

1 TIMOTHY COURCHAIINE

United States Attorney

2 District of Arizona

3 KATHERINE R. BRANCH

Assistant United States Attorney

4 Arizona State Bar No. 025128

5 Two Renaissance Square

40 North Central Avenue, Suite 1800

6 Phoenix, Arizona 85004-4449

7 Telephone: (602) 514-7500

8 Facsimile: (602) 514-7760

E-Mail: Katherine.Branch@usdoj.gov

*Attorneys for Respondents*

9 **IN THE UNITED STATES DISTRICT COURT**

10 **FOR THE DISTRICT OF ARIZONA**

11 Minerva Lopez Hernandez,

12 Petitioner,

13 v.

14 Pamela Bondi, et al.,

15 Respondents.

No. 2:25-cv-04466-SMB—DMF

**RESPONSE TO MOTION FOR  
TEMPORARY RESTRAINING  
ORDER AND TO PETITION FOR  
WRIT OF HABEAS CORPUS**

16  
17 Respondents Pamela Bondi, Attorney General of the United States; John Cantu,  
18 Phoenix Field Office Director, U.S. Immigration and Customs Enforcement (“ICE”),  
19 Enforcement and Removal Operations (“ERO”); Kristi Noem, Secretary of Homeland  
20 Security (“DHS”); Fred Figueroa, Warden, Eloy Detention Center; and Todd Lyons, Acting  
21 Director of ICE (“Respondents”), by and through undersigned counsel, hereby respond in  
22 opposition to Petitioner’s Motion for Temporary Restraining Order (Doc. 2) and her Petition  
23 for Writ of Habeas Corpus (Doc. 1).

24 **I. INTRODUCTION**

25 The Petition asserts four causes of action challenging Petitioner’s detention: 1) that  
26 her detention under 8 U.S.C. § 1225(b)(2)(A) violates the law; 2) that Respondents’  
27 application of 8 U.S.C. § 1225(b)(2)(A) to Petitioner violates the Administrative Procedures  
28 Act; and 3) that Petitioner’s detention violates the Suspension Clause; and 4) that

1 Petitioner's detention is a state-created danger that violates her Fifth Amendment due  
2 process rights.

3 In Petitioner's Motion for Temporary Restraining Order, she seeks an order from the  
4 Court enjoining Respondents from continuing to detain her, directing her immediate release  
5 from immigration detention, and enjoining Respondents from removing Petitioner from the  
6 United States.

7 **II. BAUTISTA RESOLVES PETITIONER'S CLAIM REGARDING HER**  
8 **ENTITLEMENT TO A BOND HEARING.**

9 Insofar as the Petition challenges Respondents' detention of Petitioner pursuant to 8  
10 U.S.C. § 1225(b)(2)(A), Respondents advise the Court that Petitioner appears to be a  
11 member of the Bond Eligible Class certified in *Bautista v. Santacruz*, No. 5:25-CV-01873-  
12 SSS-BFM, -- F.R.D. --, 2025 WL 3288403, at \*9 (C.D. Cal. Nov. 25, 2025). On December  
13 18, 2025, the *Bautista* court entered final judgment as to the Bond Eligible Class. *See*  
14 *Bautista*, ECF No. 94. A notice of appeal was then filed by the *Bautista* respondents on  
15 December 18, 2025. *See Bautista*, ECF No. 95.

16 Accordingly, Respondents acknowledge that Petitioner's claim in this action as to  
17 her entitlement to a bond hearing appears to be subject to the *Bautista* judgment and to any  
18 applicable appellate proceedings relating to it. To the extent Petitioner seeks an order  
19 requiring such a bond hearing, it should be consistent with what courts in this district have  
20 generally ordered in similar cases, which is to require such a hearing be held within seven  
21 (7) days. However, because the Immigration Court will be closed from December 24-  
22 December 28, Respondents respectfully request that the Court, if it orders a hearing, extend  
23 the deadline to conduct the hearing to account for the upcoming closure of the Immigration  
24 Court.

24 **III. THE COURT CANNOT ENJOIN PETITIONER'S REMOVAL.**

25 Petitioner does not assert a cause of action related to her removal from the United  
26 States, but nonetheless seeks a Court order requiring Respondents to provide five days'  
27 notice to the Court and to Petitioner before she is removed (Doc. 1 at Prayer for Relief, ¶ 6)  
28 and seeks a preliminary injunction enjoining her removal from the United States (Doc. 2 at

1 2, 18). Petitioner does not address this request for relief in the Petition or in the Motion other  
2 than requesting it in the Petition's Prayer for Relief and the Motion's introduction and  
3 conclusion. Even if Petitioner had addressed this issue substantively or asserted some basis  
4 for the Court to award such relief, the Court lacks jurisdiction to enjoin Petitioner's removal  
5 from the United States.

6 The REAL ID Act eliminated district court habeas corpus jurisdiction over orders of  
7 removal and vested jurisdiction to review such orders exclusively in the courts of appeal.  
8 *Puri v. Gonzales*, 464 F.3d 1036, 1041 (9th Cir. 2006); *Iasu v. Smith*, 511 F.3d 881, 886-  
9 87) (9th Cir. 2007). Section 106(a)(iii) of the REAL ID Act states:

10 Notwithstanding any other provision of law (statutory or nonstatutory),  
11 including section 2241 of Title 28, or any other habeas corpus provision, and  
12 sections 1361 and 1651 of such title, a petition for review filed with an  
13 appropriate court of appeals in accordance with this section shall be the sole  
14 and exclusive means for judicial review of an order of removal entered or  
15 issued under any provision of this chapter, except as provided for in  
16 subsection (e).

17 8 U.S.C. §1252(a)(5). The Act also contains a zipper clause, which requires that "questions  
18 of law and fact" arising from an order of removal be raised in a petition for review of that  
19 order brought before the court of appeals. 8 U.S.C. § 1252(b)(9); *Singh v. Gonzales*, 499  
20 F.3d 969, 978 (9th Cir. 2007).

21 The REAL ID Act also stripped the courts of jurisdiction to hear claims contesting  
22 the Attorney General's decision to execute removal orders, providing:

23 Except as provided in this section and notwithstanding any other provision  
24 of law (statutory or nonstatutory), including section 2241 of Title 28, or any  
25 other habeas corpus provision, and sections 1361 and 1651 of such title, no  
26 court shall have jurisdiction to hear any cause or claim by or on behalf of any  
27 alien arising from the decision or action by the Attorney General to  
28 commence proceedings, adjudicate cases, or execute removal orders against  
any alien under this chapter.

8 U.S.C. § 1252(g). Congress spoke clearly that "no court" has jurisdiction over "any cause  
or claim" arising from the execution of removal orders, "notwithstanding any other  
provision of law," whether "statutory or nonstatutory," including habeas, the Declaratory  
Judgment Act, the All Writs Act, or the Administrative Procedures Act. 8 U.S.C. § 1252(g).

1 Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review  
2 under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative  
3 Procedure Act) of claims arising from a decision or action to “execute” a final order of  
4 removal. *See Reno v. American-Arab Anti-Discrimination Committee (“AADC”)*, 525 U.S.  
5 471, 482 (1999).

6 Numerous courts of appeals, including the Ninth Circuit, have consistently held that  
7 claims seeking a stay of removal are barred by 8 U.S.C. § 1252(g). *See Rauda v. Jennings*,  
8 55 F.4th 773, 778 (9th Cir. 2022) (holding Section 1252(g) barred petitioner’s claim seeking  
9 a temporary stay of removal while he pursued a motion to reopen his immigration  
10 proceedings); *Camarena v. Dir., Immigr. & Customs Enf’t*, 988 F.3d 1268, 1274 (11th Cir.  
11 2021) (“[W]e do not have jurisdiction to consider ‘any’ cause or claim brought by an alien  
12 arising from the government’s decision to execute a removal order. If we held otherwise,  
13 any petitioner could frame his or her claim as an attack on the government’s *authority* to  
14 execute a removal order rather than its *execution* of a removal order.”); *E.F.L. v. Prim*, 986  
15 F.3d 959, 964-65 (7th Cir. 2021) (rejecting petitioner’s argument that jurisdiction remained  
16 because petitioner was challenging DHS’s “legal authority” as opposed to its “discretionary  
17 decisions”); *Tazu v. Att’y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020) (observing  
18 that “the discretion to decide *whether* to execute a removal order includes the discretion to  
19 decide *when* to do it. Both are covered by the statute.”) (emphasis in original) (quoted with  
20 approval in *Rauda*, 55 F.4th at 777); *Hamama v. Adducci*, 912 F.3d 869, 874-77 (6th Cir.  
21 2018) (vacating district court’s injunction staying removal, concluding that § 1252(g)  
22 stripped district court of jurisdiction over removal-based claims and remanding with  
23 instructions to dismiss those claims); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir.  
24 2017) (Section 1252(g) applies to constitutional claims arising from the execution of a final  
25 order of removal, and language barring “any cause or claim” made it “unnecessary for  
Congress to enumerate every possible cause or claim”).

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27 ...

28 ...

1 **IV. PETITIONER'S REMAINING CLAIMS FAIL TO STATE A CLAIM FOR**  
2 **RELIEF.**

3 In Count Three, Petitioner asserts a cause of action under the Suspension Clause.  
4 Petitioner's claim is not clear, but the writ of habeas corpus has not been suspended. This  
5 claim should be dismissed or denied for failure to state a claim.

6 Count Four asserts a cause of action for a due process violation premised upon the  
7 state created danger doctrine. Doc. 1 at 28-30. Petitioner alleges that Respondents have  
8 placed her in danger by "misclassifying her under § 1225(b)(2) and denying her the bond  
9 procedures guaranteed under § 1226(a)." Doc. 1 at 29. The state created danger doctrine is  
10 not a cause of action but is instead an exception to the general rule that the "Fourteenth  
11 Amendment generally does not confer any affirmative right to governmental aid." *Estate of*  
12 *Sokai v. Abdelaziz*, 137 F.4th 969, 981 (9th Cir. 2025). The state created danger exception  
13 has two elements "both of which relate to the defendant-officer's conduct,": (1) "the plaintiff  
14 must establish that the officer's affirmative conduct exposed the plaintiff to a foreseeable  
15 danger that [he] would not otherwise have faced," and (2) "the plaintiff must show that the  
16 officer acted with deliberate indifference to a known or obvious danger." *Id.* at 982 (internal  
17 quotation marks and citation omitted, alterations normalized, emphasis in original). *See also*  
18 *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1064-65 (9th Cir. 2006) (requiring a showing  
19 of deliberate indifference to support a state-created danger claim). Here, Petitioner has not  
20 asserted any facts sufficient to state a claim against any of the Respondents sufficient to  
21 demonstrate deliberate indifference.

22 **V. CONCLUSION.**

23 Respondents respectfully suggest that if the Court grants Count One of the Petition,  
24 it should deny the remainder of the Petition as either moot or dismiss it for failing to state a  
25 claim, order Respondents to provide Petitioner a bond redetermination hearing within a  
26 reasonable time accounting for the closure of the Immigration Court from December 24-28,  
27 and deny the Motion for Temporary Restraining Order as moot.

28 Respectfully submitted this 19th day of December, 2025.

TIMOTHY COURCHAINE  
United States Attorney

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District of Arizona

s/ Katherine R. Branch  
KATHERINE R. BRANCH  
Assistant United States Attorney  
*Attorneys for Respondents*