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

9 **OBDULIO NOE LOPEZ,**

10 **Petitioner,**

11 **v.**

12 **WARDEN OF IMPERIAL DETENTION**  
13 **FACILITY, et al.,**

14 **Respondents.**

Case No.: 26-cv-02746-JES-AHG

**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. ECF No. 1 at 4. Contrary to Petitioner’s misunderstanding of  
5 his own immigration history, Petitioner is properly detained 8 U.S.C. § 1231(a) as he  
6 has a final order of removal. Consequently, Respondents ask that the Court dismiss or  
7 deny Petitioner’s requested relief.

8 **II. FACTUAL BACKGROUND**

9 On April 30, 2026, Petitioner filed this petition for writ of habeas corpus. ECF 1.  
10 On May 14, 2026, Petitioner filed an amended petition for writ of habeas corpus. ECF  
11 6. Respondents will now address Petitioner’s amended petition. Petitioner’s amended  
12 habeas petition is premised on Petitioner’s own understanding of the outcomes of his  
13 first and second removal proceedings. ECF 6-1. Petitioner is mistaken about what  
14 transpired during his first and second removal proceedings. *See infra*. As a result,  
15 Petitioner comes to the wrong conclusion regarding his detention authority. *See id.*

16 Petitioner is a native and citizen of Guatemala. *See* Exhibit 1 (Notice to Appear,  
17 dated November 6, 2006).<sup>1</sup> He entered the U.S. at or near San Ysidro, California on or  
18 about February 17, 1990. *See id.* Petitioner has not departed since his initial entry. ECF  
19 6-1. On November 6, 2006, ICE issued Petitioner a Notice to Appear (NTA) under the  
20 Alien Registration Number (A#)  initiating removal proceedings. *See*  
21 Exhibit 1. Within his removal proceedings under § 1229a, Petitioner has had the  
22 opportunity to apply for relief from removal before an immigration judge (IJ), including  
23 asylum under 8 U.S.C. § 1158, withholding of removal under 8 U.S.C. § 1231(b)(3),  
24 and relief under the Convention Against Torture, as well as for the Nicaraguan  
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<sup>1</sup> 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 Adjustment and Central American Relief Act (NACARA) Special Rule Cancellation  
2 under NACARA § 203(a)(1); 8 C.F.R. § 1240.66(b).

3 On October 19, 2011, the IJ denied all forms of relief, and Petitioner was granted  
4 voluntary departure. *See* Exhibit 2 (IJ order dated October 19, 2011). Petitioner timely  
5 filed an appeal to the Board of Immigration Appeals (BIA) regarding the denial of his  
6 relief applications. *See* Exhibit 3 (BIA decision dismissing appeal). On May 21, 2013,  
7 the BIA dismissed Petitioner’s appeal, did not reinstate the period of his voluntary  
8 departure and ordered Petitioner removed. *See id.* at 3. Petitioner’s order of removal  
9 became final on that day. 8 C.F.R. § 1241.1(a) (“An order of removal made by the  
10 immigration judge at the conclusion of proceedings under section 240 of the Act shall  
11 become final upon dismissal of an appeal by the Board of Immigration Appeals”).

12 Petitioner was detained by ICE on November 17, 2025. ECF 6-1. On November  
13 18, 2025, ICE improvidently issued a second NTA under the A#  *See*  
14 Exhibit 4 (NTA dated 11.18.2025). On April 13, 2026, the IJ terminated Petitioner’s  
15 second removal proceedings “because there is an outstanding removal order” and so  
16 “[t]here is no relief [the IJ] can grant in removal proceedings with an outstanding  
17 removal order.” *See* Exhibit 5 (IJ order dated April 13, 2026). Neither party appealed  
18 the IJs termination of Petitioner’s second removal proceedings. ECF 6 at 5. ICE is  
19 seeking to execute Petitioner’s removal order.

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

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

25 Here, Petitioner’s claims of unlawful detention necessarily arise from the  
26 Department of Homeland Security’s<sup>2</sup> decision to commence removal proceedings  
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28 <sup>2</sup> “In 2002, Congress transferred the Attorney General’s immigration enforcement  
responsibilities to the Secretary of Homeland Security.” *Ibarra-Perez v. United States*,

1 against him because that decision unavoidably triggers mandatory detention under 8  
2 U.S.C. § 1226(c) until the conclusion of his removal proceedings. Removal proceedings  
3 are commenced when, as occurred here, “the alien is issued a Notice to Appear before  
4 an immigration court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx),  
5 2008 WL 11336833, at \*3 (C.D. Cal. Sept. 11, 2008). The government “may arrest the  
6 alien against whom proceedings are commenced and detain that individual until the  
7 conclusion of those proceedings.” *Herrera-Correra*, 2008 WL 11336833, at \*3. “Thus,  
8 an alien’s detention throughout this process arises from the [government’s] decision to  
9 commence proceedings” and review of claims arising from such detention is barred  
10 under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007));  
11 *see also Wang*, 2010 WL 11463156, at \*6.

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

15 **B. Petitioner is lawfully detained under U.S.C. § 1231(a)**

16 Even if the Court assumes jurisdiction to review Petitioner’s claims, the Court  
17 must deny his request for relief because Petitioner is lawfully detained under 8 U.S.C.  
18 § 1231(a). In the end, because Petitioner is in post-final order detention, Petitioner is  
19 in lawful custody. *See* 8 U.S.C. § 1231(a). Thus, his petition for a writ of habeas corpus  
20 must be denied.

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154 F.4th 989, 995 n.2 (9th Cir. 2025).

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**III. CONCLUSION**

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

DATED: May 19, 2026

Respectfully submitted,

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