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

9 RAMIRO OSORIA HERRERA,
10
11 Petitioner,
12
13 v.
14 MARKWAYNE MULLINS, et al.,
Respondents.

Case No.: 26-cv-02348-JO-VET

**RETURN TO PETITION FOR
WRIT OF HABEAS CORPUS**

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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 7. However, as
5 Petitioner’s removal proceedings remain ongoing, and as a legal permanent resident
6 applying for admission involved in human trafficking, he is considered an applicant for
7 admission.¹ Therefore, because Petitioner is an applicant for admission, he is subject to
8 mandatory detention under 8 U.S.C. § 1225(b)(2) pending a final order of removal.
9 Because Petitioner is subject to mandatory detention under § 1225(b)(2), Respondents
10 ask that the Court dismiss or deny Petitioner’s requested relief.

11 **II. FACTUAL BACKGROUND**

12 Petitioner is a native and citizen of Mexico. *See* Ex. 1 (NTA).² He was admitted
13 into the United States as a Lawful Permanent Resident (LPR) on or about December 1,
14 1990. *See id.* On May 30, 2025, Petitioner applied for admission at the San Ysidro,
15 California port of entry. *See id.* When two undocumented immigrations were discovered
16 hiding at the trunk of Petitioner’s vehicle, Petitioner was apprehended at the Port of
17 Entry. *See* Exhibit 2 (I213); *see also* Exhibit 3 (Record of Investigation); *see also*
18 Exhibit 4 (Record of Sworn Statement). The Department of Homeland Security (DHS)
19 issued Petitioner a Notice to Appear, charging him with removability under section
20 212(a)(6)(E)(i) of the Immigration and Nationality Act (INA), as an alien who at any
21 time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to
22 enter or try to enter the United States in violation of law. *See* Exhibit 1.

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24 ¹ “Any alien who commits or conspires to commit human trafficking offenses in
25 the United States or outside the United States, or who the consular officer, the Secretary
26 of Homeland Security, the Secretary of State, or the Attorney General knows or has
27 reason to believe is or has been a knowing aider, abettor, assister, conspirator, or
colluder with such a trafficker in severe forms of trafficking in persons, as defined in
the section 7102 of Title 22, is inadmissible.” 8 USC § 1182(a)(2)(H)

28 ² The attached exhibits are true copies of documents obtained from ICE counsel,
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 Petitioner remains mandatorily detained pursuant to 8 U.S.C. § 1225(b)(2) while
2 his removal proceedings remain ongoing. The immigration judge has sustained the
3 inadmissibility charges, and the Petitioner has filed an application for Cancellation for
4 Lawful Permanent Residents pursuant to 8 U.S.C. § 1229b(a); INA § 240A(a). *See*
5 Exhibit 5 (PCQS Printout). Petitioner has a merits hearing scheduled for April 24, 2026
6 at 8:30 a.m. *See* Exhibit 6 (Notice of Hearing).

8 III. STATUTORY BACKGROUND

9 “Lawfully admitted for permanent residence” is defined by statute as “having
10 been lawfully accorded the privilege of residing permanently in the United States as an
11 immigrant in accordance with the immigration laws, such status not having changed.”
12 8 USC § 1101(a)(20). Section 101(a)(13)(C) of the INA, 8 U.S.C. § 1101 (a)(13)(C),
13 lists the situations in which a person who has been admitted as an LPR can be regarded
14 as seeking admission: (i) has abandoned or relinquished [LPR] status, (ii) has been
15 absent from the United States for a continuous period in excess of 180 days, (iii) has
16 engaged in illegal activity after having departed the United States, (iv) has departed
17 from the United States while under legal process seeking removal of the alien from the
18 United States, including removal proceedings under [the INA] and extradition
19 proceedings, **(v) has committed an offense identified in section 212(a)(2), unless**
20 **since such offense the alien has been granted relief under section 212(h) or 240(a),**
21 **or (vi) is attempting to enter at a time or place other than as designated by immigration**
22 **officers or has not been admitted to the United States after inspection and authorization**
23 **by an immigration officer. *See* INA § 101(a)(13)(C); 8 U.S.C. §**
24 **1101 (a)(13)(C)(emphasis added).**

25 Section 212(a)(2)(H) of the INA, 8 USC § 1182(a)(2)(H) reads that “Any alien
26 who commits or conspires to commit human trafficking offenses in the United States or
27 outside the United States, or who the consular officer, the Secretary of Homeland
28 Security, the Secretary of State, or the Attorney General **knows or has reason to**

1 believe is or has been a knowing aider, abettor, assister, conspirator, or colluder
2 with such a trafficker in severe forms of trafficking in persons, as defined in the
3 section 7102 of Title 22, is inadmissible.

4
5 **IV. ARGUMENT**

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

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

11 Here, Petitioner's claims of unlawful detention necessarily arise from the
12 Department of Homeland Security's³ decision to commence removal proceedings
13 against him because that decision unavoidably triggers mandatory detention under 8
14 U.S.C. § 1226(c) until the conclusion of his removal proceedings. Removal proceedings
15 are commenced when, as occurred here, "the alien is issued a Notice to Appear before
16 an immigration court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx),
17 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). The government "may arrest the
18 alien against whom proceedings are commenced and detain that individual until the
19 conclusion of those proceedings." *Herrera-Correra*, 2008 WL 11336833, at *3. "Thus,
20 an alien's detention throughout this process arises from the [government's] decision to
21 commence proceedings" and review of claims arising from such detention is barred
22 under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007));
23 *see also Wang*, 2010 WL 11463156, at *6.

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

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

4 **B. Petitioner is lawfully detained**

5 Even if the Court assumes jurisdiction to review Petitioner’s claims, the Court
6 must deny his request for relief because Petitioner is lawfully detained under 8 U.S.C.
7 § 1225(b)(2).

8 **1. Petitioner is subject to mandatory detention under 8 U.S.C**
9 **§ 1225(b)(2)**

10 Because Petitioner is properly classified as an arriving alien applicant for
11 admission, Petitioner is lawfully detained because he is subject to mandatory detention
12 under 8 U.S.C. § 1225(b)(2).

13 Section 235 of the Immigration and Nationality Act, codified at 8 U.S.C. § 1225,
14 applies to an “applicant for admission,” defined as an “alien present in the United States
15 who has not been admitted” or “who arrives in the United States.” 8 U.S.C. §
16 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those covered
17 by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S.
18 281, 287 (2018).

19 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
20 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
21 document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
22 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if “the alien
23 indicates an intention to apply for asylum . . . or a fear of persecution,” immigration
24 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
25 “If the officer determines at the time of the interview that [the] alien has a credible fear
26 of persecution . . . , the alien *shall be detained* for further consideration of the
27 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien
28 does not indicate an intent to apply for asylum, does not express a fear of persecution,

1 or is “found not to have such a fear,” they “shall be detained . . . until removed” from
2 the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

3 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
4 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”
5 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained
6 for a removal proceeding “if the examining immigration officer determines that [the]
7 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8
8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“for aliens
9 arriving in and seeking admission into the United States who are placed directly in full
10 removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),
11 mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*,
12 583 U.S. at 299). However, DHS has the sole discretionary authority to temporarily
13 release on parole “any alien applying for admission to the United States” on a “case-by-
14 case basis for urgent humanitarian reasons or significant public benefit.” *Id.* §
15 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

16 As Petitioner’s removal proceedings are pending, and he has not been granted
17 temporary parole, section 1225(b)(2) mandates his detention until the proceedings have
18 concluded. *Jennings*, 583 U.S. at 297 (“Once those proceedings end, detention under §
19 1225(b) must end as well.”). Because Petitioner is lawfully detained under section
20 1225(b)(2) and the statute does not entitle him to a bond hearing at this time, his petition
21 must be denied. See, e.g., *Zelaya Gonzalez v. Matuszewski*, No. 23-CV-151 JLS-KSC,
22 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to find that the
23 petitioner had no right to release or a bond hearing).

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

25 Petitioner’s detention under § 1225(b)(2) does not violate due process. In
26 *Demore*, the Supreme Court considered the statute at issue and held: “Detention during
27 removal proceedings is a constitutionally permissible part of that process.” 538 U.S. at
28 531. And the Court may not impose temporal limitations on the statute where none exist.

1 *See Jennings*, 583 U.S. at 312 (rejecting the dissent’s drawing of a “6-month limitation
2 out of thin air”).

3 Even if the Court infers a constitutional right against prolonged mandatory
4 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,
5 courts become extremely wary of permitting continued custody absent a bond hearing.”
6 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. Apr.
7 20, 2023) (citation omitted); *see also, e.g., Sanchez-Rivera v. Matuszewski*,
8 No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (detained
9 for three years); *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at
10 *5 (S.D. Cal. Feb. 21, 2024) (over two-and-a-half years); *Yagao v. Figueroa*,
11 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019) (two
12 years); *Guyumdzhyan v. Archambeault*, No. 26-cv-269-TWR-BJW, ECF No. 9 (S.D.
13 Cal. Jan. 22, 2026) (over fifteen months).

14 As of the date of the filing of this Return, Petitioner has been in ICE custody
15 since June 6, 2025, that is, for a little over ten months. Petitioner’s detention falls
16 significantly short of the length courts have found to raise due process concerns for
17 individuals detained under 8 U.S.C. § 1225(b)(2). Though the length of detention is
18 considered an important factor, courts have also considered the likely duration of future
19 detention and any delay in the removal proceedings by the petitioner or the government
20 to determine whether “detention has become so unreasonable as to require an initial
21 bond hearing.” *See Sanchez-Rivera*, 2023 WL 139801, at *6. Based on the present
22 record, these factors do not raise due process concerns. On this record, the Court cannot
23 find that “detention has become so unreasonable as to require an initial bond hearing.”
24 *Sanchez-Rivera*, 2023 WL 139801, at *6.

25 **III. CONCLUSION**

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

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1 DATED: April 21, 2026

Respectfully submitted,

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3 United States Attorney

4 *s/ Antonio Estrada*
5 ANTONIO ESTRADA
6 Special Assistant United States Attorney
7 Attorney for Respondents
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