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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DINORA CASTELLON REYES Petitioner, v. **DORA CASTRO**, OTERO COUNTY PROCESSING CENTER **MARY DE ANDA-YBARRA,** DIRECTOR OF EL PASO FILED OFFICE U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; **KRISTI NOEM,** SECRETARY OF THE U.S. DEPARTMENT OF HOMELAND SECURITY; AND **PAM BONDI,** ATTORNEY GENERAL OF THE UNITED STATES IN THEIR OFFICIAL CAPACITIES, Respondents.	PETITION FOR WRIT OF HABEAS CORPUS ORAL ARGUMENT REQUESTED Expedited Hearing Requested

INTRODUCTION

FACTUAL BACKGROUND

1. Ms. Dinora Castellon Reyes is a citizen and national of El Salvador who entered the United States without inspection on or about May 2015. *See* Exhibit A, Petitioner's Notice to Appear.
2. On or about June 2025, Immigration and Customs Enforcement (ICE) detained and arrested Ms. Castellon. She was initially arrested in Palm Beach County, Florida and was transferred to an ICE facility in Broward County, Florida. *See* Exhibit B, I-213 Record of Deportable/Inadmissible Alien.
3. Thereafter, ICE transferred Ms. Castellon to the Otero County Processing Center in Chaparral, New Mexico.
4. On July 8, 2025, Ms. Castellon requested a custody redetermination hearing before an Immigration Judge. *See* Exhibit C.
5. On July 16, 2025, the Immigration Judge granted bond in the amount of $7,500. *See* Exhibit D.
6. The Department of Homeland Security (DHS), however, reserved appeal on the bond decision and filed a "Notice of Intent to Appeal Custody Redetermination." *See* Exhibit E.
7. DHS filed their automatic stay of the Immigration Judge's bond order pursuant to 8 C.F.R. § 1003.6. That stay, however, lapses if DHS fails to file their Notice of Appeal within ten business days of the order.
8. Afterwards, on July 30, 2025, DHS filed their Notice to Appeal before the Board of Immigration Appeals (BIA). *See* Exhibit F.

9. Ms. Castellon's family has tried to post bond multiple times but ICE kept determining that she was "not releasable."

10. After DHS filed their Notice of Appeal before their BIA, the Immigration Judge filed a Memorandum detailing his decision as to why Ms. Castellon is entitled to release. *See* Exhibit G.

11. Nevertheless, DHS filed their Appeal Brief before the BIA on September 2, 2025 (*see* Exhibit H) and Ms. Castellon filed her Reply Brief on September 3, 2025 (*see* Exhibit I).

12. To date, ICE refuses to accept bond and release Ms. Castellon. She has been detained for about three months.

JURISDICTION

13. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

14. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

15. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2)

VENUE

16. Venue is proper in this District under 28 U.S.C. § 1391(e) and 28 U.S.C. § 2241 because Petitioner is presently detained within this District at the Otero County Processing Center in Chaparral, New Mexico, which is within the jurisdiction of this Court.

17. Petitioner was initially taken into ICE custody in Florida, within the Eleventh Circuit pursuant to the same unlawful detention policy that continues to keep her confined today.

18. Accordingly, although the immediate custodian is located within this District, the decision to detain Petitioner originated within the Eleventh Circuit.

19. Petitioner therefore expressly reserves the right to seek transfer of this action to the Southern District of Florida under 28 U.S.C. § 1404(a), in the interest of justice and for the convenience of parties and witnesses.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

20. The Court must grant the petition for writ of habeas corpus "forthwith" unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.

21. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

22. Petitioner is "in custody" within the meaning of 28 U.S.C. § 2241 because she is arrested and detained by Respondents at the Otero County Processing Center, in Chaparral, New Mexico, pursuant to immigration detention authority. Petitioner challenges that custody as unlawful under the Constitution, federal law, and applicable treaties.

PARTIES

23. Petitioner is DINORA CASTELLON REYES who is a citizen and nation of El Salvador.

24. Respondent DORA CASTRO in their official capacity as Warden, Otero County Processing Center, has immediate custody over Petitioner and is responsible for her detention.

25. Respondent MARY DE ANDA-YBARRA in their official capacity as the El Paso Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, is responsible for the custody, detention, and removal of noncitizens within this jurisdiction.

26. Respondent KRISTI NOEM, in their official capacity as Secretary of the U.S. Department of Homeland Security, is the head of DHS, which oversees ICE and is ultimately responsible for the unlawful detention of Petitioner.

27. Respondent PAM BONDI, in their official capacity as Attorney General of the United States, is charged with the administration and enforcement of the immigration laws and is a proper respondent under 28 U.S.C. § 2243.

EXHUASTION

28. Petitioner has filed a reply brief before the BIA arguing that the BIA should affirm the Immigration Judge's decision granting bond.

29. While this appeal is pending, Petitioner remains detained without any opportunity for release on bond.

30. Exhaustion of that administrative process is not required here.

31. Exhaustion under 28 U.S.C. § 2241 is prudential, not jurisdictional, and courts in this Circuit have repeatedly excused it where administrative review is inadequate, futile, or would cause irreparable harm. See *Salvador F.-G. v. Noem*, 2025 WL 1669356, at *4 (N.D. Okla. June 12, 2025) (declining to require exhaustion where immigration detainee was "trapped in prolonged detention without a meaningful opportunity for bond"); *Quintana Casillas v. Sessions*, No. 17-cv-01395, slip op. at 9–11 (D. Colo. 2018) (explaining that when "the question presented is purely legal and has been repeatedly mishandled administratively, exhaustion serves no useful purpose")

32. In this circuit, the court has held that habeas corpus relief was available despite a pending BIA appeal, because "[e]ach additional day of detention without a bond hearing constitutes irreparable harm that cannot be remedied after the fact". *LG v. Choate*, No. 23-cv00611, slip op. at 14 (D.N.M. 2024)

33. The BIA appeal process here exemplifies why exhaustion is unnecessary. As *Rodriguez v. Bostock* explained, while the BIA has occasionally remanded bond denials where immigration judges misapplied § 1225(b), it has declined to issue a precedential ruling. 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025). Consequently, many immigration judges continue to deny bond altogether, and appeals typically take six months or more, during which noncitizens remain detained unlawfully, with severe consequences for their health, families, and ability to defend against removal. Id.

34. Because Petitioner's injury is the very fact of unlawful detention despite being granted bond, administrative remedies are neither timely nor effective. Habeas corpus is the only adequate remedy.

LEGAL FRAMEWORK

35. Congress established two separate detention regimes. Section 1225 governs "applicants for admission" encountered at the border or its functional equivalent, while § 1226 governs individuals "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018). These provisions are mutually exclusive: "[A] noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226." *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025).

36. Section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a."

37. Detention under § 1225(b) is therefore mandatory and individuals detained following examination under section 1225 can only be paroled into the United States "for urgent humanitarian reasons or significant public benefit." *Jennings*, 583 U.S. at 300, 138 S.Ct. 830 (quoting 8 U.S.C. § 1182(d)(5)(A)). This parole "into the United States" allows physical entry but reserves the Government's ability to treat the person as if "stopped at the border." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020).

38. Crucially, courts and the BIA have recognized that the phrase "seeking admission" carries an active, temporal component: it refers to individuals "coming or attempting to come into the United States," 8 C.F.R. § 1.2, i.e., those apprehended at or near the border and in the process of initial entry. *Martinez*, 2025 WL 2084238, at *6–7.

39. By contrast, § 1226 governs detention of noncitizens already present in the United States and apprehended on a warrant issued by the Attorney General. 8 U.S.C. § 1226(a). Unlike § 1225's mandatory scheme, § 1226(a) creates a discretionary framework, under which the Attorney General "may continue to detain," or "may release" a noncitizen on bond or conditional parole. *Id.*

40. Individuals detained under § 1226 are entitled to an individualized custody determination and may appeal that determination to an immigration judge. 8 C.F.R. § 1236.1(d)(1); *see Matter of Siniauskas*, 27 I. & N. Dec. 207, 207 (BIA 2018).

41. Courts in this Circuit have recognized that when detention is discretionary under § 1226(a), the government bears the burden of justifying continued detention by clear and convincing evidence that an individual poses a danger to the community or a flight risk. *LG v. Choate*, 976 F.3d 997, 1005–06 (10th Cir. 2020) (placing burden on the government to establish necessity of detention at a bond hearing); *Arostegui-Maldonado v. Baltazar*, No. 25- CV-2205-WJM-STV, 2025 WL 2280357, at *12 (D. Colo. Aug. 8, 2025) (following *Choate*).

42. Where the government fails to meet this burden, immigration judges must consider release, and noncitizens may present evidence that they are not dangerous or a flight risk. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1244 (W.D. Wash. 2025). These protections ensure detention is not automatic but subject to an individualized assessment, consistent with the statutory framework of § 1226(a).

43. Some narrow mandatory detention categories exist under § 1226(c) for certain criminal or security grounds, but those are not implicated here.

44. Multiple recent decisions confirm that § 1225 does not apply to long-resident noncitizens apprehended in the interior. *See Carlos Javier Lopez Benitez v. Francis*, No. 25- cv-11517, 2025 WL 1869299, at *5–8 (D. Mass. July 7, 2025)(holding that § 1225(b)(2)(A) did not apply to a petitioner who had been residing in the United States for over two years; emphasizing that "seeking admission" requires an active, ongoing effort to enter, not mere presence in the country, and concluding that detention was governed by § 1226(a) with access to bond); *see also Rodriguez v. Bostock*, F. Supp. 3d, 2025 WL 1193850, at *12–16 (W.D. Wash. Apr. 24, 2025) (finding that a non-citizen apprehended from within the United States and charged with inadmissibility was necessarily detained under section 1226, rather than section 1225); *Gomes*, 2025 WL 1869299 at *5–8 (same).

45. As those courts recognized, interpreting § 1225 to cover all noncitizens who were never formally "admitted" would collapse the statutory distinction, render § 1226 superfluous, and contradict longstanding DHS practice. *See Martinez*, 2025 WL 2084238, at *8 ("This tension between sections 1225 and 1226 motivates the conclusion that they apply to different classes of aliens"); *Gomes v. Hyde*, 2025 WL 1869299, at *5–8 (D. Mass. July 7, 2025); *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386, 133 S.Ct. 1166, 185 L.Ed.2d 242 (2013).

46. Courts have distilled two central principles:

    a. Geographic/temporal limits: § 1225 applies only to noncitizens apprehended at or near the border and in the act of entry (*see Thuraissigiam*, 591 U.S. 103, 114, 139 (2020)), not to those apprehended years later in the interior.

    b. Statutory structure: Reading § 1225 as covering all noncitizens who were never lawfully "admitted" would render § 1226 largely meaningless, contrary to the rule

against surplusage. *See Martinez*, 2025 WL 2084238, at *7; *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *6–8 (D. Mass. July 7, 2025).

47. As set forth below, applying this framework compels the conclusion that Petitioner's detention cannot fall under § 1225. Having resided in the United States for a decade, with no connection to a border encounter or recent entry, she falls squarely within the discretionary scheme of § 1226. Respondents' reliance on § 1225 is therefore legally untenable.

CLAIMS FOR RELIEF

COUNT ONE
UNLAWFUL DETENTION UNDER 8 U.S.C. § 1225; CUSTODY PROPERLY GOVERNED BY 8 U.S.C. § 1226
(Misapplication of Mandatory Detention Statute)

48. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

49. Petitioner is currently being detained without the possibility of bond under 8 U.S.C. § 1225(b)(2)(A), based on DHS's argument that she is "an Applicant seeking Admission under the provisions of Sec. 235(b)(2)(A) of the Immigration and Nationality Act ('INA')."

50. Such argument is legally erroneous. Section 1225 applies to noncitizens actively "seeking admission" at the border or its immediate functional equivalent. By contrast, § 1226 governs the arrest and detention of those "already in the country" pursuant to a warrant issued by the Attorney General. The two provisions are mutually exclusive. *See Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018); *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G. 2019).

51. Petitioner plainly falls within § 1226. She has resided in the United States for over a decade, with deep community and family ties, long-term employment, and no serious criminal record. She was arrested without a warrant on June 20, 2025, for driving without a license in the city of Pompano Beach, Florida -- hundreds of miles from any border or port of entry—and immediately transferred to Chaparral, New Mexico, where DHS generated paperwork issuing a Warrant/Notice to Appear and charged her with removal.

52. The charging document itself expressly alleges that Petitioner is "present in the United States without admission or parole," language that presumes residence in the interior and confirms that he was not in the process of seeking admission. Taken together, these contradictions underscore the arbitrariness of Petitioner's detention and the government's mischaracterization of her case.

53. Recent precedent confirms that long-term residents like Petitioner are detained under § 1226, not § 1225. In *Lopez Benitez v. Francis*, No. 25-cv-10960, 2025 WL 4094843 (D. Mass. July 8, 2025), the court held that a noncitizen who had lived in the U.S. just over two years was governed by § 1226, rejecting the government's argument that unlawful presence alone made him "seeking admission." Similarly, in *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025), the court concluded that § 1225(b) "had no application" to a person already residing in the U.S., even though she was charged as inadmissible under INA § 212(a)(6)(A)(i). And in *Rodriguez v. Bostock*, No. 25-cv-524, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025), the court emphasized that interior arrests for inadmissibility grounds are necessarily governed by § 1226.

54. Petitioner's case is even stronger than *Benitez* or *Martinez*. Whereas those petitioners had been present for only a few years, Petitioner has lived continuously in the U.S. for over a decade, with an extensive record of residence, employment, and family ties.

55. To hold otherwise would effectively erase the statutory line between §§ 1225 and 1226, converting virtually all noncitizens present without admission into mandatory detainees and rendering § 1226(a) a dead letter. Courts have consistently rejected this outcome. *See Martinez*, 2025 WL 2084238, at *7 (rejecting interpretation that would "nullify" Congress's amendment to § 1226(c)); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (noting that §§ 1225 and 1226 "apply to different classes" of noncitizens).

56. In sum, Petitioner was not "seeking admission" within the meaning of § 1225(b) but was "already in the country" within the meaning of *Jennings*, 583 U.S. at 288–89. Her custody is governed by § 1226(a), under which detention is discretionary and subject to individualized bond hearings. DHS's argument is contrary to law, unsupported by the record, and must be set aside.

COUNT TWO
Violation of Fifth Amendment Right to Due Process

57. On information and belief, Petitioner is currently being arrested and detained by federal agents without cause and in violation of her constitutional rights to due process of law.

58. The Fifth Amendment's Due Process Clause applies to "all 'persons' within the United States," regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It prohibits the federal government from depriving any person of liberty without due process of law.

59. Even in the immigration context, due process requires that when detention is discretionary, the individual is entitled to an individualized custody determination before a neutral decisionmaker, supported by reliable evidence, and applying the correct legal standards. See *Matter of Siniauskas*, 27 I. & N. Dec. 207, 207 (B.I.A. 2018) (citing *Matter of Fatahi*, 26 I. & N. Dec. 791, 793–94 (B.I.A. 2016); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1112–13 (B.I.A. 1999), modified on other grounds, *Matter of Garcia Arreola*, 25 I. & N. Dec. 267 (B.I.A. 2010)).

60. On July 8, 2025, Petitioner submitted substantial evidence addressing the statutory factors under § 1226(a). this included: letters from her employer, letters from friends and family, documentation of her continuous residence in the United States for over a decade, and proof of close family ties with her U.S. citizen children. collectively, such evidence demonstrated that Petitioner is not a danger to the community or a threat to national security and is not a flight risk.

61. On July 30, 2025, the Immigration Judge agreed with Petitioner's request and decided that she merits release under § 1226(a) and not subject to "mandatory detention."

62. DHS's own records highlight the arbitrariness of Petitioner's detention. On the one hand, the charging document expressly alleges that she is "present in the United States without admission or parole," language that presumes interior residence and confirms her custody should fall under § 1226.

63. DHS denied her the process to which she is entitled — including consideration for release on bond — and exemplified the arbitrary government action the Fifth Amendment prohibits.

64. The prejudice to Petitioner is profound. She has resided in the United States for nearly 10

years, has maintained steady employment, and is the caregiver to her young children. Had the DHS applied the correct legal framework under § 1226(a), the record overwhelmingly supports a finding that Petitioner should be released on reasonable bond or parole.

65. In sum, DHS's refusal release the Petitioner and deprive her of liberty despite an Immigration Judge's order granting her release violates due process of law. This Court should order Petitioner's immediate release.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred outside the District of New Mexico;

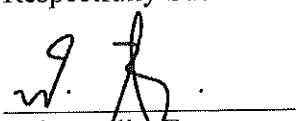
(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

(4) Declare that the Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.

(6) Grant any further relief this Court deems just and proper.

Respectfully Submitted



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