[ATTORNEY DETAINED

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# UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION [LOCATION] IMMIGRATION COURT

**[CITY, STATE]**

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| In the Matter of  NAME,  Respondent. | A# NUMBER  IN BOND PROCEEDINGS |

Immigration Judge: XXXXXX Next Master Calendar Hearing: DATE

# RESPONDENT’S MOTION FOR CUSTODY REDETERMINATION

[ATTORNEY DETAINED

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# UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION [LOCATION] IMMIGRATION COURT

**[CITY, STATE]**

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| In the Matter of  NAME,  Respondent. | A# NUMBER |

Respondent, through undersigned pro bono counsel, respectfully moves this Court for a redetermination of the conditions of her detention and release pending her removal proceedings, pursuant to 8 C.F.R. § 1003.19 and 8 C.F.R. § 1236.1(d). Respondent is statutorily eligible for a bond because she is not subject to mandatory detention under INA § 235(b) (expedited removal) and does not fall under the mandatory detention provisions for criminal offenses under INA § 236(c)(1).

In Support of this Motion, the Respondent submits the following:

1. Respondent XXXXXXX is a native and citizen of XXXXXX. [INSERT INFORMATION ABOUT RESPONDENT, WHEN AND HOW RESPONDENT ENTERED THE COUNTRY, FAMILY, ANY OTHER FACTS THAT MAKE RESPONDENT PARTICULARLY SYMPATHETIC].

1. Mr. [INSERT SPONSOR NAME AND ADDRESS] and [INSERT SPONSOR NAME] are U.S. citizens. Exhibit A. They have offered to sponsor RESPONDENT and support her in all future immigration proceedings. *Id.* Further, RESPONDENT is prima facie eligible for Asylum, Withholding of Removal, and protection under the Convention Against Torture, and intends to file her Form I-589 to seek these protections ahead of her next master hearing.
2. RESPONDENT, who is represented by pro bono counsel, does not have the ability to pay for a bond. Given the equities in this case, we ask the Court to grant RESPONDENT conditional parole, or in the alternative, set bond in a *de minimis* amount.

# ARGUMENT

* 1. **RESPONDENT** **is statutorily eligible for bond because she is not subject to mandatory detention under INA § 235(b) or INA § 236(c)(1).**

First, RESPONDENT is not subject to INA § 235(b). The Board of Immigration Appeals has held that individuals placed in expedited removal proceedings, including those later placed in INA § 240 proceedings after a positive credible fear determination, are ineligible for bond. *Matter M-S-*, 27 I&N Dec. 509, 518 (A.G. 2019). Consequently, immigration judges lack jurisdiction to redetermine bond for individuals initially processed through expedited removal.

However, the Respondent in this case was never subjected to expedited removal. Instead, the Department, exercising its discretion, placed RESPONDENT directly in full removal proceedings under INA § 240. *See* *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748 (BIA 2023) (citing *Matter of E-R-M-* *& L-R-M*-, 25 I&N Dec. 520, 523 (BIA 2011)) (reaffirming that DHS has the authority to elect whether to initiate expedited removal proceedings under INA § 235(b) or full removal proceedings under INA § 240). Therefore, this Court has jurisdiction under INA § 236(a) to grant bond in the minimum amount of $1,500 or grant conditional parole.

Finally, RESPONDENT is not subject to mandatory detention under INA § 236(c)(1) based on criminal grounds. She has no criminal record in the United States or in her country of origin. She has never been charged with, arrested for, or convicted of any offense enumerated under INA § 236(c)(1)(E)(ii) (“Laken Riley Act”), including burglary, theft, larceny, shoplifting, assault of a law enforcement officer, or any crime resulting in death or serious bodily injury to another person. Furthermore, RESPONDENT has never admitted to committing such offenses or to engaging in conduct that constitute the essential elements of such offenses as defined by the laws of any state. *Id*.

* 1. **RESPONDENT** **merits release from custody.**

In *Matter of Guerra*, 25 I&N Dec. 37, 40 (BIA 2006), the Court set forth a series of factors that Immigration Judges could look to when considering whether to release a noncitizen from custody including:

(1) whether the [noncitizen] has a fixed address in the United States; (2) the [noncitizen’s] length of residence in the United States; (3) the [noncitizen’s] family ties in the United States, and whether they may entitle the [noncitizen] to reside permanently in the United States in the future; (4) the [noncitizen’s] employment history; (5) the [noncitizen’s] record of appearance in court; (6) the [noncitizen’s] criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the [noncitizen’s] history of immigration violations; (8) any attempts by the [noncitizen] to flee prosecution or otherwise escape from the authorities; and (9) the [noncitizen’s] manner of entry to the United States.

# RESPONDENT is not a flight risk.

RESPONDENT has a permanent address where she will stay if released. Exhibit A. RESPONDENT’s relationship with his/her sponsor is sufficiently close to establish that RESPONDENT is not a flight risk. [ASSERT THAT RESPONDENT’S SPONSOR IS AN IMMEDIATE RELATIVE OR DESCRIBE HOW LONG THE SPONSOR HAS KNOWN THE RESPONDENT AND HOW CLOSE THEIR RELATIONSHIP IS]. [REVIEW ALL SPONSOR DOCUMENTS SUBMITTED AS EVIDENCE IN THIS CASE, INCLUDING ISSUES RAISED ABOVE].

This case is distinguishable from *Matter of R-A-V-P.* In *Matter of R-A-V-P* 27 I&N Dec. 803 (BIA 2020), the respondent did not provide any evidence as to the sponsor’s immigration status, ability to support the respondent, or willingness to ensure that the respondent would appear for future proceedings. *Id.* at 806*.* The respondent in *Matter of R-A-V-P* also did not provide any information as to the nature of the relationship between the respondent and his sponsor, including how they knew each other. *Id.*  This case is clearly distinguishable and therefore, RESPONDENT is not a flight risk.

Further, RESPONDENT is prima facie eligible for asylum and has a right to seek asylum in the United States pursuant to INA § 208(a)(1), which is an incentive for her to attend future immigration court hearings. [INSERT INTENTION TO FILE I-589, SHORT FACTS FROM DECLARATION STATING BASIS FOR ASYLUM CLAIM, CITE TO STATE DEPARTMENT COUNTRY CONDITIONS REPORT, IF AVAILABLE]. As stated above, RESPONDENT has no criminal history and is not subject to any bars to asylum. Therefore, she would merit a discretionary grant if she meets her burden of establishing the elements of asylum. *See Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987) (affirming that a noncitizen’s potential eligibility for relief from deportation can reflect on the likelihood of [her] appearance at deportation proceedings[.]).

# RESPONDENT is not a danger to the community.

RESPONDENT has no criminal record in the U.S. or in her country of origin. [INSERT OTHER EQUITIES AS TO RESPONDENT’S BENEFIT TO THE COMMUNITY, ANY EXPLANATION IF THERE ARE ARRESTS IN HOME COUNTRY, SUCH AS IF THEY’RE RELATED TO RESPONDENT’S PERSECUTION. EXPLAIN ANY OTHER CRIMINAL HISTORY, IF ANY.] Therefore, she does not pose a danger to the community.

# The court should release RESPONDENT on conditional parole or on *De Minimis* bond.

RESPONDENT has been detained since [DATE]. Her financial circumstances should be considered when setting her bond. The Ninth Circuit in *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) held that due process requires a Court to consider a person’s financial circumstances when setting bond. The purpose of bond is to ensure the future appearance in court. *Id*. at 991. The Court recognized that “the amount of a bond that is reasonably likely to secure the appearance of an indigent person obviously differs from the amount that is reasonably likely to secure a wealthy person’s appearance.” *Id*. The requirement in immigration cases to consider the ability to pay “follows directly from the Supreme Court’s dictate that immigration detention bear a reasonable relation to its purpose.” *Id*. at 990. “Detention of an indigent ‘for inability to post money bail’ is impermissible if the individual’s ‘appearance at trial could reasonably be assured by one of the alternate forms of release.” *Id*. citing *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc).RESPONDENT is represented pro bonoin these proceedings. With no direct source of income, RESPONDENT should be considered indigent. We therefore ask that she be released upon conditional parole. In the alternative, if the Court finds a bond necessary to secure her future appearance, we request a bond in a *de minimis* amount.

# CONCLUSION

RESPONDENT warrants release on conditional parole or bond. She is statutorily eligible for a bond, and is neither a danger to the community or a flight risk. We respectfully request that this Court release the RESPONDENT so that she can pursue her claim for relief from removal.

Respectfully submitted by,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_

XXXXXX

Attorney for Respondent [SIGNATURE BLOCK]

# TABLE OF EXHIBITS IN SUPPORT OF CUSTODY REDETERMINATION

Exhibit A: Sponsor Letter from [NAME OF SPONSOR]

Exhibit B: Copy of [SPONSOR] [PROOF OF CITIZENSHIP/RESIDENCY AND ADDRESS]

Exhibit C: Copy of [SPONSOR’S PROOF OF INCOME]

Exhibit D: Copy of RESPONDENT’S Declaration or State Department’s Country Conditions Report

# CERTIFICATE OF SERVICE

I, XXXXX certify that a copy of Respondent’s Motion for Custody Redetermination and any attached documents were served on OCC counsel for XXX via [MANNER OF SERVICE] on [DATE].

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_

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