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

9 GERARDO BUENROSTRO TORRES,

10 Petitioner,

11 v.

12 CHRISTOPHER J. LAROSE, et al.,

13 Respondents.
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Case No.: 26-cv-02739-DMS-DDL

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

I. INTRODUCTION

Petitioner filed a habeas petition under 28 U.S.C. § 2241 challenging his detention by Immigration and Customs Enforcement (ICE) and requesting the Court to release him from custody or order a bond hearing. ECF No. 1 at 11. However, because Petitioner was never lawfully admitted for permanent residence, he is considered an arriving alien applicant for admission. As an applicant for admission, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) pending a final order of removal. Therefore, Respondents ask that the Court dismiss or deny Petitioner's requested relief.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico who, on or about April 19, 1996, was granted Legal Permanent Resident (LPR) status in the United States under the name of Gerardo Buenrostro Torres. *See* Ex. 1 (NTA dated 12.20.2025).¹ On or about February 5, 1999, Petitioner was ordered deported by an Immigration Judge from the United States under the name of Mario Lopez-Mendez (alias). When Petitioner applied for LPR status under the name Gerardo Buenrostro Torres, he failed to inform the Department of Homeland Security of his alias, Mario Lopez-Mendez. *See* Exhibit 2 (I-261). In fact, Petitioner told the Department that he did not have an alias. *See id.*

On December 19, 2025, Petitioner applied for admission into the United States at the San Ysidro Port of Entry as an LPR, when a "computer-generated alert came up and Petitioner was referred to secondary inspection." *See* Exhibit 3 (I-213 dated 11.20.2025). System queries showed that Petitioner's information was positive for "A number  under Gerardo BUENROSTRO TORRES and  under Mario LOPEZ MENDEZ." *See id.* Customs and Border Protection (CBP) Officers then determined that "Mario LOPEZ MENDEZ, a Guatemalan citizen and Gerardo

¹ 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 BUENROSTRO TORRES, a Mexican citizen, are the same person.” *See id.* In fact,
2 Petitioner admitted as such. *See* Exhibit 3.

3 Petitioner has a significant immigration history under his alias of Mario Lopez
4 Mendez (hereinafter “alias”), that was not disclosed prior to being granted LPR status.
5 *See* Exhibit 2. For instance, Petitioner was in removal proceedings under his alias. *See*
6 Exhibit 4 (NTA dated 09.04.1998). Then, on February 5, 1999, Petitioner was ordered
7 removed in absentia under his alias by an immigration judge (IJ). *See* Exhibit 5 (IJ
8 removal order dated 02.05.1999). Petitioner admitted to not disclosing this information
9 at the time he was granted LPR status. *See* Exhibit 3. Had Petitioner disclosed this
10 information, he would have been inadmissible to the United States under 8 U.S.C.
11 §1182(a)(9)(A)(i); 8 U.S.C. §1182(a)(6)(C)(i); 212(a)(7)(A)(i). Because he did not
12 disclose this information, he was not properly admitted as an LPR. 8 USC
13 § 1101(a)(20). Since Petitioner was never properly admitted as an LPR, he is
14 considered an arriving alien applicant for admission. *See id.*; *see also* 8 U.S.C.
15 § 1225(b)(2).

16 Petitioner’s removal proceedings remain ongoing. The IJ has sustained the
17 inadmissibility charges, and the Petitioner has filed an application for Cancellation for
18 Non-Lawful Permanent Residents pursuant to 8 U.S.C. § 1229b(b); INA § 240A(b)(1).
19 *See* Exhibit 6 (PCQS Printout). Petitioner has a merits hearing scheduled for May 12,
20 2026 at 10:30 a.m. *See* Exhibit 7 (Notice of Hearing). As such, there is no
21 administratively final order of removal at this time pursuant to 8 C.F.R. § 1241.1 and
22 Petitioner remains mandatorily detained under 8 U.S.C. § 1225(b)(2).

23 24 **III. STATUTORY BACKGROUND**

25 “Lawfully admitted for permanent residence” is defined by statute as “having
26 been lawfully accorded the privilege of residing permanently in the United States as an
27 immigrant in accordance with the immigration laws, such status not having changed.”
28 8 USC § 1101(a)(20). Section 212(a)(9)(A)(i) of the INA, 8 U.S.C. §1182(a)(9)(A)(i),

reads that “Any alien who has been ordered removed under section 1225(b)(1) of this title or at the end of proceedings under section 1229a of this title initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.” Section 212(a)(6)(C)(i) of the INA, 8 U.S.C. §1182(a)(6)(C)(i) states that “Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible. Section 212(a)(7)(A)(i) of the INA, 8 U.S.C. §1182(a)(7)(A)(i) reads that any alien “who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title” is inadmissible.

IV. ARGUMENT

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

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

Here, Petitioner's claims of unlawful detention necessarily arise from the Department of Homeland Security's² decision to commence removal proceedings against him because that decision unavoidably triggers mandatory detention under 8 U.S.C. § 1226(c) until the conclusion of his removal proceedings. Removal proceedings

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

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

13 **B. Petitioner is lawfully detained as an Arriving Alien Applicant for**
14 **Admission**

15 Even if the Court assumes jurisdiction to review Petitioner’s claims, the Court
16 must deny his request for relief because Petitioner is lawfully detained under 8 U.S.C.
17 § 1225(b)(2).

18 **1. Petitioner is subject to mandatory detention under 8 U.S.C**
19 **§ 1225(b)(2)**

20 Here, due to Petitioner’s deliberate omission of his alias, Petitioner was never
21 lawfully admitted as an LPR. As such, Petitioner is properly classified as an arriving
22 alien applicant for admission. Because Petitioner is properly classified as an arriving
23 alien applicant for admission, Petitioner is lawfully detained because he is subject to
24 mandatory detention under 8 U.S.C. § 1225(b)(2).

25 Section 235 of the Immigration and Nationality Act, codified at 8 U.S.C. § 1225,
26 applies to an “applicant for admission,” defined as an “alien present in the United States
27 who has not been admitted” or “who arrives in the United States.” 8 U.S.C. §
28 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those covered

1 by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S.
2 281, 287 (2018).

3 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
4 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
5 document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
6 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if “the alien
7 indicates an intention to apply for asylum . . . or a fear of persecution,” immigration
8 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
9 “If the officer determines at the time of the interview that [the] alien has a credible fear
10 of persecution . . . , the alien *shall be detained* for further consideration of the
11 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien
12 does not indicate an intent to apply for asylum, does not express a fear of persecution,
13 or is “found not to have such a fear,” they “shall be detained . . . until removed” from
14 the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

15 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
16 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”
17 *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained
18 for a removal proceeding “if the examining immigration officer determines that [the]
19 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8
20 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“for aliens
21 arriving in and seeking admission into the United States who are placed directly in full
22 removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),
23 mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*,
24 583 U.S. at 299). However, DHS has the sole discretionary authority to temporarily
25 release on parole “any alien applying for admission to the United States” on a “case-by-
26 case basis for urgent humanitarian reasons or significant public benefit.” *Id.* §
27 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

1 As Petitioner's removal proceedings are pending, and he has not been granted
2 temporary parole, section 1225(b)(2) mandates his detention until the proceedings have
3 concluded. *Jennings*, 583 U.S. at 297 ("Once those proceedings end, detention under §
4 1225(b) must end as well."). Because Petitioner is lawfully detained under section
5 1225(b)(2) and the statute does not entitle him to a bond hearing at this time, his petition
6 must be denied. *See, e.g., Zelaya Gonzalez v. Matuszewski*, No. 23-CV-151 JLS-KSC,
7 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to find that the
8 petitioner had no right to release or a bond hearing).

9 **2. Petitioner's detention does not violate due process**

10 Petitioner's detention under § 1225(b)(2) does not violate due process. In
11 *Demore*, the Supreme Court considered the statute at issue and held: "Detention during
12 removal proceedings is a constitutionally permissible part of that process." 538 U.S. at
13 531. And the Court may not impose temporal limitations on the statute where none exist.
14 *See Jennings*, 583 U.S. at 312 (rejecting the dissent's drawing of a "6-month limitation
15 out of thin air").

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

27 As of the date of the filing of this Return, Petitioner has been in ICE custody
28 since December 20, 2025, that is, for a little over five months. Petitioner's detention

1 falls significantly short of the length courts have found to raise due process concerns
2 for individuals detained under 8 U.S.C. § 1225(b)(2). Though the length of detention is
3 considered an important factor, courts have also considered the likely duration of future
4 detention and any delay in the removal proceedings by the petitioner or the government
5 to determine whether “detention has become so unreasonable as to require an initial
6 bond hearing.” *See Sanchez-Rivera*, 2023 WL 139801, at *6. Based on the present
7 record, these factors do not raise due process concerns. On this record, the Court cannot
8 find that “detention has become so unreasonable as to require an initial bond hearing.”
9 *Sanchez-Rivera*, 2023 WL 139801, at *6.

10 **III. CONCLUSION**

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

13 DATED: May 8, 2026

Respectfully submitted,

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