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

10 NERY GODINEZ SALES,

11 Petitioner,

12 vs.

13 WARDEN, OTAY MESA
14 DETENTION CENTER, *et al.*,

15 Respondents.
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Case No.: 25-cv-03125-BAS-BJW

Petitioner's Status Report

1 Petitioner provides these answers to the Court’s questions expressed in the
2 scheduling order (ECF 8). Petitioner will provide further information at the
3 hearing scheduled for December 12, 2025.

4 1. Question from the Court: If Petitioner was detained in April 2015
5 pursuant to 8 U.S.C. §1225(b)(1), why did Immigration and Customs
6 Enforcement (“ICE”) release him from custody? Wasn’t he subject to
7 mandatory detention at that time under § 1225(b)(2)(A)? When was he
8 released? Was he released on bond? Was he required to report to
9 immigration authorities? If so, did he report as required?

10 a. Answer: Petitioner was not subject to mandatory detention after he
11 passed his credible fear interview in 2015. DHS’s effort to expand
12 mandatory detention under 8 U.S.C. §1225 to as many people as
13 possible (and then some) is a recent project. In 2015, after
14 petitioner passed his credible fear interview and was placed into
15 full removal proceedings, his detention was governed by 8 U.S.C.
16 § 1226(a) and he was eligible for bond. The precedent which
17 dictated this result at the time is *Matter of X-K-*, 23 I&N Dec. 731
18 (BIA 2005). That decision was overruled in 2019 by *Matter of M-*
19 *S-*, 27 I&N Dec. 509 (A.G. 2019).

20 Petitioner further avers that DHS has prosecutorial discretion to
21 release someone even if Congress has supposedly mandated their
22 detention. A mandatory detention statute permits DHS to detain
23 someone. But because of separation of powers, Congress cannot
24 truly force DHS to detain anyone, just as Congress could not force
25 the executive to indict someone. DHS has a longstanding practice
26 of releasing many people from detention even when their detention
27 was supposedly mandatory.

1 Petitioner lacks knowledge of the precise terms of his release in
2 2015 but believes DHS has easy access to this information and can
3 readily answer the remaining questions.

4 2. Question from the Court: Why did the parties jointly move to dismiss
5 Petitioner's removal proceedings on June 24, 2022?

6 a. Answer: The parties moved to dismiss proceedings based on
7 prosecutorial discretion. ICE's policy at the time was to focus
8 enforcement resources on people who were threats to national
9 security, public safety, or border security. ICE found that
10 petitioner was not a threat to national security, public safety, or
11 border security, and therefore the parties agreed to dismiss the
12 removal proceedings. This was common practice at the time for
13 people with no criminal history. *See* Memorandum of Alejandro
14 Mayorkas, DHS Secretary, "Guidelines for the Enforcement of
15 Civil Immigration Law," Sept. 30, 2021,
16 [https://www.ice.gov/doclib/news/guidelines-](https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf)
17 [civilimmigrationlaw.pdf](https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf).

18 3. What has happened to Petitioner's immigration proceedings since June
19 24, 2022? Is he still pending a full asylum hearing? If so, what progress
20 has been made in scheduling that hearing?

21 a. Petitioner's removal proceedings were dismissed in June 2022, i.e.
22 completely terminated. Any application for asylum pending at that
23 time would have ended with those proceedings. Petitioner is now
24 the subject of a new removal proceeding which began in 2025.
25 After the new proceeding began, petitioner filed an asylum
26 application on September 16, 2025. A trial on his application is
27 scheduled for February 9, 2026.

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Dated December 8, 2025

Signature: /s/Alexandra Fuxa Ramirez

Alexandra Fuxa Ramirez