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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Danys H. Bohorquez Uzcategui, Petitioner, v. Eric Rokosky, *et al.* Respondents.	No. CV-26-05444-PHX-JJT **RESPONSE PETITION FOR WRIT OF HABEAS CORPUS**

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

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner applied for admission at the Hidalgo, Texas, Port of Entry on or about January 31, 2023. Ex. A, Record of Deportable/Inadmissible Alien, at 3. Petitioner was served a Notice to Appear as an Arriving Alien on that same day. Ex. B, Notice to Appear, at 1. Petitioner was granted parole for one year and then received Temporary Protected Status that expired on April 2, 2025. Ex. A at 3. On August 22, 2025, Petitioner was arrested for Criminal Damage – Defacing (Domestic Violence). *Id.* at 2. Petitioner was

then transferred to U.S. Immigration and Customs Enforcement ("ICE") pursuant to a detainer and a Warrant for Arrest of Alien. *Id.* On January 15, 2026, Petitioner was ordered removed by an Immigration Judge. Ex. C, Order of the Immigration Judge, at 1. Petitioner timely appealed, and that appeal remains pending before the Board of Immigration Appeals.

II. PETITIONER IS SUBJECT TO MANDATORY DETENTION AS AN ARRIVING ALIEN

Federal immigration law groups aliens who come to the United States into two broad categories: aliens who are admissible into the United States, *see* 8 U.S.C. §§ 1181–1189 (governing which aliens are admissible), and aliens who are not. An alien who does not have documentation authorizing entry into the United States is inadmissible. 8 U.S.C. § 1182 (a)(7)(A)(i). A federal immigration officer must inspect all aliens who want to enter United States territory to determine whether the aliens are admissible. 8 U.S.C. § 1225(a)(3) ("All aliens . . . who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States *shall be inspected* by immigration officers.") (emphasis added). If, during an inspection, an immigration officer determines that an alien is "not clearly and beyond a doubt entitled to be admitted," the officer must detain the alien for removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

Aliens detained under 8 U.S.C. § 1225(b)(2) may be detained through the completion of their removal proceedings without bond, *Jennings v. Rodriguez*, 583 U.S. 281, 300–01, 305–06 (2018), and immigration judges are prohibited from releasing such aliens on bond. *See* 8 C.F.R. § 1003.19(h)(2)(i) ("[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to . . . [a]liens designated in § 1236.1(c) of this chapter as ineligible to be considered for release"); *see also* 8 C.F.R. § 1236.1(c)(2) ("[A]n alien subject to the TPCR who is not lawfully admitted is not eligible to be considered for release from custody"). Moreover, the Supreme Court has affirmed that Section 1225(b)(2)(A) 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*, 583 U.S. at 302. It is thus clear that the statute and applicable regulations require Petitioner's detention without bond through the completion of his removal proceedings.

Petitioner presented himself for inspection at the Hidalgo Port of Entry. Ex. A at 3. Immigration officials inspected him and determined that he was inadmissible because he did not have valid entry documents. *Id.* The officials immediately designated him for removal as an "arriving alien" and took him into custody. Placing Petitioner into immigration proceedings did not affect his status as an "arriving alien," nor as an "applicant for admission." 8 U.S.C. § 1182(d)(5); 8 C.F.R. § 1003.19(h)(2)(i). When ICE took Petitioner into custody and designated her an arriving alien, she fell under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A). Petitioner's detention is therefore required by law, and it thus cannot constitute a violation of his due process rights.

The Court has agreed with Respondents' position. In *Ibarra-Perez v. Howard*, Judge Lanza noted that *Barrera-Echavarria v. Rison*, 44 F.3d 1441 (9th Cir. 1995) (en banc)[1] held that "excludable aliens are deemed under the entry doctrine not to be present on United States territory, [so] a holding that they have no substantive right to be free from immigration detention reasonably follows." 468 F. Supp. 3d 1156, 1174 (quoting *Barrera-Echevarria*, 44 F.3d at 1450). Judge Lanza also noted that the Ninth Circuit consistently affirmed *Barrera-Echevarria*'s core holding that the entry fiction barred constitutional claims for release. *See id.* at 1174–76. Judge Lanza acknowledged the contrary findings from other district courts, including *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019)), but noted that *Banda* did not contend with *Barrera-Echevarria* nor the entry fiction. *Id.* at 1177 n.25. Judge Lanza has recently reaffirmed *Ibarra-Perez*, finding that "*Thuraissigiam* underscores the conclusion reached" therein, and that he "still concludes there is no constitutional right to a bond hearing in this context." *Mamedova v. Noem*, No. 2:25-cv-04619-DWL, at 5–6 (D. Ariz. Apr. 29, 2026).

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[1] The Ninth Circuit has since noted that part of *Barrera-Echevarria*'s holding was superseded by statute. *Xi v. INS*, 298 F.3d 832, 837–38 (9th Cir. 2002)

When Petitioner arrived at a port of entry of the United States, immigration officials properly determined that he was an inadmissible "arriving alien" and immediately began proceedings to remove him. As an inadmissible arriving alien, Petitioner has no right to be present in the United States. Petitioner is statutorily ineligible for bond, and his detention is legal as there is no final order of removal.

III. PETITIONER HAS NO LIBERTY INTEREST IN PAROLE.

Petitioner argues that his detention violates his due process rights to liberty due to his previous release on discretionary parole. However, the Ninth Circuit has made clear that there is no such liberty interest.

Even an otherwise-inadmissible alien may be temporarily paroled into the United States for "urgent humanitarian reasons," if the Secretary of Homeland Security chooses to do so. 8 U.S.C. § 1182(d)(5). However, if the Secretary exercises his discretion in this way, the alien is not considered admitted to the United States and, if and when the parole expires, "the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.*

Aliens detained under 8 U.S.C. § 1225(b)(2) may be detained through the completion of their removal proceedings without bond, *Jennings v. Rodriguez*, 583 U.S. 281, 300–01, 305–06 (2018), and immigration judges are prohibited from releasing such aliens on bond. *See* 8 C.F.R. § 1003.19(h)(2)(i) ("[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. § 1182(d)(5).]"); *see also* 8 C.F.R. § 1001.1(q) (defining an "arriving alien" as "an applicant for admission coming or attempting to come into the United States at a port-of-entry . . . even if paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked"). Petitioner's parole did not alter his status as an arriving alien. 8 U.S.C. § 1182(d)(5); 8 C.F.R. § 1003.19(h)(2)(i). In fact, when Petitioner's parole was terminated, the law required him to "return. . . to the custody from which he was paroled"—

that is, mandatory detention under 8 U.S.C. § 1225(b)(2). 8 U.S.C. § 1182(d)(5). Petitioner's detention is therefore required by law, and it thus cannot constitute a violation of his due process rights.

For the foregoing reasons, Respondents respectfully request that this Court deny the Petition for Habeas Corpus (Doc. 4).

RESPECTFULLY SUBMITTED this 12th day of August, 2026.

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s/ Tracy Riley
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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2026, I mailed the attached document via U.S. Mail to:

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