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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Nadesh Nantap Nkweta,

Petitioner,

vs.

v.

Eric Rokosky, *et al.*[1],

Respondents.

No. CV-26-02828-PHX-SMB (CDB)

RESPONSE TO ORDER TO SHOW CAUSE AND PETITION FOR WRIT OF HABEAS CORPUS

I. FACTUAL BACKGROUND.

Petitioner Christian Nadesh Nantap Nkweta, a national and citizen of Cameroon,

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

entered the United States on January 19, 2025, and was immediately apprehended by immigration officials. Exhibit A; Exhibit B. At that time, Petitioner was placed into expedited removal proceedings under 8 U.S.C. § 1225(b)(1). Exhibit B at 3. Because Petitioner expressed a fear of persecution if he were returned to Cameroon, immigration officials referred him for a credible fear interview with an asylum officer. *Id.* Petitioner received his credible fear interview and the asylum officer determined that Petitioner demonstrated a credible fear of persecution. *Id.* As such, ICE placed Petitioner into Immigration and Nationality Act ("INA") section 240 removal proceedings, for further evaluation of his asylum claim Exhibit A. Petitioner was detained at the conclusion of his credible fear interview. Exhibit B at 3-4.

On July 29, 2025, an Immigration Judge (IJ) denied his applications for relief and ordered him removed. Doc. 1 at 4. Petitioner appealed the IJ's decision to the Board of Immigration Appeals (BIA) where it remains pending. *Id.*

II. LEGAL ANALYSIS.

a. Petitioner must be detained while his asylum application is considered.

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

If an immigration officer finds that an alien is inadmissible "who is arriving in the United States" or who has not been admitted or paroled into the United States and has not 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 asylum . . . or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i), (iii). If an alien subject to this expedited removal claims a fear of persecution, the immigration officer "shall refer the alien for an interview by an asylum officer[.]" 8 U.S.C. § 1225(b)(1)(A)(ii). During the interview, the asylum officer will determine whether the alien's fear of persecution is credible, and if so, "the alien shall be detained for further consideration of the application for

asylum." 8 U.S.C. § 1225(b)(1)(B)(ii). Specifically, asylum claims for aliens who have entered without inspection can be considered and adjudicated either in full removal proceedings pursuant to INA Section 240 or a parallel procedure which uses "the same rules of procedure" as Section 240 proceedings conducted under 8 C.F.R. § 208.2. *See* 8 C.F.R. § 208.30(f).

Petitioner was originally placed into expedited removal proceedings under Section 1225(b)(1). Exhibit B at 3. He expressed a fear of persecution, and he received a determination that his fear was credible. *Id.* Petitioner does not claim that his appeal has been adjudicated yet. Thus, the clear text of Section 1225(b)(1)(B)(ii) requires his detention without bond until his appeal is adjudicated. Petitioner did not become subject to Section 1225(b)(1)(B)(ii) until the day when he had his credible fear interview. 8 U.S.C. § 1225(b)(1)(B)(ii) (stating that its detention authority is only triggered "[i]f the officer determines *at the time of the interview* that an alien has a credible fear of persecution") (emphasis added).

Moreover, the Supreme Court has affirmed that Section 1225(b)(1) means what it says: that an alien subject to detention thereunder must be detained "throughout the completion of applicable proceedings," and that such detention is not unconstitutionally indefinite. *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). Section 1225(b)(1)'s mandatory detention does not violate the Due Process Clause. *See, e.g.*, *Doe v. Andrews*, 2025 U.S. Dist. LEXIS 231911 at *33–34 (E.D. Cal. Nov. 25, 2025); *Lopez v. United States Dep't of Homeland Sec.*, No. CV-20-01063-PHX-JJT (MTM), 2021 U.S. Dist. LEXIS 98716 at *5–7 (D. Ariz. Jan 28, 2021); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020). At least one district court has held that Section 1225(b)(1)(B)(ii) applies even when a petitioner had previously been granted bond erroneously, because to hold otherwise would allow "immigration officials [to] avoid the mandatory detention requirement" through procedural irregularity. *See Padilla v. Galovich*, 2025 U.S. Dist. LEXIS 260946 at *10 (W.D. Wis. Dec. 15, 2025). Thus, Petitioner's detention without bond is statutorily required, and his Petition should be dismissed.

b. *BAUTISTA.*

Petitioner is not a member of the Bond Eligible Class certified in *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, -- F.R.D. --, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). As the Court observed, the Bond Eligible Class "is composed of '[a]ll noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.'" Order (Doc. 5) at 2 (quoting *Bautista*, 2025 WL 3288403, at *9) (alteration in original). As Respondents have argued above, Petitioner is detained under Section 1225(b)(1). Moreover, Petitioner was apprehended upon arrival. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) ("[A]n alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry'") (quoting *Zadvydas v. Davis*, 533 U. S. 678, 693 (2001)).[2] Thus, for both reasons, Petitioner is not a member of the *Bautista* class, and no relief is required in this case based on *Bautista*.

III. CONCLUSION.

In light of the above, Respondents respectfully request the Court deny Petitioner's Petition for Writ of Habeas Corpus. If the Court grants the Petition, the Court should order that Petitioner be given a bond hearing by the immigration court under 8 U.S.C. § 1226(a), not direct Petitioner's immediate release from immigration detention.

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[2] Accordingly, an alien detained shortly after unlawful entry is "treated for due process purposes as if stopped at the border." *Id.* at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 206, 215 (1953)) (internal quotation marks omitted).

RESPECTFULLY SUBMITTED this 21st day of May, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2026, I mailed via U.S. Mail the attached document to:

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