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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 BERTIN MONGE GOMEZ,  
11  
12 Petitioner,  
13 v.  
14 WARDEN OF THE GOLDEN STATE  
ANNEX DETENTION FACILITY, et al.,  
15 Respondents.

CASE NO. 1:25-CV-1724-DJC-SCR

RESPONDENTS' SUR-REPLY IN SUPPORT OF  
ANSWER IN OPPOSITION TO PETITION FOR  
WRIT OF HABEAS CORPUS

16  
17 I. INTRODUCTION

18 Respondents file this sur-reply in support of their Answer in Opposition to Bertin Gomez'  
19 Petition for Writ of Habeas Corpus. ECF No. 15. Petitioner's "amended reply" is effectively an entirely  
20 new habeas petition. The majority of Petitioner's reply makes claims to which Respondents have  
21 already responded in their earlier opposition and Respondents incorporate their arguments against those  
22 claims here by reference. *Id.* This includes the position that Petitioner has failed to exhaust the required  
23 administrative remedies. Petitioner's argues that he should be exempt from the exhaustion requirements  
24 first on the grounds that the Immigration Judge's decision was incorrect, and second on the basis that he  
25 will not receive due process through the Board of Immigration Appeals (BIA) procedures. But the  
26 former is a collateral attack of the IJ's order which is properly brought before the BIA. The latter is  
27 based on his speculation that he cannot prevail at the BIA, but that is not the same as being denied due  
28 process. In short, Petitioner has provided no reason for the Court to arrive at a different result in its

1 Findings and Recommendations that it did the first time. ECF No. 17.

2 **II. ARGUMENT**

3 **A. Petitioner's Claims Belong In Front of the BIA.**

4 The first half of Petitioner's amended reply is effectively the appeal he should argue before the  
5 BIA. He claims that (1) the IJ impermissibly shifted the burden onto Petitioner to show he was not a  
6 danger to the community or a flight risk; and (2) the IJ's conclusion that he posed a danger to the  
7 community was not supported by substantial evidence. ECF No. 23 at 9–13. As to the first claim, it is  
8 legally unsupported. In its Findings and Recommendations, this Court found that Petitioner had failed  
9 to cite authority showing that an initial bond hearing under 8 U.S.C. § 1226(a) should involve a  
10 heightened burden on the government. ECF No. 17 at 5. That deficiency persists. The IJ applied its  
11 "broad discretion" to detain Petitioner, based on evidence of danger in Petitioner's RAP sheet, during a  
12 bond redetermination hearing under 8 C.F.R. § 1236, *See* Order of the Immigration Judge, ECF No. 15-  
13 1 at 9–11. The IJ was not acting under the framework of a judicially mandated hearing that explicitly  
14 placed the burden on the government. Indeed, in authority Petitioner himself cites, this Court made  
15 clear that the burden on the government that may apply "in a constitutionally mandated proceeding,"  
16 does not apply at "generic bond proceedings under 8 U.S.C. § 1226." *Y.S.G. v. Andrews*, 2025 WL  
17 2979309, at \*9 (E.D. Cal. Oct. 22, 2025). Or, as another district court put it, "this court cannot accept  
18 that in enacting section 1226(a) Congress intended to incorporate a presumption against detention that  
19 would place the burden of proof on the Government." *Exchop Perez v. McAleenan*, 435 F. Supp. 3d  
20 1055, 1060 (N.D. Cal. 2020). So, if Petitioner were detained under § 1226, rather than § 1225, as he  
21 contends he should be, his argument that the IJ impermissibly shifted the burden to him to show he was  
22 not a danger or a flight risk must fail. ECF No. 23 at 6

23 As to Petitioner's second claim that the IJ had insufficient evidence to find him to be a danger to  
24 the community, for which he offers no support, this claim is also a matter properly put before the BIA.  
25 The IJ's finding of danger was based on Petitioner's RAP sheet and the convictions it recorded. ECF  
26 No. 15-1 at 9. The IJ noted that Petitioner's apparent recidivist tendencies to drive drunk and  
27 dangerously were sufficient to detain him. *Id.* If Petitioner contests the reliability of that RAP sheet, he  
28 should state so explicitly and he should provide evidence to support that claim. He has done neither. He

1 simply interprets the current significance of his own criminal history differently from the IJ. ECF No.  
2 23 at 11–13. Revision of the IJ’s assessment is not Petitioner’s privilege to bring as a habeas claim. It is  
3 properly handled on appeal to the BIA.

4 **B. Petitioner’s Likelihood of Success Before the BIA Does Not Nullify the Exhaustion**  
5 **Requirement.**

6 Petitioner’s claim that appealing through the BIA would be futile is unsupported speculation and  
7 is, in any event, an insufficient reason to excuse him from the exhaustion requirement.<sup>1</sup> He appears to  
8 conflate his chances of success with futility – but they are not the same. He claims that the BIA is  
9 incapable of addressing his constitutional claims, but he is incorrect. ECF No. 23 at 16. In the first  
10 instance, the BIA is designed to hear appeals from bond redetermination hearings. That is its purpose.  
11 Second, to the extent his constitutional claims are based on prolonged detention, once again, the delay  
12 has been largely his own. His position implies ultimately that because he is unlikely to prevail before  
13 the BIA, that means he will have been denied proper process. Simply because, given his criminal  
14 profile, he is unlikely to prevail on appeal to the BIA, that does not mean the BIA’s administrative  
15 remedies are “inadequate or not efficacious.” ECF No. 23 at 14 (citing *Laing v. Ashcroft*, 335 F.3d 874,  
16 881 (9th Cir. 2003)).

17 Moreover, Petitioner’s citing *Matter of Yujare Hurtado*, 29 I&N Dec. 216 (BIA) to support his  
18 argument that appeal to the BIA would be futile misses the mark, because *Hurtado* was decided after  
19 Petitioner had his bond redetermination hearing in this case. Petitioner implies that *Hurtado*  
20 retroactively nullifies all IJ decisions regarding detention because the BIA is “likely” to subject  
21 petitioners like himself to mandatory detention, but that is not true in his case. ECF No. 23 at 17  
22 (“Because the BIA is likely to hold that persons such as Petitioner who were detained in the interior of  
23 the country are subject to mandatory detention without bond, Petitioner’s appeal to the BIA would be  
24 futile.”) To bolster this position, Petitioner cites, for example, *Barco Mercado v. Francis*, 2025 WL  
25 3295903, at \*12 (S.D.N.Y. November 26, 2025), which addresses the futility of requesting a bond

26 \_\_\_\_\_  
27 <sup>1</sup> Respondents briefed the exhaustion requirements—and the reasons the Ninth Circuit has  
28 stressed for adhering to them before entertaining a habeas petition—in their Answer and incorporate  
those facts and arguments here by reference. ECF No. 15 at 4–7 (citing *Puga v. Chertoff*, 488 F.3d 812,  
815 (9th Cir. 2007), *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)).

1 hearing before an IJ in a post-*Hurtado* world, in which the IJ would find that it did not have jurisdiction  
 2 to decide the claim in the first place and detention would be mandatory. But the IJ’s ruling here pre-  
 3 dated *Hurtado* and held specifically that the IJ had jurisdiction to rule on the issue of detention. ECF  
 4 No. 15 at 9–10. Therefore, Petitioner’s argument that *Hurtado* would make any appeal futile is baseless,  
 5 because the IJ has already ruled that it had jurisdiction and decided the matter on the merits.

6 Finally, Petitioner’s argument that he should be exempt from the exhaustion doctrine because the  
 7 “lengthy time it takes to have an appeal before the BIA decided” renders the BIA unable to address his  
 8 harm is not only meritless but also misleading. ECF No. 23 at 15. He neglects to acknowledge—until  
 9 many paragraphs later—Respondents’ contention that Petitioner’s requested continuances delayed his  
 10 case for months. ECF No. 15 at 3–4. Petitioner’s claim that, apart from Petitioner’s Oct. 14, 2025  
 11 motion to continue, “neither Petitioner nor the undersigned [attorney] is aware of any other continuances  
 12 prior to the date on which the Government filed its Answer,” is curious. To it, he adds that “to the  
 13 extent that Respondents contend that the length of Petitioner’s detention is attributable to such  
 14 continuances, Petitioner denies that contention.” ECF No. 23 at 18. But, as shown in the screenshot of  
 15 proceedings, below, it appears that Petitioner (or his attorneys) requested continuances on at least three  
 16 occasions for “preparation”: September 4, October 14, and December 11, 2025.<sup>2</sup> While Respondents  
 17 acknowledge the need for adequate preparation, they do not believe Petitioner has the right to claim that  
 18 he knew nothing about the delays he requested himself to then try to leverage that delay as basis to  
 19 evade the exhaustion requirements.

Date	From	To	Base	HLoc	IJ	Alty	Medium	Adjustment
05-Feb-26	1:00 PM	1:30 PM	ADL	MCM	DEH	EK140977		IJ REASSIGNMENT
11-Dec-25	1:00 PM	1:30 PM	ADL	MCM	DEH	EK140977		Preparation - respondent/attorney/representative
14-Oct-25	9:30 AM	9:00 AM	ADL	MCM	SPN	EK240977		Preparation - respondent/attorney/representative
04-Sep-25	1:00 PM	1:00 PM	ADL	MCM	AED	None		Preparation - respondent/attorney/representative
07-Aug-25	3:00 PM	3:30 PM	ADL	MCM	AED	LT800544		IJ COMPLETION AT HEARING
06-Aug-25	1:30 PM	2:00 PM	ADL	MCM	AED	None		Respondent to seek representation
17-Jul-25	1:30 PM	2:00 PM	ADL	MVD	AED	None		TO ALLOW FOR SCHEDULING OF PRIORITY CASE
05-Jul-25	9:30 AM	9:00 AM	ADL	MCM	IGM	None		IJ REASSIGNMENT
07-Jul-25	8:30 AM	9:00 AM	ADL	MVD	AED	None		Respondent to seek representation

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27 <sup>2</sup> The Immigration Court does not appear to have a docket that is accessible the same way the  
 28 U.S. District Court does, so Respondents provide this screenshot as a means of recording the relevant  
 information.

1 **III. CONCLUSION**

2 For the foregoing reasons, the Court should recommend denying Petitioner's Petition for Writ of  
3 Habeas Corpus in its entirety.

4 Dated: February 24, 2026

ERIC GRANT  
United States Attorney

5  
6 By: /s/ JAMES CONOLLY  
JAMES CONOLLY  
Assistant United States Attorney