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ERNEST MILFORD

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ERNEST MILFORD

Petitioner,

vs.

WARDEN OF THE CALIFORNIA CITY

DETENTION FACILITY, et al.,

Respondent

) Case No.: 1:26-cv-05262-VC

) **REPLY TO RESPONDENT'S**

) **OPPOSITION TO PETITIONER'S WRIT**

) **OF HABEAS CORPUS**

ERNEST MILORD¹ (hereinafter "Petitioner"), by and through his attorney of record, TIMOTHY PATRICK HENNESSY, hereby submits this Reply to Respondent's response to motion. Respondent's Motion should be denied as Petitioner's detention is unconstitutionally prolonged.

¹ The true and correct name is "Ernest Milord" not "Ernest Milford."

I.

INTRODUCTION

Petitioner is a Lawful Permanent Resident as of February 14, 2001. (Dkt. No. 6) He was arrested by DHS on February 15, 2025. (Dkt. No. 1) He filed his Petition for Writ of Habeas Corpus on July 8, 2026. (Dkt. No. 1)

II.

ARGUMENT

A. Prolonged Mandatory Detention of a Lawful Permanent Resident Under 8 U.S.C. § 1226(c)(1)(B) Without a Bond Hearing Violates Due Process

Petitioner is a lawful permanent resident who has been detained under 8 U.S.C. § 1226(c)(1)(B) for 530 days as of this reply. He received an order of removal at an individual calendar hearing on March 27, 2026 and appealed that order to the Board of Immigration Appeals on May 5, 2026. Because the removal order is not final, Petitioner remains in pre-removal-order detention under § 1226(c). He has never received a bond hearing at which the Government was required to justify his continued detention by proving he is a current flight risk or danger to the community. The Supreme Court stated, “In our view, the statute, read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. It does not permit indefinite detention.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioner's 530-day detention crosses the constitutional threshold requiring a bond hearing at which the Government bears the burden of proving by clear and convincing evidence that continued detention is necessary stated in *Singh v. Holder*, 638 F.3d 1196, “given the substantial liberty interests at

1 stake in *Casas*² hearings, the government must prove by clear and convincing evidence that
2 continued detention is justified.” *Id.* at 1200.

3 1. The Ninth Circuit has also held that prolonged detention is unconstitutional

4 In *Rodriguez v. Marine*, 909 F.3d 252, the 9th Circuit court (on remand from the U.S.
5 Supreme court) stated, “We have grave doubts that any statute that allows for arbitrary prolonged
6 detention without any process is constitutional or that those who founded our democracy
7 precisely to protect against the government's arbitrary deprivation of liberty would have thought
8 so. Arbitrary civil detention is not a feature of our American government. Liberty is the norm,
9 and detention prior to trial or without trial is the carefully limited exception.” *Id.* at 1091-1092.

10 **B. Petitioner is likely to be successful in his bond hearing.**

11 As stated *supra*, the government bears the burden of proving by clear and convincing
12 evidence at the bond hearing that Petitioner is a flight risk and/or a danger to the community
13 because he has been detained for an unreasonably prolonged time and continues to be held for an
14 undetermined amount of time due to his pending appeal with the Board of Immigration Appeals
15 (BIA).

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23 ² A *Casas* hearing is based on *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942 (9th Cir. 2008) that held the Government provide petitioner with a hearing “before an Immigration Judge with the power to grant him bail unless the government establishes that he is a flight risk or will be a danger to the community,” *Id.* at 952

1 1. Petitioner Is Not a Flight Risk.

2 In determining whether a noncitizen is a flight risk, the court in *Perez v. Wolf*, 445 F.
3 Supp. 3d 275 (N.D. Cal. 2020),:

4 “IJs “look to a number of factors,” like:

5 (1) whether the immigrant has a fixed address in the United States; (2) the
6 immigrant's length of residence in the United States; (3) the immigrant's
7 family ties in the United States, (4) the immigrant's employment history, (5)
8 the immigrant's record of appearance in court, (6) the immigrant's criminal
9 record, including the extensiveness of criminal activity, the recency of such
10 activity, and the seriousness of the offenses, (7) the immigrant's history of
11 immigration violations; (8) any attempts by the immigrant to flee
12 prosecution or otherwise escape from authorities; and (9) the immigrant's
13 manner of entry to the United States.

14 *Id.* at 286.

15 Every relevant factor establishes that Petitioner poses no flight risk. Petitioner has resided
16 continuously in the United States for 34 years, since he was 12 years old. (Dkt. No. 1-7) He has
17 no meaningful ties to any other country. His formative years, his work history, his marriage, and
18 his family life have all occurred in the United States. (Dkt. No. 1-7) He is married to a United
19 States citizen and has a United States citizen child who requires medical attention. (Dkt. No. 1-7)
20 These family ties provide powerful incentives to remain in the United States and comply with all
21 conditions of release and with his ongoing BIA appeal.

22 Petitioner's circumstances are fundamentally inconsistent with flight. He has no rational
23 incentive to abandon his United States citizen spouse, his medically vulnerable United States

1 citizen child, his lawful permanent resident status, or his opportunity to pursue administrative
2 review of the March 27, 2026 removal order. His family depends on him. His life is here. The
3 May 5, 2026 BIA appeal demonstrates that Petitioner is actively pursuing the legal process
4 available to him, not avoiding it.

5 2. Petitioner Is Not a Danger to the Community.

6 In *Singh (supra)*, the court stated, factors "most pertinent to assessing dangerousness directs
7 immigration judges to consider "the alien's criminal record, including the extensiveness of
8 criminal activity, the recency of such activity, and the seriousness of the offenses.'" *Id.* at 1206.

9 The Government cannot establish by clear and convincing evidence that Petitioner poses a
10 danger to the community. Petitioner's criminal convictions in August 2019 involved fraud. (Dkt.
11 No. 6, 9-16) The criminal conduct occurred nearly seven years ago. Petitioner has been crime-
12 free since then.

13 The nature of Petitioner's convictions weighs heavily against a finding of dangerousness.
14 These offenses were non-violent financial and mail-related crimes. They did not involve murder,
15 rape, assault, robbery, weapons, drug trafficking, burglary, or any conduct creating an inherent
16 risk of violent confrontation or physical harm to persons.

17 Petitioner's convictions for mail fraud, bank fraud, and possession of stolen mail fall squarely
18 into the category of offenses that do not involve violence, do not create risk of violent
19 confrontation, and do not demonstrate an ongoing threat to physical safety. These are financial
20 offenses that, while serious, do not support a finding of dangerousness to the community under
21 the clear and convincing evidence standard required for prolonged detention.

22 Petitioner's seven years of crime-free conduct since August 2019 demonstrate rehabilitation
23 and the absence of current dangerousness. He has not been arrested, let alone convicted, of any

1 crime during this period. He has maintained his family ties, supported his United States citizen
2 child who requires medical care, and lived peacefully in the community during the years
3 following his criminal case. The Government has offered no evidence of threats, ongoing
4 criminal activity, witness intimidation, or any conduct suggesting current danger.

5 **III.**

6 **CONCLUSION**

7 Petitioner respectfully requests this court to immediately release him on proper monitoring or
8 in the alternative, order a bond hearing where the government must bear the burden of proving
9 by clear and convincing evidence that Petitioner is flight risk and/or a danger to the community.

10 DATED: July 30, 2026

11 /s/ Timothy Hennessy

12 TIMOTHY HENNESSY
13 Attorney for Petitioner
14 ERNEST MILORD
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