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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 MILTON OMAR HERNANDEZ.MENDEZ,)Agency No.: 
12)
13 Petitioner,)Case No:
14 v.)3:26-cv-03468-TWR-AHG
15)
16 DANIEL A. BRIGHTMAN, Field Office)
17 Director of ICE Enforcement and)
18 Removal Operations, San Diego)
19 California; *et al.*,)
20)
21 Respondents.)
22 -----)

23 PETITIONER'S RESPONSE TO RESPONDENTS'
24 OPPOSITION TO PETITION FOR A WRIT
25 OF HABEAS CORPUS
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1 Petitioner respectfully submits this Reply to Respondents' Response.

2 **I.THE PRESENT PETITION IS NOT BARRED BY THE PRIOR HABEAS**
3 **PROCEEDINGS**

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5 Respondents repeatedly characterize the present Petition as an attempt to
6 relitigate issues previously presented to this Court. That characterization is incorrect.
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8 The prior habeas action was dismissed without prejudice on exhaustion grounds and
9 did not result in any adjudication of the merits of Petitioner's present constitutional
10 claims. Following that dismissal, Petitioner pursued administrative review before the
11 Board of Immigration Appeals ("BIA"). Thus, no federal court—and this Court in
12 particular—has addressed the merits of the constitutional claims presented herein.
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15 The present Petition does not seek review of the immigration judge's
16 discretionary weighing of evidence, nor does it ask this Court to substitute its judgment
17 for that of the immigration judge. Rather, Petitioner challenges the constitutional
18 legality of his continued detention and the sufficiency of the process supporting that
19 detention. Those issues remain undecided.
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22 Accordingly, this proceeding is not an attempt to relitigate claims previously
23 resolved by this Court.
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II. THE PENDING BIA APPEAL DOES NOT PRECLUDE HABEAS REVIEW

Respondents argue that the Petition should be dismissed because Petitioner's appeal remains pending before the Board of Immigration Appeals. However, the injury challenged here is Petitioner's ongoing deprivation of liberty. Petitioner's detention continues each day while administrative review remains pending. Although the BIA may ultimately affirm or reverse the immigration judge's decision, the pendency of that appeal does not eliminate the constitutional injury caused by continued detention.

Moreover, Petitioner's appeal has now been pending for several months, and there is no indication that a decision is imminent. Meanwhile, Petitioner's detention continues unabated. Requiring Petitioner to await completion of an open-ended administrative process before obtaining judicial review would substantially prolong the very deprivation of liberty challenged in this proceeding.

The Ninth Circuit recognizes that exhaustion in the immigration habeas context is a prudential doctrine and that courts retain discretion to excuse exhaustion in appropriate circumstances. *Laing v. Ashcroft*, 370 F.3d 994, 1000-01 (9th Cir. 2004); *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Here, Petitioner's continuing detention presents an ongoing deprivation of liberty while administrative review remains pending. Under these circumstances, requiring completion of an open-ended administrative process before any judicial review would not serve the purposes underlying prudential exhaustion.

1 Courts have long recognized that exhaustion is a prudential doctrine in the
2 immigration habeas context and may yield where administrative remedies are
3 inadequate to prevent ongoing constitutional injury. That principle is particularly
4 applicable where the challenged injury is continued physical detention. Recent district
5 court decisions addressing ongoing immigration detention have similarly recognized
6 that exhaustion should not automatically preclude review where the petitioner
7 challenges continued physical detention and resulting constitutional injury. See,
8 *Rodriguez v. Noem*, 812 F. Supp. 3d 751 (W.D. Mich., S.D. Oct. 29, 2025); *Garcia v.*
9 *Noem*, 813 F. Supp. Ed 734 (W.D. Mich., S.D. Oct. 29, 2025); *Rodriguez v. Bostock*,
10 779 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025); *Lopez Benitez v. Francis*, 795 F.
11 Supp. 3d 475 (S.D.N.Y. Aug. 13, 2025).

12 **III. PETITIONER DOES NOT SEEK REVIEW OF A DISCRETIONARY** 13 **BOND DETERMINATION**

14 Respondents repeatedly characterize the Petition as a disagreement with the
15 immigration judge's exercise of discretion. Respectfully, that misstates Petitioner's
16 claim. Petitioner does not ask this Court to reweigh evidence, reassess credibility, or
17 substitute its judgment for that of the immigration judge. If Petitioner's challenge were
18 limited to the immigration judge's weighing of evidence, federal habeas review would
19 indeed be inappropriate. Petitioner instead challenges whether continued detention
20 comports with due process where detention rests upon unsupported factual premises
21 and where substantial evidence undermining the asserted basis for detention has not

1 been meaningfully addressed. Accordingly, this case presents a constitutional
2 challenge to continued detention rather than an impermissible appeal of a discretionary
3 bond determination. Federal courts within this District routinely exercise habeas
4 jurisdiction to review constitutional challenges arising from immigration detention.
5 See, e.g., *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); *Arias Torres v.*
6 *Bondi*, No. 25-cv-2457-BAS-MSB, 2025 WL 3214773 (S.D. Cal. Nov. 18, 2025);
7 *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal.
8 Nov. 19, 2025).

12 CONCLUSION

13 For the foregoing reasons, Petitioner respectfully requests that the Court reject
14 Respondents' exhaustion and jurisdictional arguments and grant the Petition.
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18 DATED: June 23, 2026

19 Respectfully submitted,

20 /s/ Nora E. Milner, Esq.
21 Attorney for Petitioner
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