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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ELDIZAR AGUILAR-MARTIN,
11 Petitioner,

12 v.

13 MARKWAYNE MULLIN, *et al.*,
14 Respondents.

Case No.: 26-cv-3130-RBM-DDL

**RESPONDENTS' RETURN
TO HABEAS PETITION**

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. 9 at 11. However, as Petitioner's removal
5 proceedings remain ongoing, and as an alien convicted of a Crime Involving Moral
6 Turpitude (CIMT) – i.e. a conviction for Inflicting Corporal Injury on a Spouse under
7 Cal. P.C. § 273.5, sustained in 2018 and for which he received a 7-year sentence –
8 Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c) pending a final
9 order of removal. Because Petitioner is properly subject to mandatory detention under
10 § 1226(c), Respondents ask the Court to dismiss or deny Petitioner's requested relief.

11 **II. FACTUAL BACKGROUND**

12 Petitioner is a native and citizen of Mexico. *See* Exhibit 1 (Notice to Appear).¹
13 Petitioner was identified by Immigration and Customs Enforcement (ICE) as a criminal
14 alien through research via law enforcement databases. *See* Exhibit 2 (I-213). Petitioner
15 has a significant criminal history, including multiple convictions. *See* Exhibit 3 (FBI
16 Record of Arrest and Prosecutions). Notably, on November 9, 2018, Petitioner was
17 arrested for Cal. P.C. § 273.5 - Inflicting Corporal Injury on a Spouse. *See id.* Petitioner
18 was ultimately convicted and sentenced to 7 years in prison. *See id.*

19 On April 22, 2026, Petitioner was encountered as part of a targeted operation by
20 Homeland Security Investigations (HSI), Inland Empire (IE), Border Enforcement
21 Security Taskforce (Best) and Border Patrol (BP) agents. *See* Exhibit 2. Agents
22 observed Petitioner drive out of his residence. *See id.* Agents conducted an investigatory
23 stop, and positioned their vehicles to block Petitioner from attempting to flee. *See id.*
24 Petitioner attempted to abscond by backing his Ford Explore into an agent's vehicle
25 causing damage to the front bumper. *See id.* Petitioner was arrested by the agents, was
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27 ¹ The attached exhibits are true copies of documents obtained from ICE counsel, with
28 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 issued a notice to appear and placed in removal proceedings. *See id.*, *see also* Exhibit
2 1. Petitioner's removal proceedings remain pending, his next master calendar hearing
3 is set for June 4, 2026. *See* Exhibit 4 (Notice of Hearing)

4 5 **III. 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's² 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 ² "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 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 assues jurisdiction to review Petitioner’s claims, the Court must
6 deny his request for relief because Petitioner is lawfully detained under 8 U.S.C.
7 § 1226(c).

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

9 Petitioner is lawfully detained because he is subject to mandatory detention under
10 8 U.S.C. § 1226(c). That statute provides that the Attorney General “shall take into
11 custody any alien who . . . is inadmissible by reason of having committed any offense
12 covered in §1182(a)(2) of this title,” 8 U.S.C. § 1226(c)(1)(A). In addition, §1182(a)(2)
13 provides that any alien convicted of, or who admits having committed, or who admits
14 committing acts which constitute the essential elements of a CIMT (other than a purely
15 political offense) or an attempt or conspiracy to commit such a crime is inadmissible. 8
16 U.S.C. §1182(a)(2)(i)(I).

17 Here, November 9, 2018, Petitioner was convicted of Cal. P.C. § 273.5 -
18 Inflicting Corporal Injury on a Spouse, for which he was Petitioner was ultimately
19 convicted and sentenced to 7 years in prison. This conviction is a CIMT and makes him
20 inadmissible under 8 U.S.C. §1182(a)(2). Because Petitioner is inadmissible for having
21 committed offenses listed in 8 U.S.C. § 1226(c), he is subject to mandatory detention
22 under the statute.

23 To the extent Petitioner alleges that he is entitled to release or a bond hearing
24 under the INA, the statutory text explicitly forecloses such contentions and permits
25 release “*only if* the Attorney General decides’ both that doing so is necessary for
26 witness-protection purposes and that the alien will not pose a danger or flight risk.”
27 *Jennings v. Rodriguez*, 583 U.S. 281, 303 (emphasis in original). Because Petitioner’s
28 removal proceedings are pending and he has not been granted release for

1 witness-protection purposes, § 1226(c) mandates his detention until the proceedings
2 have concluded. *See Demore*, 538 U.S. at 527–28 (noting that detention under the
3 statute has “a definite termination point” and “[s]uch detention necessarily serves the
4 purpose of preventing deportable criminal aliens from fleeing prior to or during their
5 removal proceedings, thus increasing the chance that, if ordered removed, the aliens
6 will be successfully removed.”).

7 Because Petitioner is lawfully detained under § 1226(c), and the statute does not
8 entitle him to release at this time, his petition must be denied.

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

10 Petitioner’s detention under § 1226(c) does not violate due process. In *Demore*,
11 the Supreme Court considered the statute at issue and held: “Detention during removal
12 proceedings is a constitutionally permissible part of that process.” 538 U.S. at 531. And
13 the Court may not impose temporal limitations on the statute where none exist. *See*
14 *Jennings*, 583 U.S. at 312 (rejecting the dissent’s drawing of a “6-month limitation out
15 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.
20 Apr. 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,
23 at *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). As of the date of the filing of this Return, Petitioner has been in ICE custody
26 for approximately 40 days. Petitioner’s detention falls significantly short of the length
27 courts have found to raise due process concerns for individuals detained under 8 U.S.C.
28 § 1226(c). Though the length of detention is considered an important factor, courts

1 have also considered the likely duration of future detention and any delay in the
2 removal proceedings by the petitioner or the government to determine whether
3 “detention has become so unreasonable as to require an initial bond hearing.” *See*
4 *Sanchez-Rivera*, 2023 WL 139801, at *6. On this record, the Court cannot find that
5 “detention has become so unreasonable as to require an initial bond hearing.”
6 *Sanchez-Rivera*, 2023 WL 139801, at *6.

7 **C. Petitioner’s is not Part of the Maldonado Batista Class Membership,**
8 **as he is detained under U.S.C. § 1226(c).**

9 Petitioner claims to be a member of the Bond Eligible Class certified in
10 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---,
11 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). However, this is incorrect, as Petitioner
12 is NOT a class member. The District Court certified the following Bond Eligible Class:

13 “All noncitizens in the United States without lawful status who (1) have entered
14 or will enter the United States without inspection; (2) were not or will not be
15 apprehended upon arrival; and (3) **are not or will not be subject to detention under**
16 **8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231** at the time the Department of Homeland
17 Security makes an initial custody determination. *See id.* (Emphasis added)

18 Here, as previously explained, Petitioner was convicted of P.C. § 273.5 -
19 Inflicting Corporal Injury on a Spouse, for which he was sentenced to 7 years in prison.
20 This conviction is a CIMT, a crime that makes Petitioner subject to detention under 8
21 U.S.C. § 1226(c). As such, Petitioner is not a *Maldonado Bautista* class member and
22 is therefore lawfully detained.

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1 **IV. CONCLUSION**

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

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5 DATED: June 2, 2026

Respectfully submitted,

6 ADAM GORDON
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8 s/ Antonio Estrada
9 ANTONIO ESTRADA
10 Special Assistant United States Attorney
11 Attorney for Respondents
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