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

11) Case No. 26-cv-02739-DMS-DDL
12 GERARDO BUENROSTRO TORRES,)

13)
14) Petitioner,)
15)

16 v.)

17 **TRAVERSE TO PETITION**

18 CHRISTOPHER J. LAROSE, Senior)

19 Warden, Otay Mesa Detention)

20 Center; DANIEL A. BRIGHTMAN,)

21 San Diego Field Office Director)

22 U.S. Immigration & Customs)

23 Enforcement (ICE); TODD LYONS,)

24 Acting Director U.S. ICE;)

25 MARKWAYNE MULLIN, U.S.)

26 Secretary of Homeland Security)

27 TODD BLANCHE, Acting Attorney)

28 General of the United States.)

Respondents.)

1 Respondents, through counsel, have filed their Return to the Petition filed in
2 the above-captioned matter. Counsel for the Respondent(s) argues Petitioner is
3 subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). Respondents
4 argue Petitioner has not been lawfully admitted to the United States as defined by
5 statute. See 8 U.S.C. § 1101(a)(2). Further, counsel for Respondents argues this
6 Court is without jurisdiction to review Petitioner's claim pursuant to 28 U.S.C. §
7 1252(g).
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9
10

11 While Petitioner, through counsel, does not agree with the position of the
12 Respondents, Petitioner's status has now changed, and Petitioner submits the
13 arguments made by the Respondents are moot. On May 12, 2026, the Immigration
14 Judge presiding over this matter granted Petitioner's application for a waiver
15 pursuant to 8 U.S.C. § 1227(a)(1)(h). 8 U.S.C. § 1227(a)(1)(h) provides: "The
16 provisions of this paragraph relating to the removal of aliens within the United
17 States on the ground that they were inadmissible at the time of admission as aliens
18 described in section 1182(a)(6)(C)(i) of this title, whether willful or innocent, may,
19 in the discretion of the Attorney General, be waived for any alien (other than an
20 alien described in paragraph (4)(D)) who-(i)(I) is the spouse, parent, son, or
21 daughter of a citizen of the United States or of an alien lawfully admitted to the
22 United States for permanent residence; and (II) was in possession of an immigrant
23 visa or equivalent document and was otherwise admissible to the United States at
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1 the time of such admission except for those grounds of inadmissibility specified
2 under paragraphs (5)(A) and (7)(A) of section 1182(a) of this title which were a
3 direct result of that fraud or misrepresentation.” A copy of the Immigration Judge’s
4 decision is attached hereto as Exhibit C.
5

6
7 When the Judge granted the waiver, Petitioner was admitted to the United
8 States as a returning Lawful Permanent Resident. Therefore, this Court has
9 undeniable jurisdiction to order the Immigration Court to either release him or
10 provide him a bond hearing in an expeditious fashion. While the Government
11 reserved its right to appeal the IJ’s decision, Petitioner submits this does not limit
12 this Court’s jurisdiction to order a bond hearing. See *Matter of Yajure Hurtado*, 29
13 I&N Dec. 216 (BIA 2025).
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16
17 DATED: May 13, 2026
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20 Respectfully submitted,

21 /s/ Thomas A. Lappin

22
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26 San Diego, CA 92163
27 Attorney for Petitioner
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EXHIBIT C



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTAY MESA IMMIGRATION COURT

Respondent Name:

BUENROSTRO TORRES, GERARDO

To:

Jordan Schweller, Esq.
109 W. "C" Street, Suite C
San Diego, CA 92101

A-Number:



Riders:

In Removal Proceedings

Initiated by the Department of Homeland Security

Date:

05/13/2026

ORDER OF THE IMMIGRATION JUDGE

- ☒ This is a summary of the oral decision entered on 05/12/2026. The oral decision in this case is the official opinion, and the immigration court issued this summary for the convenience of the parties.
- ☐ Both parties waived the issuance of a formal oral decision in this proceeding.

I. Removability

The immigration court found Respondent ☐ removable ☒ inadmissible under the following Section(s) of the Immigration and Nationality Act (INA or Act): 212(a)(6)(C)(i).

The immigration court found Respondent ☐ not removable ☐ not inadmissible under the following Section(s) of the Act:

II. Applications for Relief

Respondent's application for:

A. Asylum/Withholding/Convention Against Torture

- ☐ Asylum was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice
- ☐ Withholding of Removal under INA § 241(b)(3) was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice
- ☐ Withholding of Removal under the Convention Against Torture was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice
- ☐ Deferral of Removal under the Convention Against Torture was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice
- ☐ Respondent knowingly filed a frivolous application for asylum after notice of the consequences. *See* INA § 208(d)(6); 8 C.F.R. §1208.20

B. Cancellation of Removal

- ☐ Cancellation of Removal for Lawful Permanent Residents under INA § 240A(a) was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice
- ☒ Cancellation of Removal for Nonpermanent Residents under INA § 240A(b)(1) was ☐ granted ☐ denied ☐ withdrawn with prejudice ☒ withdrawn without prejudice
- ☐ Special Rule Cancellation of Removal under INA § 240A(b)(2) was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

C. Waiver

- ☒ A waiver under INA § 237(a)(1)(H) was ☒ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

D. Adjustment of Status

- ☐ Adjustment of Status under INA § was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

E. Other

In exercising its discretion, the Court weighed the positive and negative factors in this case.

Positive factors:

eligibility for the relief sought; family ties within the United States, residence of long duration in this country (particularly when the inception of residence occurred while the respondent was of young age), evidence of hardship to the respondent and family if removal occurs, long history of employment, educational level, the existence of property or business ties, history of taxes paid, evidence of value and service to the community, serious health/medical condition of his minor son, and other evidence attesting to a respondent's good character (e.g., affidavits from family, friends, and responsible community representatives) contained in Exhibit 5.

Negative/adverse factors:

The nature and underlying circumstances of the removal ground at issue, the presence of additional significant violations of U.S. immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent's bad character or undesirability as an asylee of this country. Because he completed all the court required him to do and because the domestic violence conviction was so long ago - it has apparently been expunged. See Exh. 5 at 46.

Under the totality of the circumstances, the Court finds that the positive factors outweigh the negative in this case.

III. Voluntary Departure

- ☐ Respondent's application for ☐ pre-conclusion voluntary departure under INA § 240B(a) ☐ post-conclusion voluntary departure under INA § 240B(b) was ☐ denied.
- ☐ Respondent's application for ☐ pre-conclusion voluntary departure under INA § 240B(a) ☐ post-conclusion voluntary departure under INA § 240B(b) was ☐ granted, and Respondent is ordered to depart by . The respondent must post a \$ bond with

DHS within five business days of this order. Failure to post the bond as required or to depart by the required date will result in an alternate order of removal to taking effect immediately.

- ☐ The respondent is subject to the following conditions to ensure his or her timely departure from the United States:
- ☐ Further information regarding voluntary departure has been added to the record.
- ☐ Respondent was advised of the limitation on discretionary relief, the consequences for failure to depart as ordered, the bond posting requirements, and the consequences of filing a post-order motion to reopen or reconsider:

If Respondent fails to voluntarily depart within the time specified or any extensions granted by the DHS, Respondent shall be subject to a civil monetary penalty as provided by relevant statute, regulation, and policy. *See* INA § 240B(d)(1). The immigration court has set

- ☐ the presumptive civil monetary penalty amount of \$3,000.00 USD
- ☐ \$ USD instead of the presumptive amount.

If Respondent fails to voluntarily depart within the time specified, the alternate order of removal shall automatically take effect, and Respondent shall be ineligible, for a period of 10 years, for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Act, to include cancellation of removal, adjustment of status, registry, or change of nonimmigrant status. *Id.* If Respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of such a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply.

If Respondent appeals this decision, Respondent must provide to the Board of Immigration Appeals (Board), within 30 days of filing an appeal, sufficient proof of having posted the voluntary departure bond. The Board will not reinstate the voluntary departure period in its final order if Respondent does not submit timely proof to the Board that the voluntary departure bond has been posted.

In the case of conversion to a removal order where the alternate order of removal immediately takes effect, where Respondent willfully fails or refuses (1) to depart from the United States pursuant to the immigration court's order, (2) to make timely application in good faith for travel or other documents necessary to depart the United States, (3) to present themselves at the time and place required for removal by the DHS, or (4) conspires to or takes any action designed to prevent or hamper their departure pursuant to the order of removal, Respondent shall be subject to a civil monetary penalty for each day Respondent is in violation, pursuant to INA § 274D and 8 C.F.R. § 280.53(b)(14). If Respondent is removable pursuant to INA § 237(a), then Respondent shall be further fined and/or imprisoned for up to 10 years. *See* INA § 243(a)(1). Further, any Respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than two years, or both. 8 U.S.C. § 1326(a).

IV. Removal

- ☐ Respondent was ordered removed to
- ☐ In the alternative, Respondent was ordered removed to
- ☐ Respondent was advised of the penalties for failure to depart pursuant to the removal order:

If Respondent is subject to a final order of removal and willfully fails or refuses (1) to depart from the United States pursuant to the immigration court's order, (2) to make timely application in good faith for travel or other documents necessary to depart the United States, (3) to present themselves at the time and place required for removal by the DHS, or (4) conspires to or takes any action designed to prevent or hamper their departure pursuant to the order of removal, Respondent shall be subject to a civil monetary penalty for each day Respondent is in violation, pursuant to INA § 274D and 8 C.F.R. § 280.53(b)(14). If Respondent is removable pursuant to INA § 237(a), then Respondent shall be further fined and/or imprisoned for up to 10 years. See INA § 243(a)(1). Further, any Respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than two years, or both. 8 U.S.C. § 1326(a).

V. Other

- ☐ Proceedings were ☐ dismissed ☐ terminated with prejudice
☐ terminated without prejudice ☐ administratively closed.
- ☐ Respondent's status was rescinded under INA § 246.
- ☐ Other;



Immigration Judge: ROBINSON, EUGENE 05/13/2026

Appeal: Department of Homeland Security: ☐ waived ☒ reserved
Respondent: ☒ waived ☐ reserved

Appeal Due: 06/11/2026

Certificate of Service

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To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : BUENROSTRO TORRES, GERARDO | A-Number : 

Riders:

Date: 05/13/2026 By: GARCIA III, ROBERTO, Court Staff