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

11 **MILTON OMAR HERNANDEZ.MENDEZ,**

) Agency No.: 

12 **Petitioner,**

) Case No: '26CV3468 JO AHG

13 **v.**

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

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

I. INTRODUCTION

Petitioner Milton Omar Hernandez-Mendez seeks habeas relief pursuant to 28 U.S.C. § 2241 from his continued immigration detention.

This Petition does not seek review of a discretionary bond determination. Petitioner does not ask this Court to reweigh evidence, determine an appropriate bond amount, or substitute its judgment for that of the immigration court.

Rather, Petitioner challenges the constitutional adequacy of the process resulting in his continued detention and the absence of an evidentiary basis supporting the finding that he poses a danger to the community.

Petitioner remains incarcerated despite:

- (1) having no criminal convictions;
- (2) having no criminal history;
- (3) having no history of violence or dangerous conduct;
- (4) previously complying with immigration bond conditions over a period of years;
- (5) DHS's subsequent cancellation of that bond after determining that Petitioner satisfied all conditions of release; and
- (6) the absence of evidence establishing that Petitioner poses a danger to the community.

The Fifth Amendment prohibits arbitrary deprivations of liberty. Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Petitioner's continued detention violates due process because the custody determination rests upon unsupported findings of dangerousness that are contradicted by DHS's own records demonstrating years of successful compliance with immigration release conditions.

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II. JURISDICTION AND VENUE

This Court has jurisdiction pursuant to 28 U.S.C. § 2241. Federal courts retain jurisdiction to review constitutional challenges to immigration detention. *Demore v. Kim*, 538 U.S. 510, 517 (2003). Petitioner is presently detained within the Southern District of California. Venue is proper pursuant to 28 U.S.C. §1391.

III. PARTIES

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

Respondents are federal officials responsible for Petitioner's detention. Each Respondent acts under color of federal law.

IV. PROCEDURAL HISTORY

Petitioner previously filed a Petition for Writ of Habeas Corpus challenging his detention under INA § 236(a). The Court dismissed that petition without reaching the merits based upon a determination that Petitioner had not yet exhausted available administrative remedies. This Court has never addressed the merits of Petitioner's present constitutional claims. The prior habeas action was dismissed solely on procedural exhaustion grounds and did not adjudicate the legality of Petitioner's continued detention. Accordingly, the constitutional issues presented herein remain undecided.

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

Petitioner remains detained while awaiting agency action.

This Petition is not a repetition of Petitioner's prior habeas action. The prior petition was dismissed without prejudice solely for failure to exhaust administrative

1 remedies and the Court did not reach the merits of Petitioner's constitutional claims.
2 Following that dismissal, Petitioner pursued administrative review before the Board of
3 Immigration Appeals and continues to suffer the ongoing deprivation of liberty
4 challenged herein.

5 6 V. LEGAL FRAMEWORK

7 The Fifth Amendment prohibits the government from depriving any person of
8 liberty without due process of law. *Dusenbery v. U.S.*, 122 S.Ct. 694 (2002). The
9 Supreme Court has repeatedly recognized that physical detention constitutes one of the
10 most severe deprivations of liberty a government may impose. "Freedom from
11 imprisonment—from government custody, detention, or other forms of physical
12 restraint—lies at the heart of the liberty" protected by the Due Process Clause.
13 *Zadvydas*, 533 U.S. at 690.

14 Due process requires meaningful procedures before liberty may be deprived.
15 *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). At a minimum, an individual facing
16 detention must receive a meaningful opportunity to contest the factual basis upon
17 which the deprivation of liberty rests. *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004).

18 This Petition does not seek review of a discretionary custody determination of
19 the type discussed in *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008). Petitioner
20 does not challenge the immigration judge's exercise of discretion or ask this Court to
21 determine whether bond should have been granted. Unlike *Prieto-Romero*, Petitioner
22 does not challenge the weight assigned to evidence or the exercise of discretion.
23 Petitioner challenges whether any evidence exists sufficient to support the
24 dangerousness finding upon which detention presently rests.

25 Instead, Petitioner challenges the constitutional sufficiency of the factual and
26 procedural foundation underlying his continued detention. Specifically, Petitioner
27 alleges that (1) the finding of dangerousness lacks evidentiary support and (2) DHS's
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own records undermine the factual basis upon which continued detention rests. Where continued detention rests upon unsupported factual findings or constitutionally inadequate procedures, federal habeas jurisdiction exists to remedy the resulting violation of due process. *Demore*, 538 U.S. at 517.

VI. CLAIM ONE

CONTINUED DETENTION BASED UPON AN UNSUPPORTED DANGEROUSNESS FINDING VIOLATES THE FIFTH AMENDMENT

The government may not constitutionally justify continued detention through speculation, unsupported assumptions, or conclusory labels. Here, Petitioner has no criminal convictions or criminal history of any kind. He has never been charged with any offense arising from the conduct referenced during custody proceedings. DHS has never alleged that Petitioner engaged in violence, threats, gang activity, weapons offenses, drug trafficking, or any other conduct typically associated with dangerousness.

The Notice to Appear contains no allegation that Petitioner engaged in dangerous conduct. Instead, the charging document alleges only that Petitioner entered the United States without inspection. See Notice to Appear.

Upon information and belief, the custody determination relied in part upon Petitioner's work-related presence at Camp Pendleton while performing employment duties pursuant to valid DHS-issued employment authorization. No criminal charge, citation, incident report, or security-related finding resulted from that event. No law enforcement agency determined that Petitioner engaged in criminal misconduct. No documentary evidence establishes dangerousness. Because Petitioner's liberty has been restricted on the basis of unsupported factual assumptions rather than evidence, his continued detention violates the Due Process Clause.

1 This case does not present a dispute regarding the weight assigned to competing
2 evidence. Rather, Petitioner alleges that Respondents cannot identify any evidence
3 establishing that he poses a danger to the community. The complete absence of such
4 evidence distinguishes this case from routine discretionary custody determinations and
5 presents a constitutional question concerning the sufficiency of the factual basis for
6 continued detention.

7 **VII. CLAIM TWO**

8 CONTINUED DETENTION IS ARBITRARY BECAUSE THE GOVERNMENT'S 9 OWN RECORDS UNDERMINE THE FACTUAL BASIS FOR DETENTION

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11 Respondents may attempt to characterize this claim as a repetition of Petitioner's
12 prior habeas proceedings. It is not. Petitioner's prior habeas litigation focused on
13 procedural issues arising from the immigration court's treatment of newly discovered
14 evidence. By contrast, this claim challenges the constitutional validity of Petitioner's
15 continued detention itself. The issue presented is whether the government may
16 continue to detain Petitioner as a purported danger to the community where its own
17 records establish years of successful compliance with release conditions, cancellation
18 of a prior immigration bond, lawful employment, and the complete absence of criminal
19 conduct or other evidence of dangerousness. That constitutional question has never
20 been adjudicated on the merits.

21
22 Petitioner remains detained despite the following undisputed facts:

23 (a) DHS possesses no evidence establishing that Petitioner poses a danger to the
24 community;

25 (b) Petitioner has no criminal convictions, no criminal arrests, and no history of
26 violent or dangerous conduct;

27 (c) DHS previously released Petitioner on immigration bond and permitted him
28 to remain at liberty for years;

1 (d) Petitioner successfully complied with the conditions of release imposed by
2 DHS;

3 (e) DHS ultimately cancelled Petitioner's immigration bond after determining
4 that he had satisfied all conditions of release;

5 (f) Petitioner maintained lawful employment pursuant to employment
6 authorization issued by DHS; and

7 (g) Petitioner has substantial family and community ties within the United
8 States.

9 The government's own records demonstrate that Petitioner successfully
10 complied with immigration release conditions over a period of years and ultimately
11 satisfied all requirements necessary for cancellation of his prior immigration bond.
12 DHS's determination that Petitioner complied with the conditions of release and was
13 entitled to bond cancellation is fundamentally inconsistent with the unsupported
14 conclusion that Petitioner presently poses a danger to the community warranting
15 continued detention.

16 Indeed, Respondents have identified no criminal conduct, no acts of violence, no
17 gang affiliation, no public-safety threat, and no other evidence that would support
18 continued detention on dangerousness grounds. The absence of such evidence is
19 particularly significant given DHS's prior determination that Petitioner could safely
20 remain at liberty in the community and its subsequent acknowledgment that he fully
21 complied with the conditions of release.

22 Under these circumstances, continued detention rests not upon evidence, but
23 upon unsupported assumptions that are contradicted by the government's own records.
24 The continued incarceration of an individual whom DHS previously released,
25 monitored, and ultimately determined had successfully complied with all conditions of
26 release constitutes arbitrary governmental action inconsistent with the Fifth
27 Amendment's guarantee of due process of law.
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1 The cumulative effect of these circumstances renders Petitioner's continued
2 detention arbitrary, fundamentally unfair, and constitutionally infirm.

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4 **VIII. PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner respectfully requests that this Court:

- 6 1. Grant the Petition for Writ of Habeas Corpus;
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- 8 2. Vacate the existing custody determination as constitutionally deficient;
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- 10 3. Order Respondents to provide Petitioner with a constitutionally adequate
11 custody hearing within fourteen (14) days of the Court's order, consistent with
12 the requirements of due process and based upon an individualized assessment
13 supported by evidence contained in the record;
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- 15 4. Require consideration of all relevant evidence bearing upon dangerousness and
16 risk of flight, including Petitioner's documented history of compliance with prior
17 immigration release conditions;
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- 19 5. Order Petitioner's release under reasonable conditions of supervision if
20 Respondents fail to provide the custody hearing ordered by this Court within the
21 time specified; and
- 22 6. Grant such other and further relief as the Court deems just and proper.

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IX. CONCLUSION

Petitioner's detention rests on proceedings that failed to meet constitutional requirements. The Petition should be granted.

Dated: June 8, 2026

Respectfully submitted,

/s/ Nora E. Milner

Attorney for Petitioner