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

10 GEVORK GUYUMDZHYAN,

11 Petitioner,

12 v.

13 GREGORY J. ARCHAMBEAULT,
San Diego Field Office Director, U.S.
14 Immigration and Customs Enforcement, *et al.*,

15 Respondents.

Case No.: 26-cv-00269-TWR-BJW

**RESPONDENTS' RETURN
TO HABEAS PETITION**

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1 **I. INTRODUCTION**

2 Petitioner filed a habeas petition under 28 U.S.C. § 2241 challenging his
3 detention by Immigration and Customs Enforcement (ICE) and requesting the Court to
4 release him from custody or order a bond hearing. ECF No. 1 at 17. However, as
5 Petitioner’s removal proceedings remain ongoing, and as an alien convicted of an
6 aggravated felony – i.e. multiple convictions for Robbery under Cal. P.C. § 211,
7 sustained in 2011 and for which he received a 21-year sentence – Petitioner is subject
8 to mandatory detention under 8 U.S.C. § 1226(c) pending a final order of removal.
9 Because Petitioner is properly subject to mandatory detention under § 1226(c),
10 Respondents ask the Court to dismiss or deny Petitioner’s requested relief.

11 **II. FACTUAL BACKGROUND**

12 **Petitioner’s First Removal Proceedings**

13 Petitioner is a native and citizen of Arminia. *See* Exh. 1 At 9, 13, 58, 62, 74; ¹
14 Exh. 2 at 4. (Barroga Declaration). He was admitted into the United States on a parole
15 on May 9, 1990, and adjusted to lawful permanent resident status on November 19,
16 1991. Exh. 2 at ¶ 5.

17 On May 6, 2002, Petitioner was convicted under California Penal Code § 211,
18 for First Degree Robbery, and was sentenced to four years’ imprisonment, an
19 aggravated felony. Exh. 1 at 2-3, 54; Exh. 2 at ¶ 6.

20 DHS first placed Petitioner into removal proceedings via a Notice to Appear
21 dated March 24, 2005. Exh. 1 at 2-3; Exh. 2 at ¶ 6. The NTA alleged the 2002 Robbery
22 conviction. Exh. 1 at 2-3. The Immigration Judge ordered Petitioner removed to
23 Armenia on October 6, 2005, but granted him withholding of removal as to Armenia
24 pursuant to INA § 241(b)(3). Exh. 1 at 1; Exh. 2 at ¶ 7.

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¹ The attached exhibits are true copies of documents obtained from ICE counsel,
28 with limited redactions made to protect against unauthorized disclosures of personally
identifiable information that federal agencies under the Privacy Act, 5 U.S.C. § 552a.

1 On or about June 30, 2025, DHS filed a motion to reopen Respondent's first
2 (2005) removal proceedings for the limited purpose of terminating his 2005 grant of
3 withholding of removal. Exh. 2 at ¶ 11. This motion was filed because Petitioner had
4 since that time become ineligible for withholding of removal due to 2011 Robbery
5 convictions, which are *per se* "particularly serious crimes" (PSC) as defined in INA §
6 241(b)(3)(B)(ii) (an alien who has been convicted of a PSC is ineligible for withholding
7 of removal). See 8 CFR § 1208.24(f) (providing for the termination of withholding of
8 removal by an IJ or the BIA). *Id.* That motion was denied by the Immigration Judge
9 on September 11, 2025. *Id.* DHS did not appeal the denial of the motion to reopen.

10 **Petitioner's Second Removal Proceedings**

11 On April 20, 2011, Petitioner was convicted in California Superior Court, County
12 of Los Angeles, for five counts of Second Degree Robbery, in violation of California
13 Penal Code § 211, committed on June 10, 2006 (Count 1), June 10, 2006 (Count 2),
14 May 30, 2006 (Count 3), June 5, 2006 (Count 4), and June 5, 2006 (Count 5). Petitioner
15 was sentenced to a total of 21 years and 4 months. Exh. 1 at 33 (Abstract of Judgment);
16 36-43 (minute order), 44 (recalling case and reducing sentence to 21 years 4 months
17 after striking prior conviction enhancement); Exh. 2 at ¶ 8.

18 On September 26, 2024, Petitioner was released from state criminal custody into
19 ICE custody. Exh. 2 at ¶ 9. Petitioner was placed into removal proceedings for a second
20 time via a Notice to Appear dated September 17, 2024. Exh. 2 at ¶ 10. This new NTA
21 was based on the 2011 convictions, alleging that Petitioner had been convicted of 5
22 counts of second-degree robbery in violation of California Penal Code § 211. *Id.* The
23 I-261 charged that Petitioner is subject to removal on the basis of INA §
24 237(a)(2)(A)(iii) in that he is an alien who has been convicted of an aggravated felony.
25 Exh. 1 at 262. The charge specified that Petitioner had been convicted of an aggravated
26 felony as defined in INA § 101(a)(43)(G), a theft offense or burglary offense for which
27 the term of imprisonment is at least one year. *Id.* Based on his aggravated felony
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1 convictions, Petitioner was mandatorily detained under INA § 236(c)(1)(B). Exh. 2 at
2 ¶ 6.

3 On September 26, 2025, the Immigration Judge issued an order that Petitioner be
4 removed to Armenia. Exh. 1 at 78; Exh. 2 at ¶ 12. The order denied his application for
5 deferral of removal under the Convention Against Torture. Exh. 2 at ¶ 12. It also denied
6 Petitioner’s applications for asylum and for withholding of removal, for which he was
7 not eligible because of his conviction for a *per se* PSC (any aggravated felony is *per se*
8 a PSC for purposes of asylum and any aggravated felony that results in a sentence of 5
9 years or more is *per se* a PSC for purposes of withholding of removal).² Petitioner
10 reserved appeal. On October 22, 2025, Petitioner filed an appeal of the order of removal
11 with the BIA. Exh. 2 at ¶ 13. That appeal is now pending.

12 **III. ARGUMENT**

13 **A. Petitioner’s claims are barred under 8 U.S.C. § 1252(g)**

14 Respondents contend that judicial review over Petitioner’s claim is barred by 28
15 U.S.C. § 1252(g), which states that “[n]o court shall have jurisdiction to hear any cause
16 or claim by or on behalf of any alien arising from the decision or action by the Attorney
17 General to commence proceedings, adjudicate cases, or execute removal orders.”

18 Here, Petitioner’s claims of unlawful detention necessarily arise from the
19 Department of Homeland Security’s³ decision to commence removal proceedings
20 against him because that decision unavoidably triggers mandatory detention under 8
21 U.S.C. § 1226(c) until the conclusion of his removal proceedings. Removal proceedings
22 are commenced when, as occurred here, “the alien is issued a Notice to Appear before
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24 ² INA § 241(b)(3)(B)(ii) (rendering an alien ineligible for withholding where “the
25 alien, ha[s] been convicted by a final judgment of a particularly serious crime” and
26 noting “an alien who has been convicted of an aggravated felony . . . for which the alien
has been sentenced to an aggregate term of imprisonment of at least 5 years shall be
considered to have committed a particularly serious crime.”).

27 ³ “In 2002, Congress transferred the Attorney General’s immigration enforcement
28 responsibilities to the Secretary of Homeland Security.” *Ibarra-Perez v. United States*,
154 F.4th 989, 995 n.2 (9th Cir. 2025).

1 an immigration court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx),
2 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). The government “may arrest the
3 alien against whom proceedings are commenced and detain that individual until the
4 conclusion of those proceedings.” *Herrera-Correra*, 2008 WL 11336833, at *3. “Thus,
5 an alien’s detention throughout this process arises from the [government’s] decision to
6 commence proceedings” and review of claims arising from such detention is barred
7 under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007));
8 *see also Wang*, 2010 WL 11463156, at *6.

9 Because this habeas petition brings a claim “arising from the decision or action
10 by the [government] to commence proceedings,” review of Petitioner’s claim is barred
11 under 8 U.S.C § 1252(g). Thus, the Court must dismiss the petition.

12 **B. Petitioner is lawfully detained**

13 Even if the Court issues jurisdiction to review Petitioner’s claims, the Court must
14 deny his request for relief because Petitioner is lawfully detained under 8 U.S.C.
15 § 1226(c).

16 **1. Petitioner is subject to mandatory detention under 8 U.S.C § 1226(c)**

17 Petitioner is lawfully detained because he is subject to mandatory detention under
18 8 U.S.C. § 1226(c). That statute provides that the Attorney General “shall take into
19 custody any alien who . . . is deportable by reason of having committed any offense
20 covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,” 8 U.S.C.
21 § 1226(c)(1)(B), and “governs detention of deportable criminal aliens pending their
22 removal proceedings,” *Demore v. Kim*, 538 U.S. 510, 527–28 (2003).

23 Based on his 2011 robbery convictions, Petitioner is charged with removability
24 under an enumerated aggravated felony under the statute: 8 U.S.C. § 1227(a)(2)(A)(iii),
25 for an aggravated felony, i.e. Robbery under Cal. P.C. § 211. *See United States v.*
26 *Martinez-Hernandez* (9th Cir. 2019) 932 F.3d 1198, 1206-07 (section 211 conviction is
27 an aggravated felony under 8 U.S.C. § 1101(a)(43)(G), “a theft offense ... for which the
28 term of imprisonment at [is] least one year.”). Because Petitioner is removable for

1 having committed offenses listed in 8 U.S.C. § 1226(c), he is subject to mandatory
2 detention under the statute.

3 To the extent Petitioner alleges that he is entitled to release or a bond hearing
4 under the INA, the statutory text explicitly forecloses such contentions and permits
5 release “*only if* the Attorney General decides’ both that doing so is necessary for
6 witness-protection purposes and that the alien will not pose a danger or flight risk.”
7 *Jennings v. Rodriguez*, 583 U.S. 281, 303 (emphasis in original). Because Petitioner’s
8 removal proceedings are pending and he has not been granted release for
9 witness-protection purposes, § 1226(c) mandates his detention until the proceedings
10 have concluded. *See Demore*, 538 U.S. at 527–28 (noting that detention under the
11 statute has “a definite termination point” and “[s]uch detention necessarily serves the
12 purpose of preventing deportable criminal aliens from fleeing prior to or during their
13 removal proceedings, thus increasing the chance that, if ordered removed, the aliens
14 will be successfully removed.”).

15 Because Petitioner is lawfully detained under § 1226(c), and the statute does not
16 entitle him to release at this time, his petition must be denied.

17 **2. Petitioner’s detention does not violate due process**

18 Petitioner’s detention under § 1226(c) does not violate due process. In *Demore*,
19 the Supreme Court considered the statute at issue and held: “Detention during removal
20 proceedings is a constitutionally permissible part of that process.” 538 U.S. at 531. And
21 the Court may not impose temporal limitations on the statute where none exist. *See*
22 *Jennings*, 583 U.S. at 312 (rejecting the dissent’s drawing of a “6-month limitation out
23 of thin air”).

24 Even if the Court infers a constitutional right against prolonged mandatory
25 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
26 courts become extremely wary of permitting continued custody absent a bond hearing.”
27 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal.
28 Apr. 20, 2023) (citation omitted); *see also, e.g., Sanchez-Rivera v. Matuszewski*,

1 No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (detained
2 for three years); *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607,
3 at *5 (S.D. Cal. Feb. 21, 2024) (over two-and-a-half years); *Yagao v. Figueroa*,
4 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019) (two
5 years). As of the date of the filing of this Return, Petitioner has been in ICE custody
6 for approximately 16 months. Petitioner’s detention falls significantly short of the
7 length courts have found to raise due process concerns for individuals detained under
8 8 U.S.C. § 1226(c). Though the length of detention is considered an important factor,
9 courts have also considered the likely duration of future detention and any delay in the
10 removal proceedings by the petitioner or the government to determine whether
11 “detention has become so unreasonable as to require an initial bond hearing.” *See*
12 *Sanchez-Rivera*, 2023 WL 139801, at *6. Nor do these factors raise due process
13 concerns. Petitioner received a decision from the IJ on his applications for relief from
14 removal. While he has appealed, there is no indication of any delay in the removal
15 proceedings on the part of the government. Further, it is possible that Petitioner will
16 become subject to a final an executable order of removal shortly. On this record, the
17 Court cannot find that “detention has become so unreasonable as to require an initial
18 bond hearing.” *Sanchez-Rivera*, 2023 WL 139801, at *6.

19 **C. Conditions of confinement allegations are not proper.**

20 To the extent Petitioner asserts claims regarding conditions of his confinement,
21 the Court lacks jurisdiction over such claims because they do not challenge the
22 lawfulness of his custody. An individual may seek habeas relief under 28 U.S.C. §
23 2241 if she is “in custody” under federal authority “in violation of the Constitution or
24 laws or treaties of the United States.” 28 U.S.C. § 2241(c). But habeas relief is available
25 to challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th
26 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t*
27 *of Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas
28 corpus historically “provide[s] a means of contesting the lawfulness of restraint and

1 securing release.”). The Ninth Circuit squarely explained how to decide whether a
2 claim sounds in habeas jurisdiction: “[O]ur review of the history and purpose of habeas
3 leads us to conclude the relevant question is whether, based on the allegations in the
4 petition, release is *legally required* irrespective of the relief requested.” *Pinson*, 69
5 F.4th at 1072 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934
6 (9th Cir. 2016) (The key inquiry is whether success on the petitioner’s claim would
7 “necessarily lead to immediate or speedier release.”). Here, Petitioner’s claims
8 regarding the conditions of his confinement do not arise under § 2241. *See Nettles*, 830
9 F.3d at 933 (“We have long held that prisoners may not challenge mere conditions of
10 confinement in habeas corpus.”); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025
11 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks
12 jurisdiction over Petitioner’s § 2241 habeas petition since it cannot be fairly read as
13 attacking ‘the legality or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at
14 1065); *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL 2300873, at *1
15 (S.D. Cal. Aug. 8, 2025) (finding petitioners’ claims did not arise under § 2241 because
16 they were not arguing they were unlawfully in custody and receiving the requested
17 relief would not entitle them to release). Thus, Petitioner’s claims do not arise under §
18 2241 and the petition should be dismissed.

19 **IV. CONCLUSION**

20 For the reasons stated herein, Respondents respectfully request that the Court
21 dismiss this petition for lack of jurisdiction or deny it on the merits.

22 DATED: January 21, 2026

23 Respectfully submitted,

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26 s/ Stephen H. Wong
27 STEPHEN H. WONG
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