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

11 QUANG LE PHAN,

12 Petitioner,

13  
14 v.

15 CHRISTOPHER LAROSE, et al.,

16 Respondents.  
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Case No.: 26-cv-1386-JES-MSB

**RESPONDENTS' RETURN TO  
HABEAS PETITION**

1 **I. INTRODUCTION**

2 Petitioner filed a habeas petition under 28 U.S.C. § 2241 challenging his  
3 post-removal-order detention by Immigration and Customs Enforcement (ICE) and  
4 requesting the Court to release him from custody or order a bond hearing. ECF No. 1 at  
5 ¶ 6. The petition, however, is moot. Petitioner’s removal proceedings have been  
6 reopened at his own request, and as an alien convicted of an aggravated felony,  
7 Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c) pending a final  
8 order of removal. Because Petitioner’s challenges to his post-removal-order detention  
9 are moot and he 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 is a native and citizen of Vietnam. Exhibit (Ex.) 1 (I-213).<sup>1</sup> He was  
13 admitted as a refugee into the United States on November 4, 1993, which was adjusted  
14 to lawful permanent resident status in 1994. ECF No. 1 at ¶ 20.

15 On March 4, 2003, Petitioner was convicted pursuant to 18 U.S.C. § 531(a) for  
16 possession of counterfeit securities of an organization for which he was sentenced to 21  
17 months of imprisonment. Ex. 2 (Notice to Appear (NTA)).

18 On March 23, 2004, the Department of Homeland Security (DHS) filed a Notice  
19 to Appear with the Immigration Court, charging Petitioner with removability under  
20 section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (INA), as an alien  
21 convicted of an aggravated felony as defined in INA § 101(a)(43)(R) for “an offense  
22 relating to commercial bribery, counterfeiting, forgery,... for which the term of  
23 imprisonment is at least one year.” *Id.*

24 On June 14, 2004, an Immigration Judge (IJ) found Petitioner removable under  
25 INA §§ 237(a)(2)(A)(iii), ordered Petitioner removed from the United States to  
26

27 <sup>1</sup> 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 Vietnam. Ex. 3 (IJ Order of Removal). As a result of the inability to remove Petitioner  
2 to Vietnam in 2005, Petitioner, after his release from federal prison, was released on an  
3 Order of Supervision by ICE. ECF No. 1 at ¶ 23; Ex. 4 (Order of Supervision).

4 On March 25, 2025, ICE arrested and detained Petitioner based on his final order  
5 of removal. *See* Ex. 1. He is detained in ICE custody at the Otay Mesa Detention Center.  
6 ECF No. 1 at ¶ 26.

7 On July 30, 2025, an IJ granted Petitioner’s motion to reopen his removal  
8 proceedings. *See* ECF No. 1. Petitioner is scheduled to appear before an IJ for a master  
9 calendar hearing on April 29, 2026. Petitioner remains mandatorily detained in ICE  
10 custody under 8 U.S.C. § 1226(c).

11 **III. ARGUMENT**

12 With proceedings reopened, Petitioner no longer has a final order of removal. His  
13 statutory and constitutional challenges are therefore jurisdictionally barred under 8  
14 U.S.C. § 1252(g); and in any event, must be denied because Petitioner is lawfully  
15 detained under the INA and the Constitution. Petitioner cites no statute or case law to  
16 support his requests for release or bond.

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

18 Petitioner’s claims are barred under 8 U.S.C. § 1252(g). Petitioner bears the  
19 burden of establishing that this Court has subject matter jurisdiction over her claims.  
20 *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (“Federal  
21 courts are courts of limited jurisdiction. . . . It is to be presumed that a cause lies outside  
22 this limited jurisdiction, and the burden of establishing the contrary rests upon the party  
23 asserting jurisdiction.”).

24 Pertinent here, 8 U.S.C. § 1252(g) bars judicial review over any claim or cause  
25 of action arising from any decision to commence or adjudicate removal proceedings or  
26 execute removal orders. *See* 8 U.S.C. § 1252(g). These three actions “represent the  
27 initiation or prosecution of various stages in the deportation process” and there was  
28 “good reason for Congress to focus special attention upon and make special provision

1 for” them. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999).  
2 “Section 1252(g) was directed against a particular evil: attempts to impose judicial  
3 constraints upon prosecutorial discretion.” *Id.* at 485 n.9.

4 Here, Petitioner’s habeas claims stem from the decision to execute his then-final  
5 order of removal. As reflected by Petitioner’s Warrant for Arrest of Alien and I-213,  
6 ICE arrested and detained Petitioner because he had a final order of removal that it  
7 intended to execute. *See* Exhs. 1, 5 (Warrant). Because Petitioner’s claims necessarily  
8 arise “from the decision or action by the Attorney General to . . . execute removal  
9 orders,” review of Petitioner’s claims is barred under 8 U.S.C § 1252(g). Thus, the  
10 Court must dismiss the habeas petition.

11 **B. Petitioner is lawfully detained**

12 Even if the Court assumed jurisdiction to review Petitioner’s claims, the Court  
13 must deny his request for relief because Petitioner was properly detained under 8 U.S.C.  
14 § 1231(a) and is currently lawfully detained under 8 U.S.C. § 1226(c).

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

16 Because Petitioner’s removal proceedings have been reopened, his detention is  
17 no longer governed by 8 U.S.C. § 1231 and 8 C.F.R. § 241.4, but rather by 8 U.S.C.  
18 § 1226. *See* 8 C.F.R. § 241.4(b)(1) (“An alien who has filed a motion to reopen  
19 immigration proceedings . . . shall remain subject to the provisions of this section unless  
20 the motion to reopen is granted. Section 236 of the Act [8 U.S.C. § 1226] and 8 C.F.R.  
21 § 236.1 govern custody determinations for aliens who are in pending immigration  
22 proceedings[.]”

23 Petitioner is lawfully detained because he is subject to mandatory detention under  
24 8 U.S.C. § 1226(c). That statute provides that the Attorney General “shall take into  
25 custody any alien who . . . is deportable by reason of having committed any offense  
26 covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,” 8 U.S.C.  
27 § 1226(c)(1)(B), and “governs detention of deportable criminal aliens pending their  
28 removal proceedings,” *Demore v. Kim*, 538 U.S. 510, 527–28 (2003).

1 Based on his 2003 conviction, Petitioner is charged with removability under 8  
2 U.S.C. § 1227(a)(2)(A)(iii), for an aggravated felony. Ex. 1. Because Petitioner is  
3 removable for having committed offenses listed in 8 U.S.C. § 1226(c), he is subject to  
4 mandatory detention under the statute.

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

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

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

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

26 Even if the Court infers a constitutional right against prolonged mandatory  
27 detention, Petitioner’s claim still fails. Petitioner has been detained for under a year.  
28 “In general, as detention continues past a year, courts become extremely wary of

1 permitting continued custody absent a bond hearing.” *Sibomana v. LaRose*,  
2 No. 22-cv-933-LL-NLS, 2023 WL 3028093, at \*4 (S.D. Cal. Apr. 20, 2023) (citation  
3 omitted); *see also, e.g., Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA-JLB,  
4 2023 WL 139801, at \*6 (S.D. Cal. Jan. 9, 2023) (detained for three years); *Durand v.*  
5 *Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at \*5 (S.D. Cal. Feb. 21, 2024)  
6 (over two-and-a-half years); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL  
7 1429582, at \*2 (S.D. Cal. Mar. 29, 2019) (two years). Petitioner’s detention falls short  
8 of the length these courts have found to raise due process concerns.

9        Though the length of detention is considered the most important factor, courts  
10 have also considered the likely duration of future detention and any delay in the removal  
11 proceedings by the petitioner or the government to determine whether “detention has  
12 become so unreasonable as to require an initial bond hearing.” *See Sanchez-Rivera*,  
13 2023 WL 139801, at \*6.<sup>2</sup> Neither of these factors raise due process concerns either.  
14 Petitioner’s reopened removal proceedings are underway, and he is scheduled to appear  
15 for a merits hearing on April 29, 2026. The initial merits hearing date, February 24,  
16 2026, was continued at the Petitioner’s request. There is no indication that any final  
17 decision by the IJ would be delayed. And there is no indication of any delay in the  
18 removal proceedings by the government. On this record, the Court cannot find that  
19 “detention has become so unreasonable as to require an initial bond hearing.”  
20 *Sanchez-Rivera*, 2023 WL 139801, at \*6.

21  
22        <sup>2</sup> Though Petitioner cites to no support for his position, such as *Mathews v.*  
23 *Eldridge*, 424 U.S. 319, 333 (1976), in his petition, courts in this district have declined  
24 to apply the *Mathews* test under these circumstances and have instead applied the test  
25 in *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See Sanchez-Rivera*,  
26 2023 WL 139801, at \*5 (“while the *Mathews* factors may be well-suited to determining  
27 whether due process requires a second bond hearing, they are not particularly  
28 dispositive of whether prolonged mandatory detention has become unreasonable in a  
particular case.”); *see also Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022)  
 (“To determine whether § 1226(c) detention has become unreasonable, the Court will  
look to the total length of detention to date, the likely duration of future detention, and  
the delays in the removal proceedings caused by the petitioner and the government.”).

1 **IV. CONCLUSION**

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

4 DATED: March 10, 2026

5 Respectfully submitted,

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