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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 Arletty Diez Uliver,

12 Petitioner,

13 v.

14 Pamela Bondi, et al.,

15 Respondents.

No. CV-26-02766-PHX-SMB (JFM)

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

16 Respondents by and through undersigned counsel, hereby respond to the Petition for
17 Writ of Habeas Corpus (Doc. 1) and the Court's Order to Show Cause (Doc. 4).

18 **I. Factual background.**

19 Petitioner is a native and citizen of Mexico. Doc. 1 at 3. In 2024, Petitioner entered
20 the United States without inspection, admission or parole and has remained in the custody
21 of Immigration and Customs Enforcement (ICE) since that time. Exhibit A at 2. Petitioner
22 was originally placed into Expedited Removal proceedings before being referred to a
23 credible fear interview and subsequently placed into standard removal proceedings. *Id.* at 3.
24 On January 30, 2026, an Immigration Judge ("IJ") ordered Petitioner removed. Doc. 1 at 8.
25 Petitioner appealed the IJ's decision to the Board of Immigration Appeals (BIA) where the
26 case remains pending. *Id.*

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

2 Only Warden Eric Rokosky is a proper respondent. *See Doe v. Garland*, 109 F.4th
 3 1188, 1195-96 (9th Cir. 2024) (holding that neither an ICE Field Office Director nor the
 4 Attorney General are proper respondents in a challenge to immigration detention); *see also*
 5 *Rumsfeld v. Padilla*, 542 U.S. 426, 439-40 & n.13 (2004) (“In challenges to present physical
 6 confinement, we reaffirm that the immediate custodian, not a supervisory official who
 7 exercises legal control, is the proper respondent.”). A habeas petition may never have
 8 multiple respondents, because the only “proper respondent is the warden of the facility where
 9 the prisoner is being held, not the Attorney General or some other remote supervisory
 10 official.” *See Doe*, 109 F.4th at 1195 (quoting *Padilla*, 542 U.S. at 435). The Court should
 11 dismiss all Respondents other than Warden Eric Rokosky.

12 **III. ZADVYDAS IS INAPPLICABLE.**

13 Petitioner has an appeal of the IJ’s denial of their application for asylum and
 14 withholding of removal pending with the BIA. Doc. 1 at 8. Because the appeal with the BIA
 15 is still ongoing and has not been dismissed there is no final order of removal at this time.¹
 16 As a result, Petitioner’s detention is not governed by *Zadvydas v. Davis*, 533 U.S. 678 (2001)
 17 because Petitioner does not have a final removal order and the government is not seeking
 18 removal while his appeal with the BIA is pending.²

19 **IV. Petitioner must be detained while her appeal with the BIA is pending.**

20 As an alien placed into expedited removal proceedings under Section 1225(b)(1)
 21 whom an asylum officer has found to have a credible fear of persecution, Petitioner is subject
 22 to detention not under Section 1226(a), but under Section 1225(b)(1)(B)(ii), and that statute
 23 does not permit Petitioner’s release on bond.

24 If an immigration officer finds that an alien is inadmissible “who is arriving in the
 25 United States” or who has not been admitted or paroled into the United States and has not
 26 been inside the United States continuously for at least two years, the immigration officer
 “shall order the alien removed . . . unless the alien indicates either an intention to apply for

27 ¹ *See*, 8 U.S.C. § 1241.1(a) Final Order of Removal.

28 ² The detention, release, and removal of aliens subject to a final order of removal is
 governed by § 241 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231.

1 asylum . . . or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(i), (iii). If an alien subject to
2 this expedited removal claims a fear of persecution, the immigration officer “shall refer the
3 alien for an interview by an asylum officer[.]” 8 U.S.C. § 1225(b)(1)(A)(ii). During the
4 interview, the asylum officer will determine whether the alien’s fear of persecution is
5 credible, and if so, “the alien shall be detained for further consideration of the application
6 for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii). Specifically, asylum claims for aliens who have
7 entered without inspection can be considered and adjudicated either in full removal
8 proceedings pursuant to INA Section 240 or a parallel procedure which uses “the same rules
9 of procedure” as Section 240 proceedings conducted under 8 C.F.R. § 208.2. *See* 8 C.F.R.
10 § 208.30(f).

11 Petitioner was originally placed into expedited removal proceedings under Section
12 1225(b)(1). Exhibit B at 2. They expressed a fear of persecution and received a
13 determination that their fear was credible. *Id.* Thus, the clear text of Section
14 1225(b)(1)(B)(ii) requires her detention without bond until their appeal with the BIA is
15 adjudicated. Petitioner did not become subject to Section 1225(b)(1)(B)(ii) until the day
16 when they had their credible fear interview. 8 U.S.C. § 1225(b)(1)(B)(ii) (stating that its
17 detention authority is only triggered “[i]f the officer determines *at the time of the interview*
18 that an alien has a credible fear of persecution”) (emphasis added).

19 Moreover, the Supreme Court has affirmed that Section 1225(b)(1) means what it
20 says: that an alien subject to detention thereunder must be detained “throughout the
21 completion of applicable proceedings,” and that such detention is not unconstitutionally
22 indefinite. *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). Section 1225(b)(1)’s
23 mandatory detention does not violate the Due Process Clause. *See, e.g., Doe v. Andrews*,
24 2025 U.S. Dist. LEXIS 231911 at *33–34 (E.D. Cal. Nov. 25, 2025); *Lopez v. United States*
25 *Dep’t of Homeland Sec.*, No. CV-20-01063-PHX-JJT (MTM), 2021 U.S. Dist. LEXIS
26 98716 at *5–7 (D. Ariz. Jan 28, 2021); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
27 591 U.S. 103, 107 (2020). At least one district court has held that Section 1225(b)(1)(B)(ii)
28 applies even when a petitioner had previously been granted bond erroneously, because to
hold otherwise would allow “immigration officials [to] avoid the mandatory detention

1 requirement" through procedural irregularity. *See Padilla v. Galovich*, 2025 U.S. Dist.
2 LEXIS 260946 at *10 (W.D. Wis. Dec. 15, 2025). Thus, Petitioner's detention without bond
3 is statutorily required, and their Petition should be dismissed.

4 **V. Conclusion.**

5 Petitioner has no final removal order and is subject to mandatory detention while
6 their appeal with the BIA is pending. Respondents respectfully request the Court deny
7 Petitioner's Petition for Writ of Habeas Corpus.

8 Respectfully submitted this 27th day of May 2026.

9
10 TIMOTHY COURCHAINED
11 United States Attorney
12 District of Arizona

13 s/ Derek Faraldo
14 DEREK FARALDO
15 Assistant United States Attorney

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on May 27, 2026, I mailed via U.S. Mail the attached document
18 to:

19 Arletty Diez Uliver
20 A# 
21 ELOY-AZ-ELOY-DC
22 DETENTION CENTER
23 1705 E HANNA RD.
24 ELOY, AZ 85131
25 PRO SE

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