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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
11

12 **MILTON OMAR HERNANDEZ-MENDEZ,**)

Agency No.: 

13 Petitioner,)

14 v.)

Case No.:

15 **DANIEL A. BRIGHTMAN, Field Office**)
16 **Director of ICE Enforcement and**)
17 **Removal Operations, San Diego,**)
18 **California; CHRISTOPHER L. LA ROSE,**)
19 **Warden, Otay Mesa Detention Center;**)
20 **TODD LYONS, Acting Director of ICE;**)
21 **MARKWAYNE MULLINS, Secretary,**)
22 **U.S. Department of Homeland Security;**)
23 **Todd BLANCHE, Acting U.S. Attorney**)
24 **General**)

'26CV2702LL MSB

25 _____ Respondents. _____

PETITION FOR WRIT OF HABEAS CORPUS

(28 U.S.C. § 2241)

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I. INTRODUCTION

Petitioner challenges his continued detention under INA § 236(a) following multiple custody determinations that failed to satisfy due process.

Despite dispositive evidence demonstrating that Petitioner previously complied fully with immigration bond conditions, the immigration judge denied bond based on findings of flight risk and danger. That determination was made without consideration of critical DHS documentation confirming Petitioner's prior compliance.

Petitioner has now undergone repeated custody proceedings, none of which resulted in a constitutionally adequate evaluation of the full record. Continued detention under these circumstances is not reasonably related to its purpose and is unlawful.

II. JURISDICTION AND VENUE

This court has jurisdiction pursuant to 28 U.S.C. § 2241. See *Demore v. Kim*, 538 U.S. 510, 517 (2003).

Petitioner is detained within this District. Venue is proper under 28 U.S.C. § 1391.

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1 **III. PARTIES**

2 Petitioner is a noncitizen currently detained by Immigration and Customs
3 Enforcement.

4 Respondents are federal officials responsible for Petitioner's detention.
5

6 **IV. STATEMENT OF FACTS**

7 **A. Prior Immigration Proceedings and Bond Compliance**

8 Petitioner was previously placed in removal proceedings and released on a
9 \$7,500 immigration bond.
10

11 During that period, Petitioner appeared at all required proceedings, complied
12 with all bond conditions; and did not abscond. Indeed, he established significant
13 family and economic ties to the U.S.
14

15 Following termination of those proceedings in December 2024, DHS issued
16 Form I-391 confirming that Petitioner satisfied all bond conditions and cancelled
17 the bond.
18

19 **B. Re-Detention and New Proceedings**

20 Despite the prior termination of proceedings, DHS re-arrested Petitioner and
21 initiated new removal proceedings. Petitioner remains detained at Otay Mesa
22 Detention Center.
23

24 **C. Bond Denial on an Incomplete Record**

1 Petitioner received a bond hearing under INA § 236(a). The immigration
2 judge denied bond based on findings that Petitioner posed a flight risk and a danger
3 to the community. However, the immigration judge did not consider DHS Form I-
4 391 confirming Petitioner's prior compliance with bond conditions. The
5 determination was therefore made on an incomplete record.
6

7 **D. Petitioner's Background and Equities**

8 Petitioner has substantial ties to the United States and a demonstrated history
9 of compliance with legal obligations. Petitioner:
10

- 11 • has resided in the United States for a significant period of time;
- 12 • is married to a U.S. citizen and has a U.S. citizen child;
- 13 • has maintained stable employment and has worked lawfully when
14 authorized; and
- 15 • has lived openly in the community and has not attempted to evade
16 authorities.

17 At the time of his most recent encounter with DHS, Petitioner was working
18 pursuant to valid employment authorization and engaged in ordinary employment
19 activities.

20 Petitioner has no criminal history, no arrests, and no record of dangerous
21 conduct.
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1 **E. Multiple Custody Determinations Without a Reliable Outcome**

2 Petitioner has undergone multiple custody proceedings. At an earlier bond
3 hearing, the immigration judge indicated on the record that, if jurisdiction were
4 available, she would have granted release on a bond of approximately \$2,000.
5

6 Following a habeas filing by prior counsel, a subsequent bond hearing was
7 conducted. At that hearing, bond was denied based on findings of flight risk and
8 danger to the community, despite the absence of any new adverse evidence.
9

10 Thereafter, undersigned counsel filed a motion for custody redetermination
11 based on newly obtained DHS documentation. That request was denied.

12 **F. DHS Documentation Confirming Bond Compliance Was Produced Only**
13 **After Motion Practice**

14 At the time of the prior custody determinations, DHS had not produced
15 documentation confirming the disposition of Petitioner's prior bond. Undersigned
16 counsel filed a motion to terminate proceedings, in part based on DHS's failure to
17 account for the status of the previously posted bond. In response to that motion,
18 DHS produced Form I-391 confirming that Petitioner satisfied all bond conditions
19 and that the bond was cancelled. This evidence was therefore not available to the
20 immigration judge at the time of the bond determination.
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23 **V. EXHAUSTION IS EXCUSED**

24 Exhaustion is not jurisdictional and may be excused. *Santos-Zacaria v.*
25 *Garland*, 143 S.Ct. 1103 (2023). Although habeas petitioners are generally

1 expected to exhaust administrative remedies, exhaustion is not jurisdictional and
2 may be excused where administrative review would be futile or inadequate. *Laing*
3 *v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).
4

5 **A. Administrative Review Is Inadequate to Remedy the Constitutional**
6 **Violations at Issue**

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8 The core issue presented here is not merely whether the Immigration Judge
9 reached the correct conclusion, but whether the bond proceeding itself satisfied
10 constitutional requirements. Where a petitioner raises procedural due process
11 violations—such as failure to consider material evidence—administrative review is
12 often inadequate because it is limited to the existing record. See *Hernandez v.*
13 *Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (discussing limitations of
14 administrative review in the detention context).
15
16

17 Here, the Immigration Judge failed to consider dispositive evidence—
18 namely, DHS’s prior determination that Petitioner complied with all bond
19 conditions. Because this constitutional defect arises from the structure and conduct
20 of the hearing itself, administrative appeal would not provide an effective remedy.
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23 This petition challenges the constitutional adequacy of the bond proceedings
24 themselves. Where the claim is that the hearing was conducted on an incomplete
25 record, administrative review does not provide an effective remedy.

1 **B. Exhaustion Is Futile**

2 Exhaustion may be excused where further proceedings would be futile.
3 *Laing*, 370 F.3d at 1000. Recent empirical data and reporting provide context
4 demonstrating why administrative review may not provide meaningful relief in
5 cases involving custody determinations.
6

7 A comprehensive analysis of Board of Immigration Appeals (“BIA”) decisions issued between 2024 and 2026 has reported that the noncitizen success
8 rate on appeal declined from approximately 20% to 10% following structural
9 changes to the Board. The same study documented a substantial increase in
10 government-filed appeals and a corresponding increase in the rate at which those
11 appeals were sustained. *Id.*
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14 Contemporaneous reporting has similarly described significant institutional
15 changes within the immigration adjudication system, including reductions in the
16 size of the BIA and shifts in adjudicatory outcomes following those changes. See,
17 e.g., Ximena Bustillo & Rahul Mukherjee, *An Immigration Court Few Have Heard*
18 *of Is Quietly Shaping Policy*, NPR (Mar. 20, 2026).
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21 Petitioner does not rely on these sources to challenge the legitimacy of the
22 immigration courts as a whole. Rather, they provide relevant context supporting
23 the conclusion that, in this case, administrative appeal is unlikely to correct the
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1 specific constitutional errors at issue—particularly where those errors involve
2 failure to consider critical evidence in the first instance.

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4 Under these circumstances, requiring exhaustion would serve no practical
5 purpose and would only prolong Petitioner’s unlawful detention. See *McCarthy v.*
6 *Madigan*, 503 U.S. 140, 147 (1992).

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8 Here, Petitioner has already undergone multiple custody determinations,
9 none of which resulted in consideration of the full record. The central defect—the
10 failure to consider dispositive evidence—remains unchanged.

11 **C. Irreparable Harm**

12 Continued detention constitutes irreparable harm. *McCarthy v. Madigan*,
13 503 U.S. at 147.

14 **VI. LEGAL STANDARD**

15 The Fifth Amendment applies to noncitizens in removal proceedings.
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17 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

18 Due process requires procedures that reduce the risk of erroneous
19 deprivation of liberty. “ Due process is not a technical conception with fixed
20 content unrelated to time, place and circumstances; rather, it is flexible and calls
21 for such procedural protections as particular situation demands. U.S.C.A. Const.
22 Amends. 5, 14.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

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2 **VII. ARGUMENT**

3 **A. The Bond Proceedings Violated Due Process**

4 Freedom from physical restraint lies at the core of the liberty protected by
5 the Due Process Clause. *Zadvydas*, 533 U.S. at 690. Because immigration
6 detention is civil, it must be accompanied by adequate procedural safeguards.
7 Noncitizens detained under INA § 236(a) are entitled to a bond hearing that
8 comports with due process. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).
9 Due process requires, at minimum: a neutral decisionmaker, consideration of the
10 evidence presented, and a determination based on individualized factors.
11

12 **B. The Immigration Judge Failed to Consider Material Evidence**

13 The immigration judge did not consider DHS Form I-391 confirming that
14 Petitioner previously complied with all bond conditions. This evidence directly
15 addresses the central issue of flight risk. The bond determination was therefore
16 made without consideration of the most probative evidence in the record. A
17 fundamental requirement of due process is that the decisionmaker consider all
18 material evidence. *Cinapian v. Holder*, 567 F.3d 1067, 1074 (9th Cir. 2009).
19

20 Here, the immigration judge failed to consider DHS Form I-391 confirming
21 that Petitioner previously satisfied all bond conditions and that his prior bond was
22 cancelled.
23

24 This evidence directly addresses the central issue in a custody
25 determination—whether Petitioner poses a flight risk. A respondent who has

1 already demonstrated compliance with immigration bond conditions cannot
2 reasonably be characterized as a flight risk absent contrary evidence.

3
4 Because the Immigration Judge did not consider this dispositive evidence,
5 the bond determination was made on an incomplete record and is constitutionally
6 defective. This document reflects DHS's own determination that Petitioner
7 complied with all conditions of release and does not present a flight risk.

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9 **C. The Record Does Not Support a Finding of Flight Risk or Danger**

10 A bond determination must be supported by evidence and must reflect an
11 individualized assessment. *Singh*, 638 F.3d at 1203. The undisputed record
12 reflects: prior compliance with bond conditions; no failures to appear; no criminal
13 history; and strong family and community ties. These facts do not support a finding
14 that Petitioner poses a flight risk or danger to the community.

15
16 **D. The Proceedings Did Not Provide a Reliable Adjudication**

17 Due process requires a neutral and disinterested decisionmaker in both civil
18 and criminal cases. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

19
20 Procedures that create a substantial risk of erroneous deprivation violate due
21 process. *Mathews*, 424 U.S. at 335. Here, the failure to consider dispositive
22 evidence created an unacceptable risk of error.

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1 Where a bond determination is made without consideration of the most
2 probative evidence on flight risk, the resulting deprivation of liberty cannot be
3 considered reliable.
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5 Petitioner does not contend that the immigration judge acted with personal
6 bias. However, the failure to consider central, outcome-determinative evidence
7 raises serious concerns about the reliability of the adjudication.
8

9 **E. Repeated Proceedings Have Failed to Produce a Constitutionally Adequate**
10 **Determination**

11 Petitioner has already been subjected to multiple custody determinations: an
12 initial proceeding indicating release would be appropriate but for a finding of
13 jurisdiction; a subsequent bond denial unsupported by the record; and a denied
14 request for redetermination based on new evidence.
15

16 Despite these proceedings, the central defect remains unchanged. Notably,
17 DHS did not produce the dispositive bond documentation until after motion
18 practice compelled its production. Under these circumstances, additional
19 proceedings would not reliably ensure a constitutionally adequate determination.
20 The failure to produce and consider DHS's own bond documentation underscores
21 that repeated proceedings have not ensured a reliable adjudication.
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23 No proceeding has resulted in a determination based on a complete record.
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1 **F. Continued Detention Is Not Reasonably Related to Its Purpose**

2 Civil detention must bear a reasonable relation to its purpose. *Zadvydas*, 533
3 U.S. at 690. Where the record demonstrates compliance and the absence of risk,
4 continued detention is not justified. The purpose of detention under INA § 236(a)
5 is to ensure appearance at proceedings and protect the community. Where the
6 record demonstrates that those concerns can be addressed through release
7 conditions—and where prior compliance has already been established—continued
8 detention is not justified.
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11 **VIII. RELIEF REQUESTED**

12 Petitioner respectfully requests that this Court:

- 13 1. **Grant the Petition for Writ of Habeas Corpus and order Petitioner's**
14 **immediate release from custody.**

15 The existing record establishes that detention is not justified as a matter of
16 law, and Petitioner has already undergone multiple custody determinations without
17 a constitutionally adequate resolution. Further proceedings are unnecessary where
18 the record demonstrates that continued detention is not reasonably related to its
19 purpose.
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- 21 2. **In the alternative**, if the Court concludes that additional proceedings are
22 required, order a new bond hearing that complies with due process, including:
23 requiring the government to justify continued detention; requiring consideration of
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1 all material evidence, including DHS Form I-391; and requiring an individualized
2 determination based on the full record.
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4 **IX. CONCLUSION**

5 Petitioner's detention rests on proceedings that failed to meet constitutional
6 requirements. The Petition should be granted.
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8 Dated: April 28, 2026

9 Respectfully submitted,
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11 */s/ Nora E. Milner*

12 Attorney for Petitioner
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