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12 *Attorneys for Respondents*

13 **IN THE UNITED STATES DISTRICT COURT**

14 **FOR THE DISTRICT OF ARIZONA**

15 Manuel Perz Perez,

16 Petitioner,

17 v.

18 Markwayne Mullin, et al.

19 Respondents.

No. 2:26-cv-02088-DWL (CDB)

**RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS (Doc. 1)
AND
RESPONSE TO ORDER TO SHOW
CAUSE (Doc. 4)**

20 Respondents, by and through counsel, respond to the Petition for a Writ of Habeas
21 Corpus (Doc. 1) and Order to Show Cause (Doc. 4).

22 **I. Factual Background.**

23 Petitioner is a native and citizen of Guatemala born on June 4, 2005. Exhibit A,
24 Declaration of Deportation Officer Nellie Martinez ¶ 4. On March 12, 2021, Petitioner
25 entered the United States as an unaccompanied minor (UAC) near Paseo Del Norte, Texas,
26 without being inspected, admitted or paroled by an immigration officer. *Id.* ¶ 5. Petitioner
27 was apprehended by United States Customs and Border Patrol (“CBP”) officers shortly after
28 his unlawful entry and transported to the El Paso Central Processing Center in El Paso,
Texas. *Id.*

On March 14, 2021, Petitioner was issued a Notice to Appear (“NTA”) in removal
proceedings charging him with removability under Immigration and Nationality Act section

1 212(a)(6)(A)(i), as a noncitizen present in the United States without being admitted or
2 paroled. Exhibit A ¶ 6. On March 21, 2021, CBP transferred custody of Petitioner to United
3 States Immigration and Customs Enforcement (“ICE”) in El Paso, Texas. *Id.* ¶ 7. ICE
4 subsequently transferred custody of Petitioner to the Department of Health and Human
5 Services Office of Refugee Resettlement (“ORR”) at the Southwest Key, Casa Padre
6 Juvenile Center in Hidalgo, Texas, pending Petitioner’s hearing before an immigration judge
7 (“IJ”). *Id.*

8 On July 16, 2021, ICE issued Petitioner an Order of Release on Recognizance and
9 released him from custody to a family member. Exhibit A ¶ 8. On June 2, 2022, Petitioner
10 filed a Petition for Amerasian, Widow, or Special Immigrant, Form I-360, with U.S.
11 Citizenship and Immigration Services (USCIS). *Id.* ¶ 9. On June 28, 2022, Petitioner filed a
12 motion to administratively close his removal proceedings. *Id.* ¶ 9. On July 1, 2022, an IJ in
13 granted Petitioner’s motion, closing his removal proceedings. *Id.* ¶ 10. On January 11, 2023,
14 USCIS approved Petitioner’s Form I-360 and granted him Lawful Permanent Residency as
15 a (SL6 class) Special Immigrant Juvenile. *Id.* ¶ 11.

16 On June 22, 2023, the Goodyear Police Department in Goodyear, Arizona, arrested
17 Petitioner for several DUI related offenses. Exhibit A ¶ 12. On August 21, 2023, the
18 Goodyear City Magistrate Court found Petitioner guilty of DUI and sentenced him to ten
19 days imprisonment and a fine. *Id.* ¶ 13. On September 9, 2023, ICE encountered Petitioner
20 at the Maricopa County Sheriff’s Office Intake, Transfer, and Release facility pursuant to his
21 arrest for DUI. *Id.* ¶ 14. ICE exercised prosecutorial discretion in accordance with the current
22 agency guidance and took no action against Petitioner at that time. *Id.*

23 On September 4, 2024, the Chandler Police Department, in Chandler, Arizona, arrested
24 Petitioner for two counts of criminal damage-deface, offence committed on February 2,
25 2023. Exhibit A ¶ 15. The court dismissed the charges. *Id.* On June 16, 2025, ICE moved
26 the IJ to re-calendar Petitioner’s administratively closed removal proceedings. *Id.* ¶ 16. On
27 June 30, 2025, the IJ granted the motion to re-calendar. *Id.* ¶ 18. On December 19, 2025,
28 Mr. Perez filed a motion to terminate his removal proceedings. *Id.* ¶ 19. On January 13, 2026,

1 an IJ granted Petitioner's motion and terminated removal proceedings. *Id.* ¶ 20.

2 On January 18, 2026, the Mesa Police Department arrested Petitioner for disorderly
3 conduct, two counts of extreme DUI and two counts of DUI w/BAC of .08 or more. Exhibit
4 A ¶ 21. These charges are still pending. *Id.* On that same date, ICE encountered Petitioner at
5 the Mesa City Jail ("MCJ") pursuant to his arrest and ICE lodged an Immigration Detainer,
6 Notice of Action, Form I-247, with the MCJ. *Id.* The MCJ transferred custody of Petitioner
7 to ICE and ICE subsequently transferred Petitioner to the Central Arizona Florence
8 Correctional Complex (CAFCC), in Florence pending custody redetermination. *Id.* On
9 January 26, 2026, the National Management Unit identified Petitioner as a potential J.O.P
10 class member and recommended for the asylum case to be forwarded to USCIS for
11 adjudication of the pending I-589. *Id.* ¶ 22.

12 On January 28, 2026, ICE issued Petitioner a Notice to Appear (NTA), Form I-862,
13 charging him with violating Section 212(a)(6)(A)(i) of INA, as a noncitizen present in the
14 United States without being admitted or paroled or who arrived in the United States at any
15 time or place other than as designated by the Attorney General and Section 212(a)(7)(A)(i)(I)
16 of the INA, as an immigrant who, at the time of application for admission, is not in possession
17 of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry
18 document required by the Act, and a valid unexpired passport, or other suitable travel
19 document, or documents of identity and nationality as required under the regulations issue
20 by the Attorney General under section 211(a) of the Act. *Id.* ¶ 23.

21 On February 8, 2026, USCIS contacted ICE to schedule a video call to interview
22 Petitioner regarding his Asylum Application, Form I-589. On March 26, 2026, USCIS
23 conducted Mr. Perez' asylum interview via video call. Exhibit A ¶ 24. On April 2, 2026, ICE
24 received the USCIS asylum UAC Decision and Notice for Non-Eligibility. ICE served
25 Petitioner with the decision. *Id.* ¶ 25. Petitioner's next hearing before the IJ is scheduled for
26 January 21, 2026. *Id.* ¶ 26.

27 **II. The Warden is the only proper Respondent.**

28 Petitioner has named the following as Respondents in this case: Pamela Bondi, Attorney

1 General, Executive Office for Immigration Review, Corina Almeida, Chief Counsel ICE
 2 Office of the Principal Legal Advisor, Christopher McGregor, ICE Field Officer Director and
 3 Luis Rosa, Jr., Warden of Florence Correctional Center.

4 Only Respondent Luis Rosa, Jr., Warden of Florence Correctional Center, is a proper
 5 respondent. *See Doe v. Garland*, 109 F.4th 1188, 1195-96 (9th Cir. 2024) (holding that neither
 6 an ICE Field Office Director nor the Attorney General are proper respondents in a challenge
 7 to immigration detention); *see also Rumsfeld v. Padilla*, 542 U.S. 426, 439-40 & n.13 (2004)
 8 (“In challenges to present physical confinement, we reaffirm that the immediate custodian, not
 9 a supervisory official who exercises legal control, is the proper respondent.”). A habeas
 10 petition may never have multiple respondents, because the only “proper respondent is the
 11 warden of the facility where the prisoner is being held, not the Attorney General or some other
 12 remote supervisory official.” *See Doe*, 109 F.4th at 1195 (quoting *Padilla*, 542 U.S. at 435).

13 **III. Due process likely requires a bond hearing under 8 U.S.C. § 1226(a)**

14 Respondents maintain their litigating position that, in general, noncitizens, such as
 15 Petitioner, present in the United States who have not been admitted or paroled are
 16 “applicants for admission” such that they are subject to mandatory detention under 8 U.S.C.
 17 §1225(b)(2). *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 508 (5th Cir. 2026).

18 Respondents also recognize, however, that several courts have found that noncitizens
 19 with Special Immigrant Juvenile Status previously released, such as Petitioner here, have a
 20 liberty interest in their release pursuant to their SIJS status. *See, e.g., Rodriguez v. Perry*,
 21 747 F. Supp. 3d 911, 919 (E.D. Va. 2024); *Inlago Tocagon v. Moniz*, 802 F. Supp. 3d 93,
 22 101 (D. Mass. 2025). In these cases, the Courts found that proper remedy is a bond hearing
 23 under 8 U.S.C. § 1226(a). *Id.*

24 **IV. Conclusion.**

25 To the extent the Petition seeks an order requiring Respondents to either immediately
 26 release Petitioner or hold a bond hearing, Respondents request that any order granting
 27 Petitioner relief direct the Respondents to provide a bond redetermination hearing under
 28 section 1226(a) within 7 days.

1 Respectfully submitted on April 6, 2026.

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4 District of Arizona

5 s/Theo Nickerson
6 THEO NICKERSON
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