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

9 NOE BECERRA-GONZALEZ,
10 **Petitioner,**
11 **v.**
12 PATRICK DIVVER, et al.,
13 **Respondents.**
14

Case No.: 26-cv-02908-AGS-MSB

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

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1 **I. INTRODUCTION**

2 Petitioner filed a second 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 13. Petitioner now claims that he must be
5 released based on a derivative U.S. citizenship claim. Because Petitioner is properly
6 subject to mandatory detention under § 1226(c) and has not presented a probative claim
7 to U.S. citizenship, Respondents ask that the Court dismiss or deny Petitioner’s
8 requested relief.

9 **II. FACTUAL BACKGROUND**

10 Petitioner is a native and citizen of Mexico. *See* Ex. 1 (NTA).¹ He was admitted
11 into the United States as a Lawful Permanent Resident (LPR) on or about January 17,
12 1983. *See id.* On December 18, 2017, Petitioner was convicted of a felony for
13 importation of methamphetamine in violation of Title 21 U.S.C. §§ 952, 960, and for
14 which he was sentenced to 27 months of imprisonment. *See* Exhibit 2 (I213); *see also*
15 Exhibit 3 (Conviction Documents).

16 On March 2, 2026, Petitioner applied for admission at Andrade Winterhaven,
17 California. *See* Exhibit 1. Petitioner was apprehended at the Port of Entry, and the
18 Department of Homeland Security (DHS) issued Petitioner a Notice to Appear,
19 charging him with removability under Title 8 of the U.S. Code (USC)
20 §1182(a)(2)(C)(i)/ §212(a)(2)(C)(i) of the Immigration and Nationality Act (INA), as
21 an alien who the consular officer or the Attorney General knows or has reason to believe
22 is or has been an illicit trafficker in any controlled substance or in any listed chemical
23 (as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802)), or is or
24 has been a knowing aider, abettor, assister, conspirator, or colluder with others in the
25 illicit trafficking in any such controlled or listed substance or chemical, or endeavored
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27 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 to do so. *See id.* Petitioner remains mandatorily detained pursuant to 8 U.S.C. § 1226(c)
2 while his removal proceedings remain ongoing.

3 On March 30, 2026, Petitioner filed his first habeas petition claiming violations
4 of the Administrative Procedures Act (APA) and violation of his right to procedural due
5 process under the Fifth Amendment. *Becerra-Gonzalez v. Divver*, 26-cv-01997-JLS-
6 DEB, No. 1. Nowhere in his first petition did Petitioner claim to be a United States
7 Citizen. *See generally id.* On April 15, 2026, this Court denied Petitioner’s first petition,
8 holding that “Petitioner was previously convicted of a felony for the importation of
9 methamphetamine and sentenced to twenty-seven months of imprisonment....
10 Therefore, Petitioner is mandatorily detained pursuant to 8 U.S.C. § 1226(c).” *Becerra-*
11 *Gonzalez*, No. 5 at 2. This Court also held that because Petitioner had only been detained
12 for two months “the Court finds that due process concerns do not require ordering a
13 bond hearing at this stage.” *See id.* at 4. Therefore, on April 15, 2026, the Court denied
14 his first petition. *See id.*

15 Less than a month later, on May 8, 2026, Petitioner then filed his second habeas
16 petition, in which he now suddenly claims his detention to be unlawful as he has a claim
17 to derivative U.S. citizenship. *Becerra-Gonzalez v. Divver*, 26-cv-02908-AGS-MSB,
18 No. 1 at 8. However, his U.S. citizenship claim is improperly supported. First, Petitioner
19 claims that “DHS cannot continue detaining Petitioner as an immigration detainee
20 without meaningfully addressing whether he derived citizenship by operation of law”
21 and that because “[DHS has] not issued a reasoned determination establishing that
22 Petitioner is subject to immigration detention as an alien” his detention “therefore
23 exceeds the lawful scope of immigration detention authority.” However, Petitioner
24 ignores the fact that DHS has already conducted an internal analysis and has concluded
25 that Petitioner has not presented a probative claim to US citizenship.²

26 Petitioner claims that his “derivative-citizenship claim arises from statutory facts
27 existing before his eighteenth birthday, including his lawful permanent residence as a
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² This information was provided by ICE Counsel.

1 child and his father’s naturalization.” *See id.* However, other than his claim regarding
2 his father’s naturalization, Petitioner presents no other facts or evidence that would
3 establish his US citizenship claim. Petitioner has several administrative remedies
4 available to support his US citizenship claim, such as applying for a Certificate of
5 Citizenship (Form N-600) through U.S. Citizenship and Immigration Service (USCIS)
6 or by applying for a passport with the U.S. Department of State. However, Petitioner
7 has not pursued either of these viable administrative remedies. *See* Exhibit 4 (Personal
8 Centric Identity Services – Printout). Instead, Petitioner has filed this second petition.

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

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

14 Here, Petitioner’s claims of unlawful detention necessarily arise from the
15 Department of Homeland Security’s³ decision to commence removal proceedings
16 against him because that decision unavoidably triggers mandatory detention under 8
17 U.S.C. § 1226(c) until the conclusion of his removal proceedings. Removal proceedings
18 are commenced when, as occurred here, “the alien is issued a Notice to Appear before
19 an immigration court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx),
20 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). The government “may arrest the
21 alien against whom proceedings are commenced and detain that individual until the
22 conclusion of those proceedings.” *Herrera-Correra*, 2008 WL 11336833, at *3. “Thus,
23 an alien’s detention throughout this process arises from the [government’s] decision to
24 commence proceedings” and review of claims arising from such detention is barred

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26
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 under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007));
2 *see also Wang*, 2010 WL 11463156, at *6.

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

6 **B. Petitioner is lawfully detained**

7 Even if the Court assumes jurisdiction to review Petitioner’s claims, the Court
8 must deny his request for relief because Petitioner has not presented a probative claim
9 to U.S. citizenship and is therefore lawfully detained under 8 U.S.C. § 1226(c).

10 **1. Because Petitioner has not presented a probative Claim to U.S.**
11 **citizenship, Petitioner is subject to mandatory detention under 8**
12 **U.S.C § 1226(c).**

13 As explained above, DHS has concluded that Petitioner has not presented a
14 probative claim to U.S. citizenship. Consequently, he is lawfully detained because he is
15 subject to mandatory detention under 8 U.S.C. § 1226(c).

16 Section 1226(c) provides that the Secretary “shall take into custody any alien who
17 . . . is inadmissible by reason of having committed any offense covered in section
18 1182(a)(2) of this title” and “is deportable by reason of having committed any offense
19 covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title.” 8 U.S.C.
20 § 1226(c)(1)(A)-(B). The Supreme Court has explained that the section properly
21 “governs detention of deportable criminal aliens pending their removal proceedings,”
22 *Demore v. Kim*, 538 U.S. 510, 527–28 (2003). Under 8 U.S.C. § 1182(a)(2)(A)(i)(II),
23 “any alien convicted of, or who admits having committed, or who admits committing
24 acts which constitute the essential elements of . . . a violation of (or a conspiracy or
25 attempt to violate) any law or regulation of a State, the United States, or a foreign
26 country relating to a controlled substance . . . is inadmissible.” Under 8 U.S.C
27 § 1227(a)(2)(B)(i), “[a]ny alien who at any time after admission has been convicted of
28 a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the
United States, or a foreign country relating to a controlled substance” Based on his

1 2017 conviction, Petitioner is subject to mandatory detention under the statute. *See* 8
2 U.S.C. § 1226(e) (“discretionary judgment regarding the application of this section shall
3 not be subject to review”).

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

16 Because Petitioner is lawfully detained under § 1226(c), and the statute does not
17 entitle him to release at this time, his petition must be denied. *See Nejad v. LaRose*, No.
18 25-cv-2425-AGS-JLB, ECF Nos. 13, 14 (S.D. Cal. Jan. 15, 2026) (denying petition
19 where petitioner was detained under 8 U.S.C. § 1226(c)).

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

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

27 Even if the Court infers a constitutional right against prolonged mandatory
28 detention, Petitioner’s claim still fails. “In general, as detention continues past a year,

1 courts become extremely wary of permitting continued custody absent a bond hearing.”
2 *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. Apr.
3 20, 2023) (citation omitted); *see also, e.g., Sanchez-Rivera v. Matuszewski*,
4 No. 22-cv-1357-MMA-JLB, 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (detained
5 for three years); *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607, at
6 *5 (S.D. Cal. Feb. 21, 2024) (over two-and-a-half years); *Yagao v. Figueroa*,
7 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. Mar. 29, 2019) (two
8 years); *Guyumdzhyan v. Archambeault*, No. 26-cv-269-TWR-BJW, ECF No. 9 (S.D.
9 Cal. Jan. 22, 2026) (over fifteen months). As of the date of the filing of this Return,
10 Petitioner has been in ICE custody for a little over two months. Petitioner’s detention
11 falls significantly short of the length courts have found to raise due process concerns
12 for individuals detained under 8 U.S.C. § 1226(c). Though the length of detention is
13 considered an important factor, courts have also considered the likely duration of future
14 detention and any delay in the removal proceedings by the petitioner or the government
15 to determine whether “detention has become so unreasonable as to require an initial
16 bond hearing.” *See Sanchez-Rivera*, 2023 WL 139801, at *6. Based on the present
17 record, these factors do not raise due process concerns. On this record, the Court cannot
18 find that “detention has become so unreasonable as to require an initial bond hearing.”
19 *Sanchez-Rivera*, 2023 WL 139801, at *6.

20 **C. Petitioner Should Exhaust Administrative Remedies.**

21 The Court should ensure Petitioner properly exhausts administrative remedies.
22 More specifically, if Petitioner believes he is a US citizen, Petitioner should apply for
23 either a Certificate of U.S. Citizenship or U.S. Passport with the corresponding federal
24 agency. The Ninth Circuit requires that “habeas petitioners exhaust available judicial
25 and administrative remedies before seeking relief under § 2241.” *Castro-Cortez v. INS*,
26 239 F.3d 1037, 1047 (9th Cir. 2001). “When a petitioner does not exhaust administrative
27 remedies, a district court ordinarily should either dismiss the petition without prejudice
28 or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion

1 is excused.” *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *see also*
2 *Alvarado v. Holder*, 759 F.3d 1121, 1127 n.5 (9th Cir. 2014) (issue exhaustion is a
3 jurisdictional requirement); *Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (no
4 jurisdiction to review legal claims not presented in the petitioner’s administrative
5 appeal). Here, despite making a U.S. citizenship claim, Petitioner has not taken
6 additional steps to establish his eligibility for derivative U.S. citizenship. Accordingly,
7 the Court should dismiss without prejudice or stay these proceedings until he takes
8 action to validate his claim to U.S. citizenship.

9
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 18, 2026

Respectfully submitted,

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16 *s/ Antonio Estrada*
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19 Attorney for Respondents
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