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

9 MARIA DE LA PAZ LUQUIN DE GARZA,

Case No.: 26-cv-03607-JES-JLB

10 Petitioner,

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

11 v.

12 WARDEN/OFFICER IN CHARGE, et al.,

13 Respondents.
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I. INTRODUCTION

Petitioner filed a habeas petition under 28 U.S.C. § 2241 challenging her detention by Immigration and Customs Enforcement (ICE) and requesting the Court to release her from custody or order a bond hearing. ECF No. 1 at 20-21. Petitioner has also filed a motion for temporary restraining order. As the petition and motion assert the same claims and relief, Respondents respond to both herein for the sake of judicial efficiency. Petitioner's removal proceedings remain ongoing, and as an alien convicted of a felony – for Importation of Methamphetamine and Importation of Heroin in violation of Title 21 U.S.C. Section 952 & 960 on April 5, 2023, and for which she was sentenced to four years – Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c) pending a final order of removal. Because Petitioner is properly subject to mandatory detention under § 1226(c), Respondents ask that the Court dismiss or deny Petitioner's requested relief.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico, who was admitted into the United States as a Lawful Permanent Resident (LPR). *See* Ex. 1 (Notice to Appear);¹ *See* Exhibit 2 (I-213 dated January 3, 2019). On January 3, 2019, Petitioner was apprehended at the Otay Mesa Port of Entry due to drugs being located in her vehicle. *See* Exhibit 2. She was paroled into the U.S. for the purposes of criminal prosecution. *See id.* On April 5, 2023, Petitioner was convicted of a felony for Importation of Methamphetamine and Heroin in violation of Title 21 U.S.C. Section 952 & 960, and for which she was sentenced to four years. *See* Exhibit 3 (Conviction Documents).

On March 2, 2026, Petitioner applied for admission at CBX port of entry, California after departing the U.S. *See* Exhibit 1; *see also* Exhibit 4 (I-213 dated May 13, 2026). Any previously issued parole was terminated as a matter of law upon

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.

Petitioner departing the U.S. *See* 8 C.F.R § 212.5 (e)(1)(i)(Parole shall be automatically terminated without written notice upon the departure from the United States of the alien). Petitioner was apprehended at the Port of Entry, and the Department of Homeland Security (DHS) issued Petitioner a Notice to Appear, charging her with removability under section 212(a)(2)(C)(i) of the Immigration and Nationality Act (INA), as an alien who the consular officer or the Attorney General knows or has reason to believe is or has been an illicit trafficker in any controlled substance or in any listed chemical (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), or is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in the illicit trafficking in any such controlled or listed substance or chemical, or endeavored to do so. *See* Exhibit 1; *see also* Exhibit 4. Petitioner's removal proceedings remain ongoing. *See* Exhibit 5 (Notice of Hearing).² Petitioner remains mandatorily pursuant to 8 U.S.C. § 1226(c) while her removal proceedings remain ongoing.

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's³ decision to commence removal proceedings against her because that decision unavoidably triggers mandatory detention under 8 U.S.C. § 1226(c) until the conclusion of her removal proceedings. Removal proceedings are commenced when, as occurred here, "the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). The government

² Petitioner is not subject to a final order of removal. *See* 8 C.F.R. § 1241.1.

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 “may arrest the alien against whom proceedings are commenced and detain that
2 individual until the conclusion of those proceedings.” *Herrera-Correra*, 2008 WL
3 11336833, at *3. “Thus, an alien’s detention throughout this process arises from the
4 [government’s] decision to commence proceedings” and review of claims arising from
5 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
6 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

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

10 **B. Petitioner is lawfully detained**

11 Even if the Court assumes jurisdiction to review Petitioner’s claims, the Court
12 must deny her request for relief because Petitioner is lawfully detained under 8 U.S.C.
13 § 1226(c).

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

16 Petitioner is lawfully detained because she is subject to mandatory detention
17 under 8 U.S.C. § 1226(c).

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

1 § 1227(a)(2)(B)(i), “[a]ny alien who at any time after admission has been convicted of
2 a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the
3 United States, or a foreign country relating to a controlled substance” Based on his
4 2017 conviction, Petitioner is subject to mandatory detention under the statute. *See* 8
5 U.S.C. § 1226(e) (“discretionary judgment regarding the application of this section shall
6 not be subject to review”).

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

19 Because Petitioner is lawfully detained under § 1226(c), and the statute does not
20 entitle her to release at this time, his petition must be denied. *See Nejad v. LaRose*, No.
21 25-cv-2425-AGS-JLB, ECF Nos. 13, 14 (S.D. Cal. Jan. 15, 2026) (denying petition
22 where petitioner was detained under 8 U.S.C. § 1226(c)).

23 2. Petitioner’s detention does not violate due process

24 Petitioner’s detention under § 1226(c) does not violate due process. In *Demore*,
25 the Supreme Court considered the statute at issue and held: “Detention during removal
26 proceedings is a constitutionally permissible part of that process.” 538 U.S. at 531. And
27 the Court may not impose temporal limitations on the statute where none exist. *See*
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1 *Jennings*, 583 U.S. at 312 (rejecting the dissent’s drawing of a “6-month limitation out
2 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). As of the date of the filing of this Return,
14 Petitioner has been in ICE custody for less than two months. Petitioner’s detention falls
15 significantly short of the length courts have found to raise due process concerns for
16 individuals detained under 8 U.S.C. § 1226(c). Though the length of detention is
17 considered an important factor, courts have also considered the likely duration of future
18 detention and any delay in the removal proceedings by the petitioner or the government
19 to determine whether “detention has become so unreasonable as to require an initial
20 bond hearing.” *See Sanchez-Rivera*, 2023 WL 139801, at *6. Based on the present
21 record, these factors do not raise due process concerns. On this record, the Court cannot
22 find that “detention has become so unreasonable as to require an initial bond hearing.”
23 *Sanchez-Rivera*, 2023 WL 139801, at *6.

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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: June 24, 2026

Respectfully submitted,

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s/ Antonio Estrada
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