[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

SIGNATURE BLOCK] DETAINED

# 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 this motion, requests a redetermination of the conditions of detention and release pending determination of removability, pursuant to 8 C.F.R. § 1003.19 and 8 C.F.R. § 1236.1(d). In Support of that Motion, Respondent submits the following:

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

1. Mr. [INSERT SPONSOR NAME AND ADDRESS] and are U.S. citizens. Exhibit A. They have offered to sponsor RESPONDENT and support her in any and all future immigration proceedings. *Id.*
2. RESPONDENT, who is being represented *pro bono*, 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 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 some or all of them when considering whether to release an alien from custody including:

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

# RESPONDENT is not a flight risk.

RESPONDENT has a permanent address to where she will stay if released. Exhibit A. RESPONDENT is eligible for relief from removal, and is likely to succeed in being granted

relief, which is an incentive for her to attend future immigration court hearings. [INSERT INTENTION TO FILE I-589, SHORT FACTS FROM CFI, IF AVAILABLE].

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].

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.

[REVIEW ALL SPONSOR DOCS SUBMITTED AS EVIDENCE IN THIS CASE, INCLUDING ISSUES RAISED ABOVE].

# 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]

# The court should release Ms. 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) recently 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 being represented *pro bono* in 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 neither a danger to the community, nor a flight risk. We respectfully request that this Court release 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]

# CERTIFICATE OF SERVICE

I, XXXXX certify that a copy of Respondent’s Pre-Hearing Statement and any attached documents were served on OCC counsel for Eloy, AZ via [MANNER OF SERVICE] on [DATE].

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

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