**IN THE DISTRICT COURT**
**FOR THE DISTRICT OF NEW MEXICO**

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| **DINORA CASTELLON-REYES**, Petitioner,<br><br>vs.<br><br>**DORA CASTRO**, Warden of the Otero County Processing Center,<br><br>**MARY DE ANDA-YBARRA**, Director of El Paso Field Office,<br><br>**KRISTI NOEM**, Secretary U.S. Department of Homeland Security, and<br><br>**PAM BONDI**, Attorney General of the United States,<br>Respondents. | Civil Case No. 2:25-893 MLG/JHR |

**UNITED STATE'S MOTION TO DISMISS PETITION FOR WRIT OF HABEUS CORPUS**

**COMES NOW** the United States of America by and through undersigned counsel and files this Motion seeking dismissal of the *Petition for Writ of Habeus Corpus* filed in this matter by Dinora Magdalena Castellon-Reyes. Doc. 1. In support thereof the Unites States shows this honorable Court as follows:

**BACKGROUND**

Dinora Magdalena Castellon-Reyes hereinafter ("Petitioner" or "Castellon-Reyes") was born in El Salvador, is a citizen of that nation, and entered the United States without inspection in May of 2015. Doc 1 at 2. Petitioner was not admitted or paroled after inspection by an immigration officer and entered the United States at an unknown location. Ex. 1. On June 20, 2025, Florida Highway Patrol Officers along

with U.S. Border Patrol Agents stopped a vehicle for a traffic violation and subsequently determined that Castellon-Reyes, a passenger in that vehicle, had unlawfully entered the United States. Ex. 2. Petitioner was arrested at that time based upon a reasonable belief of her unlawful presence in the United States. The Department of Homeland Security (hereinafter "DHS") subsequently placed her in removal proceedings pursuant to 8 U.S.C. § 1229a by issuing her a Notice to Appear charging her as being inadmissible for being present in the United States without being admitted, under 8 U.S.C. § 1182(a)(6)(A)(i) ("An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible."). Ex. 1. That document also ordered Petitioner to appear before an immigration judge on August 20, 2025. *Id.*

During removal proceedings, aliens deemed "applicants for admission" are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), which provides: "Subject to subparagraphs (B) and (C), 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 of this title." Congress defined "applicant for admission" as the following: "An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States

after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C.§ 1225(a)(1). Petitioner filed a request for a bond hearing on July 8, 2025, and that hearing was held on July 16, 2025. At that time the Immigration Judge (hereinafter "IJ") issued bond in the amount of $7,500, and that same day DHS reserved the right to appeal. Doc. 1. at 1 of Ex. D and Ex. E at 1. The appeal was perfected on July 30, 2025, and an automatic stay of the IJ's bond determination was put in place. Ex. 3.

Petitioner had a removal proceeding on August 4, 2025, and at the request of her counsel the matter was continued until October 16, 2025. On September 23, 2025, the Board of Immigration Appeals (hereinafter "BIA") issued orders sustaining DHS' appeal, vacating the IJ's July 16, 2025 decision granting bond, and ordering Petitioner held without bond.

Petitioner filed her *Petition for Writ of Habeus Corpus* on September 16, 2025, and also filed a *Motion for Order to Show Cause* on September 25, 2025. On September 30, 2025, the Court granted the *Motion* and ordered the Respondents to be served and the Petitioner to file proof of said service. Doc. 5. The Court stated Respondents shall file "a return on the Order to Show Cause why the Petition for Writ of Habeas Corpus should not be granted within three business days after Petitioner serves them." *Id.* The "federal respondents" were served on October 6, 2025.

## STANDARD OF REVIEW

In a petition for a writ of habeas corpus, the petitioner is challenging the legality of her restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). "The writ of habeas corpus shall not extend to a prisoner unless…[h]e is in custody in violation of the Constitution or laws and treaties of the Unites States." 28 U.S.C.A. § 2241(c).

Petitioner is challenging her temporary civil immigration detention pending her removal proceedings.

Judicial review of immigration matters, including of detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("the power over aliens is of a political character and therefore subject only to narrow judicial review"). The Supreme Court has thus "underscore[d] the limited scope of inquiry into immigration legislation," and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is

elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process.")

## ARGUMENT

Congress has determined that aliens such as Petitioner be detained throughout their removal proceedings pursuant to 8 U.S.C. § 1225(b)(2). Moreover, this temporary detention does not violate Due Process. Because Petitioner cannot show her temporary detention violates the law, her Petition must be dismissed. *See* 28 U.S.C. § 2241.

### I. PETITIONER IS TEMPORARILY DETAINED PURSUANT TO § 1225(B)(2)

Pursuant to 8 U.S.C. § 1225(b)(2)(A), "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." 8 U.S.C. §

1225(b)(2)(A). Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement. Petitioner is an "applicant for admission" to the United States. As described above, an "applicant for admission" is an alien present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1). Congress's broad language here is unequivocally intentional—an undocumented alien is to be "deemed for purposes of this chapter an applicant for admission." *Id.* Regardless of Petitioner's characterization that "an applicant for admission" should only include "new arrivals to the country," *See* Doc. 1, Petitioner is "deemed" an applicant for admission based on her undocumented status. Additionally, as Petitioner has not demonstrated to an examining immigration officer that she is "clearly and beyond a doubt entitled to be admitted," her detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Thus, the Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that she "shall be" detained.

The Supreme Court has confirmed that an alien present in the country but never admitted is deemed "an applicant for admission" and that "detention must continue" "until removal proceedings have concluded" based on the "plain meaning" of 8 U.S.C. § 1225. *Jennings v. Rodriguez*, 583 U.S. 281, 289 & 299 (2018). At issue in *Jennigs* was the statutory interpretation. The Supreme Court reversed the Ninth Circuit Court of Appeal's imposition of a six-month detention time limit into the statute. *Id.* at 297. The Court clarified there is no such limitation in the statute and reversed on these grounds, remanding the constitutional due process claims for initial consideration before the lower court. *Id.*

Applying this reasoning, the United States District Court for the District of Massachusetts recently confirmed in a habeas action that an unlawfully present alien, who had been unlawfully present in the country for approximately 20 years, was nonetheless an "applicant for admission" upon the straightforward application of the statute. *See Webert Alvarenga Pena, Petitioner, v. Patricia Hyde, et al., Respondents.*, No. CV 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025). The Court explained this resulted in the "continued detention" of an alien during removal proceedings as commanded by statute. *Id.*

This interpretation has also been embraced by the BIA in *Matter of Jonathan Javier Yajure Hurtado*. In its decision, the BIA concluded that aliens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection by itself, does not constitute an 'admission.'" *Matter of Jonathan Javier Yajure Hurtado, Respondent*, 29 I. & N. Dec. 216, 228 (BIA 2025). To hold otherwise would lead to an "incongruous result" that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. In so concluding, the BIA rejected the alien's argument that "because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as 'seeking admission.'" *Id.* at 221. The BIA determined that this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "is not admitted to the United States (as he admits) but

he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original).*See also Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) ("The problem, however, is that Congress has defined the concept of an "applicant for admission" in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission, or who have been brought in against their will under certain circumstances… In other words, many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be "seeking admission" under the immigration laws.")

Petitioner also states that the determination by the United States that Petitioner is lawfully detained under § 1125 is incorrect as such an interpretation would "nullify" Congress' recent amendment to § 1126, but that is not the case. In January of this year, text was added to that section which required the Attorney General take into custody any alien who is inadmissible and has committed certain crimes. 8 U.S.C. § 1226(c). The argument in the cases cited by Petitioner are essentially that had the United States already possessed the ability to detain inadmissible alien's within the United States pursuant to § 1225 then the amendments to § 1226 would be mere surplusage. *See Gomes v. Hyde,* No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025). The problem with this analysis is that it overlooks the entirety of the statues at issue. Title 8 U.S.C. § 1125(b)(2) permits detention of "an alien who is an applicant for admission" for a

proceeding under § 1229a if it is determined that the alien is not entitled to be admitted. 8 U.S.C. § 1125(b)(2). The recent amendments to § 1126 cover a far broader scope of individuals, it applies to all aliens that are inadmissible, whether or not they are classified as an "applicant for admission", that then commit certain crimes. 8 U.S.C. § 1126(c). Based upon this, the enactments of the recent amendments to § 1126 are not nullified by the determination that § 1125 applies to individuals such as the Petitioner in this matter.

Because Petitioner shall be detained during her removal proceedings and her proceedings are uncontrovertibly ongoing, her temporary detention is lawful. Any argument by Petitioner that her temporary detention exceeds statutory authority is clearly invalid and should be rejected.

## II. Petitioner's Temporary Detention Does Not Offend Due Process

As mentioned above, Congress broadly crafted "applicants for admission" to include undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. § 1225(a)(1). And, Congress directed aliens like the Petitioner to be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they—by definition—have crossed borders and traveled in violation of United States law. And as explained above, that is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has recognized this profound interest. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to

expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."). And with this power to remove aliens, the Supreme Court has recognized the United States' longtime Constitutional ability to detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made.").

In another immigration context (aliens already ordered removed awaiting their removal), the Supreme Court has explained that detaining these aliens less than six months is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as perhaps unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court explained Congress was justified in detaining aliens

during the entire course of their removal proceedings who were convicted of certain crimes. 538 U.S. at 513. In that case, similar to undocumented aliens like Petitioner, Congress provided for the detention of certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *Id.* The Court emphasized the constitutionality of the "definite termination point" of the detention, which was the length of the removal proceedings. *Id.* at 512 ("In contrast, because the statutory provision at issue in this case governs detention of deportable criminal aliens *pending their removal proceedings,* the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings. Second, while the period of detention at issue in *Zadvydas* was "indefinite" and "potentially permanent," that is not the case in this matter. Although a precise end date to Petitioner's removal cannot pinpointed, that is because her removal proceedings continue, not because they are indefinite. "Petitioner's detention will end either when the government grants her asylum or when it removes her, and Petitioner identifies no Tenth Circuit or Supreme Court case holding that such detention violates the Due Process Clause." *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202, 1211 (D.N.M. 2020). *See also Mwangi v. Terry,* 465 F. App'x 784, 787 (10th Cir. 2012)

The United States District Court for the District of Massachusetts (case mentioned above) recently dismissed a habeas action, finding that it was not a violation of due process to detain an undocumented alien during the course of his removal proceedings. *See Webert Alvarenga Pena, Petitioner, v. Patricia Hyde, et al.,*

*Respondents.*, No. CV 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025).

Petitioner's temporary detention pending her removal proceedings does not violate Due Process. She has been detained for roughly three months and 19 days as her process unfolds. Specifically, her next removal hearing is coming up before the immigration judge on October 16, 2025. Resolution one way or another is undoubtedly forthcoming. The record in Petitioner's case demonstrates no lack of procedural due process—nor any deprivation of liberty "sufficiently outrageous" required to establish a substantive due process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply made the decision to detain her pending removal which is a "constitutionally permissible part of that process." *See Demore v. Kim*, 538 U.S. 510, 531 (2003).

## CONCLUSION

Petitioner fails to establish her temporary detention is unlawful. Her Petition for Habeas Corpus should be dismissed.

Respectfully submitted,
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 9, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

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