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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

Raul Guerra-Arriaga,

Petitioner,

v.

Patrick Divver, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement; et al.

Respondents.

Case No. '26CV3296 LL AHG

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Petitioner Raul Guerra-Arriaga respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner is a 57-year-old father of two United States citizen sons who has lived in the United States for more than twenty years, built his life in St. George, Utah, and raised his sons as their sole parental figure after their mother was deported to Guatemala. He is currently detained by U.S. Immigration and Customs Enforcement at the Otay Mesa Detention Center in San Diego, California.

This Petition challenges only Petitioner's continued civil immigration detention. It does not ask this Court to review the merits of the Immigration Judge's removal order, decide his pending appeal before the Board of Immigration Appeals, or grant cancellation of removal. Petitioner seeks habeas relief because Respondents continue to hold him in prolonged civil detention while his BIA appeal remains pending, without a constitutionally adequate custody process requiring the Government to justify continued imprisonment by clear and convincing evidence and without meaningful consideration of his family ties, lengthy residence, rehabilitation, low ICE custody classification, release plan, and the severe hardship caused by his detention.

Petitioner's detention is no longer a brief or routine incident of removal proceedings. He has been detained since January 2025. He litigated his application for cancellation of removal while detained, received an Immigration Judge decision on April 14, 2026, and filed a timely appeal to the Board of Immigration Appeals on May 6, 2026. Because that appeal remains pending, his removal order is not administratively final. Respondents therefore cannot justify his detention as post-order detention under 8 U.S.C. § 1231. At most, his detention is pre-final-order

custody under 8 U.S.C. § 1226(a), and due process requires a meaningful individualized custody hearing.

ICE's own custody classification materials confirm that continued detention is unnecessary. On April 5, 2026, ICE classified Petitioner as Low Custody with a total custody score of 2. The worksheet did not score him for a security-threat-group issue, a pattern of violence, institutional disciplinary issues, or supervision-history concerns. Those facts undermine any claim that Petitioner is too dangerous or unmanageable for supervised release.

Petitioner respectfully requests immediate release under reasonable conditions of supervision. In the alternative, he requests that this Court order Respondents to provide, within five days, a constitutionally adequate bond hearing before a neutral immigration judge, at which the Government bears the burden of proving by clear and convincing evidence that Petitioner is a present danger or flight risk that cannot reasonably be addressed through bond or less restrictive conditions of release.

I. JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 and 28 U.S.C. §§ 2242–2243 because Petitioner is in federal custody within this District and alleges that his custody violates the Constitution and laws of the United States. Federal district courts retain habeas jurisdiction over collateral challenges to present physical immigration detention. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006).

Venue is proper in this District because Petitioner is detained at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, California 92154, within the Southern District of California.

This Petition challenges only Petitioner's present physical confinement and the constitutional adequacy of the custody process used to continue that confinement. It does not seek review of the Immigration Judge's merits decision, the denial of cancellation of removal, or the substance of Petitioner's pending BIA appeal. The jurisdictional bars in 8 U.S.C. § 1252(a)(5), § 1252(b)(9), and § 1252(g) therefore do not bar habeas jurisdiction. *Jennings*, 583 U.S. at 294; *Singh v. Holder*, 638 F.3d 1196, 1200–03 (9th Cir. 2011).

II. PARTIES

Petitioner Raul Guerra-Arriaga is a native and citizen of Mexico. His Alien Registration Number is [redacted]. He is currently detained by ICE at the Otay Mesa Detention Center in San Diego, California.

Respondent Christopher J. LaRose is the Senior Warden of the Otay Mesa Detention Center and Petitioner's immediate physical custodian.

Respondent Patrick Divver is the Field Office Director of ICE Enforcement and Removal Operations, San Diego Field Office. In that official capacity, he is responsible for Petitioner's immigration custody and continued detention within this District. He is sued in official capacity only.

Respondent U.S. Department of Homeland Security is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act, including immigration detention and removal.

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Petitioner is a longtime resident and father of two United States citizen sons.

Petitioner is a 57-year-old man from Chiapas, Mexico. He has lived in the United States since approximately November 2004 and made his life in St. George, Utah. He came from a poor family in Mexico, attended school only until approximately age eight, and began working at a young age to help his parents. His work history in the United States includes vacuum systems, plumbing, sprinklers, cleaning, landscaping, painting, and small landscaping jobs for neighbors.

Petitioner is the father of two United States citizen sons, Brandon Sanchez Gonzalez and Jason Sanchez Gonzalez. The mother of Petitioner's children was deported to Guatemala when the children were very young. From that point forward, Petitioner raised his sons alone. He became their only consistent parental figure, provider, and emotional support. His declaration explains that he remained in St. George because his sons needed him and because he wanted to raise them in a safe community surrounded by good people and strong values.

Petitioner's children were raised primarily by Petitioner. Petitioner took both a maternal and paternal role, provided for their basic needs, helped them process the absence of their mother, and supported their education.

B. Petitioner was placed in removal proceedings and applied for non-LPR cancellation.

DHS served Petitioner with a Notice to Appear on or about March 4, 2025, charging him as inadmissible under INA § 212(a)(6)(A)(i). Petitioner applied for cancellation of removal for certain nonpermanent residents under INA § 240A(b)(1). His application was based on his more than ten years of continuous physical presence, good moral character, lack of disqualifying convictions, and the exceptional and extremely unusual hardship his removal would cause his United States citizen sons.

Petitioner submitted a substantial record to the Immigration Court. His filings included a prehearing statement, his own declaration, declarations from his sons, evidence of rehabilitation, DNA evidence confirming his relationship to a qualifying relative, amendments to the EOIR-42B, and proof of payment for the EOIR-42B filing fee.

C. The Immigration Judge denied cancellation and ordered removal, and Petitioner filed a timely BIA appeal.

On April 14, 2026, the Otay Mesa Immigration Court issued a summary order of the Immigration Judge's oral decision. The order found Petitioner inadmissible under INA § 212(a)(6)(A)(i), denied cancellation of removal under INA § 240A(b)(1), and ordered removal.

Petitioner timely appealed. His EOIR-26 identifies him as detained, lists the last hearing as Otay Mesa Immigration Court, marks the appeal as a merits appeal from the Immigration Judge's April 14, 2026, decision, and is dated May 6, 2026. The EOIR-26 also states that he intends to file a separate written brief.

Because Petitioner filed a timely appeal to the BIA, his removal order is not administratively final. Respondents therefore cannot treat him as a person subject to final-order detention under 8 U.S.C. § 1231. His custody is governed, at most, by 8 U.S.C. § 1226(a).

D. Petitioner remains detained while his appeal is pending.

Petitioner remains detained at Otay Mesa. His detention has become prolonged by any reasonable measure. He has been in custody since January 2025, remained detained through the immigration court proceedings, remained detained through the April 14, 2026, merits decision, and remains detained during the BIA appeal.

Petitioner's continued detention has inflicted severe harm on his family. His sons have been forced to manage life without the only parent who raised them. Petitioner's absence has affected his sons' education, career path, financial stability, and emotional well-being.

Petitioner has strong reasons to appear and comply. His BIA appeal is pending. He has counsel. He has two United States citizen sons. He has lived in the United States for more than twenty years. His entire family life is centered here. His sons depend on him, and he has every reason to remain engaged in the legal process.

E. ICE's own custody classification shows that Petitioner is a low-custody individual.

ICE's own custody classification materials undermine any claim that continued detention is necessary. On April 5, 2026, ICE completed a custody reclassification worksheet for Petitioner at OMDC. The worksheet identifies the matter as a reclassification, lists Spanish as the interview

language, and does not identify any special vulnerability or management concern requiring elevated management.

ICE assigned Petitioner a total custody classification score of 2. The worksheet reflects no severity-of-charge score, no additional-prior-conviction score, no supervision-history score, no security-threat-group score, no history or pattern of violence score, and no disciplinary score. The custody-level guideline places a score of 0–2 in the Low Custody range, and the worksheet reflects a final housing assignment of Low custody.

That classification is directly relevant to due process. Respondents cannot reasonably maintain that Petitioner is so dangerous or unmanageable that he must remain imprisoned during a BIA appeal while ICE's own classification system treats him as low custody. If ICE can safely classify him as low custody inside OMDC, any legitimate regulatory concern can be addressed outside detention through ordinary release conditions.

IV. LEGAL STANDARD

Habeas corpus under 28 U.S.C. § 2241 is the traditional vehicle for a person in custody to challenge the legality of that custody. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). The writ remains available to noncitizens held in immigration custody who allege that their detention violates the Constitution or laws of the United States. *Zadvydas*, 533 U.S. at 687–88; *Demore*, 538 U.S. at 516–17.

The Fifth Amendment applies to persons in civil immigration detention. *Zadvydas*, 533 U.S. at 693. Immigration detention is civil, not punitive. Because liberty is the norm and

detention is the carefully limited exception, due process requires procedures adequate to ensure that continued detention remains justified. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Where a removal order is not administratively final because a BIA appeal remains pending, detention is governed by 8 U.S.C. § 1226 rather than 8 U.S.C. § 1231. Section 1226(a) permits discretionary civil detention during removal proceedings, but it does not authorize prolonged detention without constitutionally adequate process. In the prolonged-detention context, due process requires the Government to justify continued detention by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011). Due process also requires meaningful consideration of ability to pay and alternatives to detention. *Hernandez v. Sessions*, 872 F.3d 976, 990–1001 (9th Cir. 2017).

The custody inquiry must be individualized. Immigration courts traditionally consider factors including fixed address, length of residence, family ties, employment history, record of appearances, criminal history, immigration violations, attempts to flee, and manner of entry. *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006). Continued detention cannot rest on conclusory allegations, general suspicion, or a failure to consider conditions of release.

V. CLAIM ONE: PETITIONER'S PROLONGED DETENTION WITHOUT A CONSTITUTIONALLY ADEQUATE BOND HEARING VIOLATES DUE PROCESS

Petitioner's continued detention violates the Fifth Amendment because Respondents have held him in prolonged civil immigration detention without providing a constitutionally adequate custody process. His detention has lasted far beyond the brief period that may accompany ordinary removal proceedings. He has remained detained since January 2025, through

immigration court proceedings, and now through a BIA appeal from the April 14, 2026, removal decision.

The private liberty interest is at its highest. Petitioner is a civil detainee. He is not serving a criminal sentence. He is physically confined at Otay Mesa while pursuing an administrative appeal. His sons, who are United States citizens and who were raised by him as their only parental figure, continue to suffer emotional, financial, and psychological harm from his detention.

The risk of erroneous deprivation is substantial if continued detention is allowed without a hearing that places the burden on the Government. Petitioner has strong evidence favoring release: lengthy residence in the United States, two United States citizen sons, a pending BIA appeal, extensive family responsibilities, and ICE's own low-custody classification.

Additional safeguards are both available and constitutionally necessary. A neutral bond hearing with the Government bearing the burden of proof, consideration of ability to pay, and consideration of less restrictive alternatives would directly address whether detention is actually necessary. Those safeguards are required by due process in prolonged civil immigration detention.

VI. CLAIM TWO: PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a), AND RESPONDENTS CANNOT TREAT HIM AS SUBJECT TO FINAL-ORDER DETENTION

Petitioner's removal order is not administratively final because he filed a timely BIA appeal. The Immigration Judge's decision was issued on April 14, 2026. Petitioner filed an EOIR-26 on May 6, 2026. His appeal remains pending before the Board of Immigration Appeals.

Because the appeal remains pending, Respondents cannot justify detention under 8 U.S.C. § 1231 as post-order detention. Section 1231 applies after the order of removal becomes administratively final. While the BIA appeal is pending, Petitioner remains in pre-final-order detention under 8 U.S.C. § 1226(a). Under that statute and the Due Process Clause, he is entitled to an individualized custody determination.

Any contrary custody classification would be unlawful. Respondents may not avoid due process by treating Petitioner as if his removal order were final while his administrative appeal remains pending. Nor may they continue prolonged detention under § 1226(a) without requiring the Government to justify that detention under the correct constitutional standard.

VII. CLAIM THREE: THE RECORD DOES NOT SUPPORT DETENTION AS NECESSARY TO PREVENT DANGER OR FLIGHT

The record does not establish that Petitioner is a present danger or flight risk that cannot be managed through conditions of release. Petitioner has lived in the United States for more than twenty years. He raised two United States citizen sons as their sole parental figure. He has worked, supported his family, maintained community ties, and pursued relief through the immigration court process. He has an active BIA appeal and every reason to comply with future proceedings.

ICE's own custody classification confirms the point. ICE classified Petitioner as Low Custody, assigned him a total custody classification score of 2, and did not score him for supervision-history problems, security-threat-group affiliation, violence history, or institutional disciplinary issues. That is the Government's own custody assessment. It weighs strongly against any claim that Petitioner is too dangerous or unmanageable to be released under supervision.

Petitioner's criminal history does not justify detention without a rigorous present-danger analysis. The record before the Immigration Court disputed DHS's characterization of his history, noted DHS's inconsistencies regarding alleged DUI convictions, and identified rehabilitation evidence, including completion of an alcohol rehabilitation program. Even where past conduct is relevant, due process requires a present-tense, individualized inquiry into whether the person currently poses a danger and whether conditions could reasonably mitigate any concern. *Singh*, 638 F.3d at 1203–07; *Matter of Guerra*, 24 I. & N. Dec. at 40.

Nor does the record establish serious flight risk. Petitioner's BIA appeal gives him a concrete reason to remain engaged in the legal process. His sons live in the United States. His entire adult life has been built here. He has counsel and identifiable community ties. He is not a person with no connection to the United States or no reason to appear.

Even if the Government identifies a legitimate concern, detention is not constitutionally permissible unless no condition or combination of conditions can reasonably address that concern. Here, release could be conditioned on a reasonable bond, fixed residence, reporting, ICE check-ins, telephonic monitoring, GPS monitoring if necessary, and compliance with all immigration proceedings. Respondents have not shown that those measures would be inadequate.

VIII. CLAIM FOUR: CONTINUED DETENTION IS PUNITIVE IN EFFECT AND DISPROPORTIONATE TO ANY CIVIL PURPOSE

Immigration detention is civil, not criminal punishment. The Government's regulatory interests are ensuring appearance and protecting the community where necessary. Continued detention becomes constitutionally suspect when it is no longer reasonably related to those purposes or when less restrictive conditions can serve the same interests.

Petitioner's detention has become punitive in effect. He has been detained since January 2025, transferred through multiple facilities, litigated his cancellation case while confined, and now remains detained at Otay Mesa while his BIA appeal is pending. His United States citizen sons have been deprived of the father who raised them. The record before the Immigration Court describes substantial emotional and financial harm caused by his absence.

Continued detention is also disproportionate because ICE's own classification worksheet rates Petitioner as Low Custody with a total score of 2. Where the agency's own classification materials show low custody risk, continued incarceration during a pending BIA appeal is not reasonably necessary. Any legitimate concern can be addressed through supervision, reporting, and electronic monitoring if needed.

The Government can protect any legitimate interest through supervision. Continued incarceration at Otay Mesa is not reasonably necessary where Petitioner has strong family ties, a pending appeal, rehabilitation evidence, a low custody classification, and release conditions available. Due process does not permit Respondents to continue civil detention simply because detention is administratively convenient.

IX. EXHAUSTION DOES NOT BAR RELIEF

Any argument that Petitioner must exhaust additional administrative custody review before seeking habeas relief should be rejected. Exhaustion in this context is prudential, not jurisdictional, and may be excused where administrative review is inadequate, futile, or unable to prevent irreparable harm. *Laing v. Ashcroft*, 370 F.3d 994, 1000–01 (9th Cir. 2004); *Leonardo v. Crawford*, 646 F.3d 1157, 1160–61 (9th Cir. 2011).

Petitioner does not ask this Court to reweigh an ordinary discretionary bond record. He challenges the constitutionality of prolonged civil detention itself and the absence of a custody process that satisfies due process. Administrative delay cannot remedy the ongoing deprivation of physical liberty, especially where his detention has already lasted well over a year and his BIA appeal remains pending.

To the extent Petitioner has not received a bond hearing under the correct standard, the absence of that process is itself the constitutional violation. To the extent he received any custody review that did not place the burden on the Government, did not require clear and convincing evidence, or did not address ability to pay and alternatives to detention, that process was constitutionally inadequate.

X. IMMEDIATE RELEASE IS THE PROPER REMEDY; ALTERNATIVELY, THE COURT SHOULD ORDER A PROMPT BOND HEARING WITH SPECIFIC SAFEGUARDS

The traditional function of habeas corpus is to secure release from unlawful custody. *Preiser*, 411 U.S. at 484. This Court has broad authority under 28 U.S.C. §§ 2241–2243 to order relief that cures unconstitutional detention.

Immediate release is warranted. Petitioner's detention is prolonged. He has a pending BIA appeal. He has two United States citizen sons who depend on him. He has lived in the United States for more than two decades. ICE classified him as Low Custody with a total score of 2. Petitioner intends to comply with probation or release conditions, ICE reporting, and his appeal case. Continued detention is not necessary.

At minimum, if the Court declines to order immediate release, it should order Respondents to provide a new custody hearing within five days before a neutral immigration judge. At that hearing, the Government should bear the burden of proving by clear and convincing evidence that Petitioner is a present danger or flight risk and that no bond or less restrictive condition can reasonably address the identified concern. The immigration judge should be required to consider Petitioner's ability to pay, alternatives to detention, family ties, length of residence, pending BIA appeal, sons' hardship, release plan, ICE's low-custody classification, and the reporting, and electronic monitoring conditions. Any denial of release should be supported by a reasoned written decision.

XI. REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court issue a writ of habeas corpus under 28 U.S.C. § 2241; declare that Petitioner's continued detention violates the Fifth Amendment; order Respondents to immediately release Petitioner under reasonable conditions of

supervision; enjoin Respondents from re-detaining Petitioner absent lawful process; and grant any further relief this Court deems just and proper.

In the alternative, Petitioner requests that the Court order Respondents to provide, within five days, a constitutionally adequate bond hearing before a neutral immigration judge under 8 U.S.C. § 1226(a), at which the Government bears the burden of proof by clear and convincing evidence, the immigration judge considers ability to pay and less restrictive alternatives, and any denial of release is supported by a reasoned written decision addressing the evidence and explaining why detention is necessary.

Respectfully submitted,

DATED this May 28, 2026

/s/ Jose Torres
Jose Torres
Counsel for Petitioner