms exist here that independently warrant waiving that requirement. Without ever addressing the evidence in this case, Respondents assert that there is no "unique" harm here. Dkt. 6 at 5. Respondents documents that they had access to at least the CD for the bond hearing (and presumably the evidence submitted at the bond hearing). But this Court has repeatedly found exhaustion should be waived where, as is the case here, the petitioner has immediate U.S. citizen family members who depend on him, particularly when those family members have significant medical needs. *See Flores Velazquez*, 2026 WL 1815731, at *5 (waiving exhaustion for irreparable injury where "prior to his detention, Petitioner financially and emotionally supported his family, including his adult child who has special needs, relies on Petitioner for transportation, and is experiencing trauma from the loss of Petitioner's support"); *Loya Medina v. Hernandez*, No. 2:26-cv-00772-GJL, 2026 WL 1260848, at *6 (W.D. Wash. May 7, 2026) (finding irreparable injury for petitioner who was the primary caregiver for husband requiring ongoing medical care, and whose absence impacted her two U.S.-citizen children educationally and emotionally); *Zavala Sandoval v. Hernandez*, No. 2:26-CV-01198-JNW, 2026 WL 1661379, at *3 (W.D. Wash. June 9, 2026) ("Here, [the petitioner] demonstrates the individualized irreparable harm he has suffered and will continue to suffer—his inability be [sic] with his family, provide for his children, and work."). Respondents have no answer to these cases which closely resemble the facts here. The cases Respondents additionally cite did not address the BIA's long delays in issuing custody decisions or involve the specific, significant harms present

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here. Dkt. 6 at 6-7.

CONCLUSION

Accordingly, the Court should grant Mr. Samuel Ramirez Villagomez's petition.

Respectfully submitted this 24th day of August 2026.

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I certify that this memorandum complies with the Local Civil Rules.
There are 1388 words in this filing.