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

11 **MILTON OMAR HERNANDEZ.MENDEZ,**) Agency No.: 
12)
13 **Petitioner,**)
14 **v.**) Case No: '26CV3384 JLS DDL
15)
16 **DANIEL A. BRIGHTMAN, Field Office**)
17 **Director of ICE Enforcement and**)
18 **Removal Operations, San Diego**)
19 **California; CHRISTOPHER L. LA ROSE,**)
20 **Warden, Otay Mesa Detention Center;**)
21 **TODD LYONS' Acting Director of ICE;**)
22 **MARKWAYNE MULLINS, Secretary,**)
23 **U.S. Department of Homeland Security;**)
24 **TODD BLANCHE, Acting U.S. Attorney**)
25 **General**)
Respondents.)

26
27 **PETITION FOR WRIT OF HABEAS CORPUS**
28 **(28 U.S.C. § 2241)**

I. INTRODUCTION

Petitioner challenges his continued detention pursuant to INA § 236(a), 8 U.S.C. § 1226(a), as violating the Due Process Clause of the Fifth Amendment.

Petitioner remains detained despite overwhelming evidence demonstrating that he previously complied with all conditions of release imposed by the Department of Homeland Security ("DHS"), appeared at all required proceedings, never absconded, and presents neither a danger to the community nor a flight risk.

The immigration judge denied bond without consideration of DHS Form I-391, which confirms that Petitioner successfully completed all conditions of a prior immigration bond and that DHS cancelled the bond after proceedings were terminated.

Petitioner has now undergone multiple custody proceedings. None has resulted in a constitutionally adequate determination based upon the complete record.

Following dismissal of Petitioner's prior habeas petition for failure to exhaust administrative remedies, Petitioner pursued administrative review by filing an appeal with the Board of Immigration Appeals ("BIA") on April 29, 2026. That appeal remains pending. Petitioner continues to suffer the ongoing deprivation of liberty while awaiting agency action. The BIA's failure to provide timely review,

1 coupled with Petitioner's continuing detention, renders further administrative
2 exhaustion inadequate and futile.

3
4 Petitioner therefore seeks immediate release in that he has exhausted his
5 remedies in this matter and it is futile for him to have to wait for further bond
6 hearings in this matter.

7 **II. JURISDICTION AND VENUE**

8 This court has jurisdiction pursuant to 28 U.S.C. § 2241 because Petitioner
9 challenges the legality of his detention by federal immigration authorities.
10
11 *Demore v. Kim*, 538 U.S. 510, 517 (2003).

12 Venue is proper in the Southern District of California because Petitioner is
13 confined at Otay Mesa Detention Center within this District and the challenged
14 detention is occurring within this District. 28 U.S.C. §1391(e).

16 **III. PARTIES**

17 Petitioner MILTON OMAR HERNANDEZ-MENDEZ is a noncitizen
18 currently detained by Immigration and Customs Enforcement at Otay Mesa
19 Detention Center.

20
21 Respondent CHRISTOPHER L. LA ROSE is the Warden of Otay Mesa
22 Detention Center and is Petitioner's immediate custodian.

23 Respondent DANIEL A. BRIGHTMAN is the Field Office Director of ICE
24 Enforcement and Removal Operations for the San Diego Field Office.
25

1 Respondent TODD LYONS is the Acting Director of U.S. Immigration and
2 Customs Enforcement.

3 Respondent MARKWAYNE MULLIN is the Secretary of Homeland
4 Security.

5 Respondent TODD BLANCHE is the Acting Attorney General of the United
6 States.

7 Each Respondent acts under color of federal law and is responsible for
8 Petitioner's detention. All Respondents are federal officials responsible for
9 Petitioner's detention.

10 **V. PROCEDURAL HISTORY**

11 Petitioner previously filed a Petition for Writ of Habeas Corpus challenging
12 his detention under INA §236(a). The court dismissed that petition without
13 reaching the merits based upon a determination that Petitioner had not yet
14 exhausted available administrative remedies.

15 Following dismissal, Petitioner pursued administrative review by filing a
16 timely appeal before the BIA on April 29, 2026. The appeal remains pending, and,
17 as of the filing of this Petition, the BIA has not issued a decision.

18 Petitioner remains detained while awaiting agency action.

19 This Petition is based upon materially changed circumstances occurring after
20 dismissal of Petitioner's prior habeas action, including Petitioner's pursuit of
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1 administrative review and the BIA's failure to provide relief while Petitioner's
2 detention continues.

3 4 **VI. STATEMENT OF FACTS**

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

6 Petitioner was previously placed in removal proceedings and released on a
7 \$7,500 immigration bond. During that period, Petitioner complied with all bond
8 conditions. Petitioner appeared at all required immigration proceedings and he
9 never absconded.

10
11 Petitioner established substantial family, employment, and community ties
12 within the United States.

13
14 Following termination of those proceedings in December 2024, DHS issued
15 Form I-391 confirming that Petitioner had satisfied all bond conditions. DHS
16 cancelled the bond.

17
18 DHS's issuance of Form I-391 constitutes the government's own
19 determination that Petitioner complied with all conditions of release.

20 21 **B. Re-Detention and New Proceedings**

22
23 Despite termination of the prior proceedings, DHS subsequently re-arrested
24 Petitioner and initiated new removal proceedings.

25 Petitioner remains detained at Otay Mesa Detention Center.

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

2 Petitioner received a custody hearing pursuant to INA § 236(a). However,
3 the immigration judge denied bond. The immigration judge concluded that
4 Petitioner presented a flight risk and danger to the community. The Immigration
5 Judge did not consider DHS Form I-391.
6

7 Consequently, the custody determination was made without consideration of
8 the most probative evidence regarding Petitioner's compliance with immigration
9 supervision.
10

11 **D. Petitioner's Equities**

12 Petitioner is married to a United States citizen. He also has four United
13 States citizen children. Thus, Petitioner has substantial family ties within the
14 United States.
15

16 Petitioner has maintained employment and worked lawfully when
17 authorized. In fact, at the time of his most recent arrest, he was on the job, working
18 with a moving company. His actions at that time were not illegal or in violation of
19 the law. He was working pursuant to a lawfully-issued work authorization
20 document, issued by DHS.
21

22 Petitioner has no criminal convictions or history of violence or dangerous
23 conduct.
24

25 Petitioner has never failed to appear in immigration proceedings.

1 **E. Multiple Custody Proceedings**

2 Petitioner has undergone multiple custody determinations. During an earlier
3 proceeding, the immigration judge indicated that, if jurisdiction existed, release on
4 approximately \$2,000 bond would have been appropriate.
5

6 Following a prior habeas proceeding, another custody hearing was
7 conducted. But bond was again denied despite the absence of any new adverse
8 evidence.
9

10 Thereafter, counsel filed a motion for custody redetermination based upon
11 newly obtained DHS evidence. That request was denied.
12

13 No custody determination has been made based upon the complete
14 evidentiary record.

15 **F. DHS Produced Form I-391 Only After Motion Practice**

16 DHS did not produce Form I-391 during the original custody proceedings.
17

18 Counsel filed a motion to terminate proceedings, in part based upon DHS's
19 failure to account for the status of the previously posted bond. Only after motion
20 practice did DHS produce Form I-391.

21 The immigration judge therefore never considered that evidence during the
22 bond proceedings.
23

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25 ///

1 **G. Pending BIA Appeal**

2 On April 29, 2026, Petitioner filed an appeal before the BIA. The appeal remains
3 pending. No decision has been issued.
4

5 Petitioner remains detained while awaiting agency action.

6 **VII. EXHAUSTION HAS BEEN SATISFIED OR SHOULD BE**
7 **EXCUSED**

8 **A. Exhaustion Is Not Jurisdictional**

9 Exhaustion is not jurisdictional and may be excused. *Santos-Zacaria v.*
10 *Garland*, 143 S.Ct. 1103 (2023). Courts may excuse exhaustion where
11 administrative remedies are inadequate, futile, or incapable of providing
12 meaningful relief. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).
13

14 **B. Petitioner Pursued Administrative Review**

15 Following dismissal of the prior habeas petition, Petitioner filed a BIA
16 appeal on April 29, 2026. The agency has therefore been afforded a full
17 opportunity to address Petitioner's claims. Nevertheless, no decision has been
18 issued. Petitioner remains detained.
19
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21 **C. Administrative Review Is Inadequate**

22 The injury challenged here is ongoing physical detention. Each day of
23 detention constitutes a continuing deprivation of liberty.
24
25

1 Administrative review is inadequate where the process cannot provide
2 timely relief. *McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992). A delayed
3 administrative decision cannot restore months of liberty already lost.
4

5 **D. Further Exhaustion Would Be Futile**

6 The BIA currently faces an extraordinary appellate backlog. EOIR statistics
7 reported approximately 138,672 pending appeals before the BIA at the close of
8 Fiscal Year 2024. By the third quarter of Fiscal Year 2025, the number of pending
9 appeals had increased to more than 186,000.
10

11 The Department of Justice has acknowledged a BIA appellate backlog
12 approaching 200,000 cases. These statistics demonstrate substantial delays in the
13 adjudication of immigration appeals. Contemporaneous reporting has similarly
14 described significant institutional changes within the immigration adjudication
15 system, including reductions in the size of the BIA and shifts in adjudicatory
16 outcomes following those changes. See, e.g. Ximena Bustillo & Rahul Mukherjee,
17 *An Immigration Court Few Have Heard of Is Quietly Shaping Policy*, NPR (Mar.
18 20, 2026). [https://www.npr.org/2026/03/20/nx-sl-5707535/trump-immigration-](https://www.npr.org/2026/03/20/nx-sl-5707535/trump-immigration-detentionappeals-board-deportation)
19 [detentionappeals-board-deportation](https://www.npr.org/2026/03/20/nx-sl-5707535/trump-immigration-detentionappeals-board-deportation).
20
21

22 Petitioner does not contend that delay alone excuses exhaustion in every
23 case.
24
25

1 Rather, in the context of ongoing detention, requiring Petitioner to remain
2 incarcerated indefinitely while awaiting agency action would render exhaustion
3 inadequate as a practical means of protecting his liberty interest.
4

5 Continued detention while awaiting resolution of a severely backlogged
6 administrative appeal serves no meaningful purpose.

7 **E. Constitutional Claims Are Beyond the Agency's Ability to Remedy Fully**

8
9 This Petition challenges the constitutional adequacy of Petitioner's custody
10 proceedings. The central issue is not simply whether the immigration judge
11 reached the correct conclusion. Rather, the issue is whether detention may continue
12 where the decisionmaker failed to consider material and outcome-determinative
13 evidence.
14

15 Such constitutional claims fall within the traditional scope of habeas review.

16 **F. Irreparable Harm**

17
18 Loss of physical liberty constitutes irreparable harm. *McCarthy*, 503 U.S. at
19 147. Petitioner remains detained despite prior successful bond compliance; no
20 failures to appear; no criminal history; strong family ties; and a pending
21 administrative appeal.
22

23 **VIII. LEGAL STANDARD**

24 The Fifth Amendment applies to noncitizens in removal proceedings.
25 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). “Due process requires procedures
sufficient to reduce the risk of erroneous deprivation of liberty. Furthermore, due

1 process is not a technical conception with fixed content unrelated to time, place
2 and circumstances; rather, it is flexible and calls for such procedural protections as
3 particular situation demands. U.S.C.A Cost. Amend. 5,14.” *Mathews v. Eldridge*,
4 424 U.S. 319, 335 (1976).
5

6 Freedom from physical restraint lies at the core of the liberty protected by
7 the Due Process Clause. *Zadvydas*, 533 U.S. at 690.
8

9 IX. RELIEF REQUESTED

10 WHEREFORE, Petitioner respectfully requests that this Court:

11 **Grant the Petition for Writ of Habeas Corpus and order Petitioner’s**
12 **immediate release from custody.**

13 The existing record establishes that detention is not justified as a matter of
14 law, and Petitioner has already undergone multiple custody determinations without
15 a constitutionally adequate resolution. Further proceedings are unnecessary where
16 the record demonstrates continued detention is not reasonably related to its
17 purpose.
18

19 X. CONCLUSION

20 Petitioner remains detained despite compelling evidence establishing
21 compliance with prior bond conditions, absence of danger, and absence of
22 meaningful flight risk.
23

24 Petitioner pursued administrative review after dismissal of his prior habeas
25 petition yet remains incarcerated while awaiting agency action.

1 Because continued detention violates the Due Process Clause, the Petition
2 should be granted.
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5 Dated: June 3, 2026

6 Respectfully submitted,
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8 /s/ NORA E. MILNER, ESQ.
9 Attorney for Petitioner
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