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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11) Case No. **'26CV2739 DMS DDL**
12 GERARDO BUENROSTRO TORRES,)

13)
14) Petitioner,)

15 v.)

16 CHRISTOPHER J. LAROSE, Senior)

17 Warden, Otay Mesa Detention)

18 Center; DANIEL A. BRIGHTMAN,)

19 San Diego Field Office Director)

20 U.S. Immigration & Customs)

21 Enforcement (ICE); TODD LYONS,)

22 Acting Director U.S. ICE;)

23 MARKWAYNE MULLIN, U.S.)

24 Secretary of Homeland Security,)

25 TODD BLANCHE, Acting Attorney)

26 General of the United States.)

27)
28) Respondents.)
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**PETITION FOR WRIT OF
HABEAS CORPUS
[CIVIL IMMIGRATION HABEAS
ALIEN DETAINEE 28 U.S.C.
§ 2241]**

1 Petitioner GERARDO BUENROSTRO TORRES hereby petitions this Court
2 for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to remedy his unlawful
3 detention by Respondents. In support of this Petition, Petitioner submits the
4 following:
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6 INTRODUCTION

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8 1. Petitioner GERARDO BUENROSTRO TORRES () is
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10 unlawfully detained by Respondents at the Otay Mesa Detention Center located
11 within the jurisdiction of this Court. Petitioner was detained by Immigration and
12 Customs Enforcement (“ICE”) when he applied for admission to the United States
13 as a returning Lawful Permanent Resident (LPR). A Notice to Appear (“NTA”) was
14 filed against Petitioner on December 20, 2025, and he is currently in Removal
15 proceedings seeking relief from Removal. *A copy of the NTA is attached hereto as*
16
17 *Exhibit A.*
18

19 CUSTODY/DETENTION

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21 2. On December 19, 2025, Petitioner applied for admission to the United
22 States as an LPR and presented his I-551 LPR card. Customs and Border Protection
23 (CBP) officers reviewed his I-551 and were alerted to a potential Immigration
24 violation through a computer check. CBP Officers issued an NTA to Petitioner,
25 scheduled him for an Immigration Court hearing and transported him to the Otay
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1 Mesa Detention Center to be held in custody during the pendency of his Removal
2 proceedings.

4 JURISDICTION

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6 3. This action arises under the Constitution of the United States; the
7 Immigration and Nationality Act (“INA”); 8 U.S.C. § 1101, et seq.; and the
8 Administrative Procedures Act (“APA”) 5 U.S.C. § 500, *et seq.*
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11 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241
12 (habeas corpus); 28 U.S.C. § 1331 (Federal Question); 28 U.S.C. § 1651 (All Writs
13 Act; 5 U.S.C § 701, et seq. (APA); and 28 U.S.C. §§ 2201-2202 (Declaratory
14 Judgment Act).
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17 5. This Court may grant relief pursuant to the Habeas Corpus Statutes, the
18 Declaratory Judgment Act and the All Writs Act, 28 U.S.C. § 1651.
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20 VENUE

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23 6. Venue is proper as Petitioner is detained at the Otay Mesa Detention
24 Facility, located in Otay Mesa, California in the County of San Diego. This
25 detention center is located within the Jurisdiction of this U.S. District Court.
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1 7. Venue is also proper as at least one (1) of the Respondents in this
2 matter is located within this District and is subject to the Court's jurisdiction. The
3 claims and action alleged herein occurred within this District and no real property is
4 involved. See 28 U.S.C. § 1391(e).
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7 **REQUIREMENTS OF 28 U.S.C. § 2243**
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9 8. This Court must grant this Petition or issue an Order to Show Cause
10 (“OSC”) to the Respondents forthwith unless the Petitioner is not entitled to relief.
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12 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a
13 Return within three (3) unless good cause is shown to extend the response time. If
14 extended, the response time cannot exceed twenty (20) days.
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17 **PARTIES**
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19 9. Gerardo Buenrostro Torres is a fifty-nine (59) year old native and
20 citizen of Mexico. Mr. Buenrostro Torres first entered the United States in
21 November 1990. On April 19, 1996, he was accorded LPR status. He is the father of
22 two (2) United States citizen children and has operated his own cleaning business
23 for more than twenty (20) years. He is currently in Removal proceedings before the
24 Immigration Court. He is currently detained at the Otay Mesa Detention Facility.
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1 10. Respondent Christopher LaRose is the warden of the Otay Mesa
2 Detention Facility where Petitioner is being detained. Warden LaRose oversees the
3 daily operations of the Otay Mesa Detention Facility and acts at the direction of the
4 Respondents Brightman, Lyons and Mullin. Respondent is a custodian of the
5 Petitioner and is named in his official capacity.
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8 11. Respondent Daniel A. Brightman is the acting Field Office Director of
9 ICE and is named in his official capacity. ICE is the agency within the Department
10 of Homeland Security (“DHS”) that is responsible for the detention and removal of
11 non-citizen aliens pursuant to the Immigration laws of the United States. In his legal
12 capacity, he is the legal custodian of Petitioner.
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15 12. Respondent Todd M. Lyons is the acting director of ICE and is named
16 in his official capacity. ICE is the agency within DHS which is responsible for the
17 enforcement of U.S. Immigration law and the detention on non-citizen aliens,
18 including Petitioner. Respondent Lyons has custodial authority over Petitioner.
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22 13. Respondent Markwayne Mullin is currently the Secretary of DHS and
23 is named in his official capacity. DHS is the Federal Agency charged with the
24 enforcement of U.S. Immigration law. DHS also oversees the adjudication of
25 applications for Immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1.
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1 Respondent Mullin has the ultimate authority over the custody and detention of
2 Petitioner, and he is named in his official capacity.

3
4 14. Respondent Todd Blanche is the Acting Attorney General of the United
5 States and the most senior official in the U.S. Department of Justice (“DOJ”). He is
6 named in his official capacity. Respondent Blanche, in his official capacity, is
7 responsible implementation and enforcement of U.S. Immigration law. See 8 U.S.C.
8 § 1103(a)(1). In his capacity as the head of the DOJ, he oversees the Executive
9 Office for Immigration Review, commonly referred to as the Immigration Court. As
10 such, in his official capacity he oversees the Agency responsible for the adjudication
11 of Petitioner’s Removal proceedings and Bond proceedings.
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15 LEGAL FRAMEWORK

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18 15. This Petition presents the legal question of whether an alien can be
19 detained by the Government without any formal review or being afforded the
20 opportunity to seek release from detention. *Trump v. J. G. G.*, 604 U.S. ____, 145
21 S. Ct. 1003, 1006. (2025).
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24 16. The U.S. Supreme Court has affirmed aliens are entitled to Due Process
25 of law under the U.S. Constitution in Removal and Bond proceedings. Non-citizen
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1 aliens must be afforded proper notice and an opportunity to be heard. *See Trump v.*
2 *J. G. G.*, 604 U.S. _____, 145 S. Ct. 1003, 1006. (2025).
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4 17. 8 U.S.C. § 1226(a)(2) provides that during the pendency of Removal
5 proceedings an alien may be arrested and detained and subsequently the
6 Government may release the alien on a conditional parole.
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9 18. Upon apprehension by ICE an alien in custody will be evaluated by an
10 officer for release from detention. The ICE officer makes an initial custody
11 determination. *Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022) (citing 8. C.F.R. §
12 236.1(c)(8)). The non-citizen will be released unless he/she is determined to be a
13 flight risk or danger to society. The alien must also establish he/she is likely to
14 appear for any future hearings.
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18 19. When the decision to release an alien was made by an ICE officer, The
19 Government's practice is to require a showing of changed circumstances before any
20 re-arrest or re-detention. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D.
21 Cal. 2017). When an alien has been at liberty from detention for a significant time
22 after determination said alien was not a flight risk nor danger to the community, the
23 alien has an "interest in remaining at liberty unless (he) no longer meets those
24 criteria." *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185 at
25 13 (E.D. Cal. Sept. 5, 2025).
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FACTUAL ALLEGATIONS

20. Petitioner initially arrived in the United States in November of 1990. On December 19, 2025, Petitioner was encountered by CBP officers as he applied for admission to the United States through the vehicle lanes of the San Ysidro Port of Entry. He was detained and remains detained at this time. On January 2, 2026 and March 3, 2026, the Immigration Judge (“IJ”) denied Petitioner’s request for release on bond. *A copy of the IJ’s orders denying bond are attached hereto as Exhibit B.*

21. Petitioner is currently in Removal Proceedings before the U.S. Immigration Court and has pending applications for relief from removal. He is the father of two (2) United States citizens. His minor child has been diagnosed on the Autism spectrum at level 2. The child requires therapy and significant daily assistance.

23. Petitioner was encountered on December 19, 2025, when he applied for admission to the United States as a returning LPR. Petitioner presented his I-551 or “greencard” to CBP Officers at the Port of Entry. CBP officers placed Petitioner into Removal proceedings and transported him to the Otay Mesa Detention Center where he is currently detained.

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EXHAUSTION OF REMEDIES

25. Petitioner was denied release on bond on January 2, 2026 and March 3, 2026, by an IJ. Petitioner further submits exhaustion of remedies is futile as the Immigration Court lacks jurisdiction over bond based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

26. For Habeas claims, exhaustion of all remedies is prudential, not jurisdictional. *See Hernandez v. Sessions*, 872 F.3d 976, 978 (9th Cir. 2017).

CAUSES OF ACTION

COUNT 1

(Violation of the Immigration and Nationality Act)

27. Petitioner incorporates by reference the allegations set forth in paragraphs 1-26.

28. DHS is detaining Petitioner pursuant to 8 U.S.C. § 1225 and an Immigration Judge has found Petitioner ineligible for release on bond.

29. Petitioner's detention after an extended time at liberty is in violation of the INA.

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COUNT 2

(Violation of Due Process Clause)

30. Petitioner incorporates by reference the allegations set forth in paragraphs 1-29.

31. On December 19, 2025, Petitioner was taken into custody by CBP officers. Officers declined to release Petitioner on parole and made no determination as to whether he was a flight risk or a danger to the community. He was denied bond by an Immigration Judge on two (2) occasions without a determination of whether he is a flight risk or danger to the community.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents within three (3) days to show cause why this Petition should not be granted;
- (3) Declare Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the INA and the APA;

- 1 (4) Issue a Writ of Habeas Corpus ordering Respondent to release Petitioner
2 immediately or in the alternative order an immigration Judge to release him
3 on reasonable bond;
4
5 (5) Issue and order prohibiting Respondents from re-detaining Petitioner
6 without a material change in circumstances, notice and a pre-detention
7 hearing where Respondent's must establish by clear and convincing
8 evidence Petitioner is either a flight risk or danger to the community; and
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10 (6) Award Petitioner fees and costs under the Equal Access to Justice Act (28
11 U.S.C. § 2412), and any other applicable statute or regulation; and
12
13 (7) Grant any further relief this Court deems just and proper.
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15
16 DATED: April 30, 2026
17

18 Respectfully submitted,
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20 /s/ Thomas A. Lappin
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22 Thomas A. Lappin, Esq.
23 Law Office of Thomas A. Lappin
24 PO Box 635305
25 San Diego, CA 92163
26 Attorney for Petitioner
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, Thomas A. Lappin, Esq, submit this verification on behalf of the Petitioner.

I am Petitioner's attorney and verify the events described in the Petition have been discussed with the Petitioner. I hereby verify the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed this 30th day of April 2026 at San Diego, California.

/s/ Thomas A. Lappin

Thomas A. Lappin, Esq.
Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I declare under penalty of perjury I am the Petitioner in this matter. This Petition has been read to me in my native Spanish and the factual information contained in the Petition is true and correct to the best of my knowledge.

VERIFICACIÓN DE CONFORMIDAD CON EL TÍTULO 28 DEL CÓDIGO DE LOS EE. UU., § 2242

Declaro bajo pena de perjurio que soy el peticionario en este asunto. Esta petición me ha sido leída en mi español nativo y la información fáctica contenida en ella es veraz y correcta a mi leal saber y entender.

Dated 4/30/26 Gerardo Buenrostro

Gerardo Buenrostro Torres
Petitioner/Peticionario