

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Antonio Angel CASTILLO and Juan Jose Leon LOZA on behalf of themselves as individuals and on behalf of others similarly situated,

Plaintiffs,

v.

Mary DE ANDRA-YBARRA, Field Office Director, El Paso Field Office, Dora CASTRO, Warden of Otero Processing Center; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Sirce OWEN, Acting Director, EOIR; OTERO IMMIGRATION COURT; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR);

Defendants.

Case No.

**CLASS ACTION COMPLAINT AND
PETITION FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

1. Plaintiffs, Antonio Angel Castillo (“Mr. Castillo”) and Juan Jose Leon Loza (“Mr. Leon Loza”) are noncitizens detained at the Otero Processing Center and are subject to prolonged, mandatory detention under a sudden and unlawful policy change adopted by the Department of Homeland Security (“DHS”), the Executive office for Immigration Review (“EOIR”) and thereafter applied by immigration judges (“IJs”) of the Otero Immigration Court. This new policy, and practice, now mandates their detention and prevents him them and others similarly situated, from being released on bond while in civil immigration proceedings.

2. On July 8, 2025, DHS, “in coordination with” EOIR/DOJ, issued *Interim Guidance Regarding Detention Authority for Applicants for Admission*, declaring that all persons who

entered the United States without inspection are to be deemed “applicants for admission” under 8 U.S.C. § 1225(b)(2)(A), and are therefore subject to mandatory detention. This new reading now completely disregards how long a noncitizen has resided in the United States and where, in proximity to the United States border, the noncitizen was apprehended.

3. On September 5, 2025, the Board of Immigration Appeals (“Board”) adopted this policy in *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Board held that Immigration Judges lack authority to consider bond requests or grant bond to noncitizens present in the United States without admission. The Board further held that all noncitizens who entered without inspection, regardless of their length of residence in the United States or the distance from the border at which they were apprehended, are deemed “applicants for admission” who are “seeking admission,” and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

4. Prior to July 8, 2025, the Otero Immigration Court, as did other immigration courts across the country, regularly exercised jurisdiction under § 1226(a) over noncitizens who were apprehended and processed in the District of New Mexico, granting bond in appropriate cases. DHS’s Office of the Principal Legal Advisor (“OPLA”) did not oppose the court’s jurisdiction. Additionally, where an IJ issued a bond order, OPLA did not traditionally file Form EOIR-43 (Notice of Intent to Appeal).

5. Since the issuance of the July 8, 2025 Interim Guidance, most Otero Immigration Judges have continued to find jurisdiction under § 1225(a) to decide custody matters and have granted bond in meritorious cases. Yet, OPLA has now unilaterally overridden those judicial determinations. By systematically filing Form EOIR-43, OPLA triggers the automatic-stay provisions of 8 C.F.R. § 1003.19(i)(2), effectively making itself the final—and only—arbiter of

custody. This practice ensures continued detention even after an IJ finds that the noncitizen has met their burden on dangerousness and flight risk, prolonging confinement for months while the Board appeal remains unresolved.

6. Acting through the Otero Immigration Court, and OPLA, Defendants have institutionalized this policy. OPLA routinely invokes automatic-stay appeals to nullify favorable bond determinations. This is an approach that subverts both the text and the structure of the Immigration and Nationality Act (“INA”) and violates the Due Process Clause.

7. Once OPLA unilaterally triggers an automatic stay, the only recourse is an appeal to the Board of Immigration Appeals (“Board”). OPLA systematically files Form EOIR-43 to contest an IJ’s § 1226(a) jurisdiction and favorable bond rulings, invoking the automatic-stay mechanism of 8 C.F.R. § 1003.19(i)(2). In practice, this “right” to appeal is illusory as the Board’s months-long delay ensures that noncitizens remain detained often until they are removed from the United States, mooting the very issue under review. Even those who prevail in their removal cases face the risk of remaining detained while OPLA appeals the IJ’s grant of relief, with merits appeals lasting even longer. The cumulative effect is a detention regime that pressures noncitizens to abandon their claims after months of confinement, exacerbated by the severe obstacles detention poses to obtaining counsel and preparing a defense.

8. In federal criminal proceedings, detention decisions are treated with urgency. District courts and courts of appeals routinely resolve appeals from magistrate judges within days, weeks, or at most a few months. The Board, however, does not afford comparable attention to custody appeals, despite their direct implications for individual liberty. Rather than recognizing

these proceedings as involving fundamental rights protected by the Due Process Clause, the Board routinely allows such cases to languish for months without resolution.

9. The Board’s delays compound the harm created by OPLA’s automatic-stay practice. Even after an Immigration Judge issues a favorable bond order, the noncitizen remains confined, often for extended periods, severely impairing their ability to defend against removal. Prolonged detention also exposes individuals to unsafe and, at times, life-threatening and inhumane conditions in ICE’s contracted facilities. Faced with indefinite confinement and deteriorating conditions, many noncitizens are forced to abandon viable claims for relief simply to escape continued detention.

10. Plaintiffs, Antonio Angel Castillo and Juan Jose Leon Loza, seek to represent two classes of noncitizens apprehended and processed within the District of New Mexico to challenge Defendants’ policies and practices that (a) deny noncitizens the opportunity for a bond hearing under 8 U.S.C. § 1226(a), and (b) nullify favorable bond determinations through OPLA’s routine filing of Form EOIR-43, triggering automatic-stays.

11. Plaintiffs, Antonio Angel Castillo and Juan Jose Leon Loza, seek to represent a class of noncitizens who (1) were or will be apprehended and processed within the District of New Mexico, (2) have entered or will enter the United States without inspection, (3) are not apprehended upon arrival into the United States, and (4) are not or will not be subject to detention under 8 U.S.C. § 1226(c), 8 U.S.C. § 1225(b)(1), or § 1231 at the time they are scheduled for or request a bond hearing (“Bond Denial Class”). This class includes individuals detained at Otero County Processing Center in Chaparral, New Mexico, Cibola Country Correctional Center in Milan, New Mexico, and Torrance County Detention Facility in Estancia, New Mexico or any

other contracted or local facility, and seek declaratory relief that establishes class members are detained under § 1226(a) and therefore entitled to a full and fair bond hearing.

12. Plaintiffs, Antonio Angel Castillo and Juan Jose Leon Loza, seek to represent all detained citizens who have a pending appeal, or will file an appeal, of an IJ's bond hearing order to the Board, where the initial apprehension and processing occurred within the District of New Mexico, regardless of the facility in which they are detained at the time of the appeal. This includes individuals whose favorable bond orders under 8 U.S.C. § 1226(a) have been nullified by OPLA's filing of Form EOIR-43, triggering an automatic stay under 8 C.F.R. § 1003.19(i)(2), despite the individual not being subject to mandatory detention under 8 U.S.C. §§ 1225(b)(1), 1226(c), or 1231.

JURISDICTION AND VENUE

13. This case arises under the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101–1538, and its implementing regulations; the Administrative Procedure Act (APA), 5 U.S.C. §§ 500–596, 701–706; and the U.S. Constitution. Thus, the Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the United States, and under 28 U.S.C. § 2241, as the case challenges Plaintiff's and class member's unlawful detention.

14. The Court may grant relief pursuant to 28 U.S.C. § 2241; the Declaratory Judgement Act, 28 U.S.C. § 2201; the APA, 5 U.S.C. §§ 702, 706; the All Writs Act, 28 U.S.C. § 1651; Federal Rule of Civil Procedure 65; and the Court's inherent equitable powers.

15. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because Defendants are United States agencies and officers sued in their official capacities and/or reside in this District. In addition, a substantial part of the events or omissions giving rise to the claims

occurred in the District of New Mexico, including processing of Plaintiff and proposed class members; Plaintiffs are detained in this District; and no real property is involved in this action.

REQUIREMENTS OF 28 U.S.C. § 2243

16. Habeas corpus is perhaps the most important writ known to the constitutional law affording a remedy in all cases of illegal restraint or confinement. *See Fay v. Noia*, 372 U.S. 391, 400 (1963). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *See Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990) (citation omitted).

17. The Court must grant the petition for writ of habeas corpus or order Defendants to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Defendants must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

PARTIES

18. Plaintiff, Antonio Angel Castillo (“Mr. Castillo”), is a citizen and national of Mexico who has been in immigration detention since December 2024. After ICE performed interior enforcement, ICE issued Form I-200 (Warrant of Arrest) and arrested Mr. Castillo in El Paso, Texas, without setting a bond. Mr. Castillo later requested his custody be reviewed by an IJ. On April 28, 2025, the IJ erroneously denied Mr. Castillo’s custody request. On April 29, 2025, Mr. Castillo appealed the decision to the Board. Four months later, on August 20, 2025, the Board agreed that the court erred in its decision and remanded the bond matter to the IJ to continue exercising jurisdiction and issue a new order. On August 28, 2025, Mr. Castillo was granted another bond hearing. The IJ heard arguments and found that the court continued to have jurisdiction,

found Mr. Castillo had proven his burden that he was not a danger to society nor a flight risk, and exercised favorable discretion in Mr. Castillo's favor. The IJ ordered Respondent's released on a \$20,000 bond with ATD at DHS discretion. *See Alternatives to Detention*, <https://www.ice.gov/features/atd> (last visited Oct. 8, 2025). On August 29, 2025, DHS filed form EOIR-43 (Notice of Intent to Appeal Custody Redetermination).

19. Plaintiff, Juan Jose Leon Loza ("Mr. Leon Loza"), is a citizen and national of Mexico who has been in immigration detention since August 16, 2025. Mr. Leon Loza was detained at a checkpoint in the interior of the United States. Mr, Leon Loza first arrived in the United States around August of 1999. He resides in New Mexico, and has United States Citizen children. Mr. Leon Loza is the owner of Los Agaves Restaurant which has been in business for almost ten years in Artesia, New Mexico. He is also the owner of another Agaves Restaurant in Ruidoso, New Mexico that has been in business for about four years. Mr. Leon Loza has hosted events in his restaurant for the Border Patrol as his Los Agaves restaurant is located six blocks from the Federal Law Enforcement Training Center in Artesia, New Mexico. But, despite his equities, he is considered an applicant for admission under the Defendant's policy.

20. Defendant, Mary De Andra-Ybarra, is the Field Office Director of the El Paso Field Office of the U.S. Immigration and Customs Enforcement's Enforcement and Removal Operations division. Director De Andra-Ybarra is Plaintiffs' immediate custodian and is responsible for Plaintiffs' detention and removal, including class members apprehended and processed in the District of New Mexico who are detained at facilities under her authority. She is named in her official capacity.

21. Defendant, Dora Castro, is the Warden of Otero Processing Center in Chaparral, New Mexico, where the Plaintiffs are detained. Warden Castr’ has immediate physical custody of the Plaintiffs oner and other members of the proposed classes currently or previously detained at Otero Processing Center and is sued in her official capacity.

22. Defendant Kristi Noem is the Secretary of the United States Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees U.S. Immigration and Customs Enforcement, which is responsible for Plaintiffs’ detention and the detention of class members. Secretary Noem has ultimate custodial authority over Plaintiffs and the classes. Secretary Noem is sued in her official capacity.

23. Defendant United States Department of Homeland Security (“DHS”) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens, such as members of the proposed classes apprehended and processed in the District of New Mexico.

24. Defendant Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

25. Defendant Executive Office for Immigration Review (“EOIR”) is a component agency of the United States Department of Justice responsible for conducting removal and bond hearings of noncitizens, including those of members of the proposed classes. EOIR is comprised of a trail-level adjudicatory body administered by Immigration Judges (“IJs”) and an appellate body known as the Board of Immigration Appeals (“Board”). The Board has jurisdiction over any

IJ orders appealed. This includes bond appeals from members of the Bond Appeal Class whose favorable bond orders under 8 U.S.C. § 1226(a) have been automatically stayed through the filing of Form EOIR-43 by DHS's Office of the Principal Legal Advisor ("OPLA").

26. Defendant Sirce Owen is the Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including timely adjudication of bond appeals for members of the Bond Appeal Class and the administration of policies and practices challenged in this action. This includes the Board's handling of EOIR-43 appeals that have the effect of nullifying IJs' favorable bond determinations. She is sued in her official capacity.

27. The Otero Immigration Court is the adjudicatory body within EOIR with jurisdiction over the removal and bond cases of Plaintiffs and other individuals apprehended and processed in the District of New Mexico, including those detained at the Otero County Processing Center in Chaparral, New Mexico, or any other ICE-contracted or local facility. Its IJs preside over bond hearings under 8 U.S.C. § 1226(a), and its decisions in such hearings are subject to appeal to the Board.

LEGAL BACKGROUND

A. Detention under 8 U.S.C. § § 1226(a) and 1225(b)(2)

28. The Immigration and Nationality Act ("INA") authorizes three basic forms of detention for noncitizens in removal proceedings. The first is detention under 8 U.S.C. § 1226. Section 1226 grants the Attorney General authority to detain noncitizens who are placed in standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a (removal proceedings). Noncitizens detained under § 1226(a) are entitled to a bond hearing at the outset of

their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). By contrast, § 1226(c) mandates detention of certain noncitizens who have been arrested, charged with, or convicted of specified criminal offenses. Those individuals are subject to mandatory custody without the possibility of bond.

29. The two other forms of detention are found in sections 1225(b) and 1231(a)-(b). The INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Section 1231 applies to noncitizens with a final order or removal, including individuals in withholding-only proceedings. Their detention is authorized by 8 U.S.C. § 1231(a)-(b).

30. The matter in Mr. Castillo’s case concerns the detention provisions at § 1226(a) and § 1225(b)(2). These detention provisions were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. 104-208, Division C §§ 302–03, 110 Stat. 3009-546, 110 Stat. 3009-580 to 3009-584, 3009-585. Section 1226(a) was recently amended this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (January 29, 2025). When Congress enacted IIRIRA, EOIR clarified in its implementing regulations that, as a general matter, individuals who entered the United States without inspection were not considered detained under § 1225. Instead, such noncitizens were treated as detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”)

31. Following the enactment of IIRIRA, individuals who entered without inspection and were placed in standard removal proceedings generally received bond hearings under § 1226(a), unless disqualified by their criminal history. This practice aligned with longstanding agency interpretation and decades of prior precedent recognizing that noncitizens not classified as “arriving” were entitled to custody hearing before an IJ or neutral decision maker.

32. Class members, including Plaintiffs, were apprehended during interior enforcement actions far from any port of entry. Class members were well inside the United States and cannot be said to be seeking admission. In other words, they were already present in the United States and were thus not seeking entry. An interior apprehension lacks any statutory nexus to the “applicant for admission” framework under 8 U.S.C. § 1225(b)(2) and therefore falls squarely within § 1226(a)’s bond-eligible detention scheme. This abrupt change in textual reading raises serious constitutional concerns under the Fifth Amendment’s Due Process Clause.

33. Prior to July 8, 2025, the Otero Immigration Court regularly exercised § 1226(a) jurisdiction for similarly situated respondents apprehended and proceeded in the District of New Mexico, granting bond in appropriate cases. Where OPLA did not file Form EOIR-43, there was no DHS opposition to the court’s jurisdiction, and bond hearings proceeded in their normal course. On July 8, 2025, DHS, “in coordination with” DOJ, issued an Interim Guidance Regarding Detention Authority for Applicants for Admission, declaring that all persons who entered without inspection shall be deemed “applicants for admission” under 8 U.S.C. § 1225 and therefore subject to mandatory detention under § 1225(b)(2)(A), regardless of when or where they were apprehended.

34. On September 5, 2025, during the pendency of Mr. Castillo’s bond appeal, the Board decided *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting the same position. The Board held in a published decision that all noncitizens who entered without admission or parole are ineligible for bond hearings. Federal courts, however, have rejected this reading. *See D.S. v. Bondi, et al.*, 2025 WL 2802947, at *7 n.5 (D. Minn. Oct. 1, 2025); *Zumba v. Bondi, et al.*, 2025 WL 2753496, at *9 (D.N.J. Sept. 26, 2025); *Rodriguez v. Bostock*, 2025 WL 2782499, at *26 (W.D. Wash. Sept. 30, 2025).

35. Section 1226(a) applies by default to all noncitizens “pending a decision on whether the [noncitizen] is to be removed from the United States,” including those charged as inadmissible under § 1182(a)(6)(A)(i) (entered without being admitted or paroled). By contrast, § 1225(b) applies to individuals arriving at a port of entry or who have only recently entered the country. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The plain language of § 1225 confirms this distinction: the statute describes custody and detention in the context of inspection, a process that occurs at or near the border. That context is significant because it demonstrates that the actions governed by § 1225 concern border enforcement. Accordingly, the mandatory detention provisions of § 1225(b)(2) do not apply to individuals, such as Plaintiffs’ and similarly situated class members, who had already entered and were residing in the interior of the United States when apprehended.

B. Automatic-Stay Practice in the Otero Processing Center and the BIA’s Practice of Delayed Decisions

36. Where an IJ exercises § 1226(a) jurisdiction and has granted bond, OPLA has routinely filed Form EOIR-42 (Notice of Intent to Appeal) which then triggers an automatic stay of release under 8 C.F.R. § 1003.19(i)(2). OPLA’s use of EOIR-43 to invoke the automatic stay nullifies favorable bond determinations and results in prolonged detention while custody appeals are before the Board. Thus, a noncitizen remains confined despite an IJ’s findings that the

noncitizen is neither a danger nor flight risk. Many noncitizens are either removed from the United States or complete their immigration proceedings before the Board resolves the appeal.

37. Federal courts have concluded that the automatic-stay provision under 8 C.F.R. § 1003.19(i)(2) is unconstitutional facially and as applied. *See Vazquez v. Feeley*, 2025 WL 2676082, at *5 (D. Nev. Sept. 17, 2025). *Alves da Silva v. US Immigr. & Customs Enft, Bos. Field Off. Acting Dir. et al*, 2025 WL 2778083, at *6 (D.N.H. Sept. 29, 2025); *See generally Leon v. Forestal*, 2025 WL 2694763, at *3 (S.D. Ind. Sept. 22, 2025). Further, “[t]he application of the automatic stay is itself a separate act of detention that must also satisfy due process”. *Vazquez v. Feeley*, , 2025 WL 2676082, at *18 (D. Nev. Sept. 17, 2025). That tactic infringes on noncitizen's fundamental right to freedom, contains an undefined and subjective standard for its application, is only applied after a noncitizen has established by clear and convincing evidence that they are not a flight risk nor a danger, it is a unilateral stay, and, it lacks any reference to or establishment of any procedure for challenging it's innovation. *Id.*

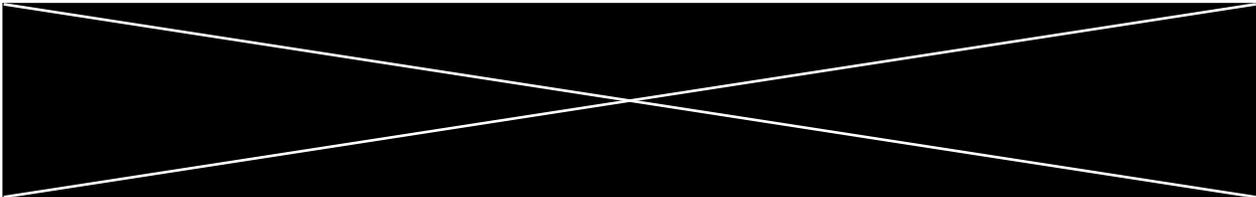
38. The noncitizen's “right” to appeal effectively becomes illusory. During the month-long delays before the Board issues a decision, individuals remain confined solely based on a unilateral decision, not because an IJ found them ineligible for bond This harm extends to all detained noncitizens who have a right to an individualized bond hearing under § 1226(a) and who either received a favorable bond that was stayed or were denied.

39. In the instant case, the first appeal took four months on a rather simple erroneous finding. These timelines are incompatible with the nature of custody review, where the question is whether continued detention is even necessary at all. Thus, these delays defy due process by denying a prompt and meaningful opportunity to challenge any continued detention. This, in turn,

violates the APA requirement to conclude matters “within a reasonable time,” warranting judicial relief. *See* 5 U.S.C. § 555(b), 5 U.S.C. § 706(1).

NAMED PLAINTIFFS’ ALLEGATIONS

40. Plaintiff, Antonio Angel Castillo (“Mr. Castillo”), is 33 years old and is a citizen and national of Mexico. He first arrived in 2001 and resided with his sisters and mother. Mr. Castillo was raised in El Paso, Texas, until he was 18 years old. During his upbringing, he and his family were subjected to 



41. On July 1, 2023, Mr. Castillo entered the United States. On December 29, 2024, ICE encountered Mr. Castillo, away from the United States border, and arrested him for a pending burglary charge from 15 years ago. Those charges came about when Mr. Castillo was still residing in the United States during his formative years. The charges were later dismissed in March 2025.

42. On April 28, 2025, Mr. Castillo requested custody redetermination review before an IJ. During the hearing, DHS counsel kept arguing that Mr. Castillo had serious domestic violence charges against him and thus was a danger to the community. However, this was incorrect as Mr. Castillo’s only criminal charge was dismissed.

43. Mr. Castillo’s counsel kept insisting and correcting the Court that the domestic violence charges belonged to Eric Stuhlman, not to Mr. Castillo. In fact, the same police report that stated the heinous abuse led to Mr. Castillo’s mother and sister obtaining U-Visa Status

(Victims of Criminal Activity: Domestic Violence). The IJ nonetheless denied Mr. Castillo's bond request. DHS did not raise any opposition to the court's jurisdiction.

44. On April 29, 2025, Mr. Castillo filed a custody appeal before the Board. On May 28, 2025, DHS filed a brief stating that there was no error in the IJ's determination that Mr. Castillo was a danger and that the IJ correctly considered "serious allegations of past criminal activity and misconduct". Again, DHS did not raise any arguments opposing jurisdiction.

45. On June 13, 2025, Mr. Castillo filed a brief demonstrating that the IJ erred because criminal conduct was incorrectly attributed to him. Based on the record, it was not reasonable to confuse the two because a picture of [REDACTED] had been provided to the court and [REDACTED]'s birthplace was Guam. Therefore, [REDACTED], by virtue of his birth, was a United States Citizen.

46. On August 20, 2025, the Board issued a decision concluding that the IJ's determination was clearly erroneous. The Board remanded the issue back to the IJ for new decision on the custody redetermination. There was no mention of any jurisdictional issues.

47. On August 28, 2025, Mr. Castillo was granted another bond hearing. For the first time, DHS argued that the court did not have jurisdiction because he was deemed an "applicant for admission" and was not eligible for bond. The court found jurisdiction under § 1226(a) after the Board remanded the case and ordered that a new decision be made. The IJ found that Mr. Castillo had proven by clear and convincing evidence that he was not a danger to the community nor a flight risk. The IJ issued a \$20,000 bond.

48. The following day, on August 29, 2025, DHS filed a Form EOIR-43 (Notice of Intent to Appeal) invoking the automatic-stay provisions under 8 C.F.R. § 1003.19(i)(2). On

September 5, 2025, the Board published its decision in *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025).

49. On September 10, 2025, DHS formally filed Form EOIR-26 (Notice of Appeal from a Decision of an Immigration Judge). DHS supplemented the form with a brief and argued that the IJ lacked jurisdiction to hear bond requests or to grant bond to any noncitizen present in the United States without admission. In its 22-page attachment, DHS cited to *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025), once.

50. The arguments in the attached brief completely focused on jurisdiction. There were no challenges as to the determination regarding Mr. Castillo's dangerousness or risk of flight. Mr. Castillo's appeal brief is due October 16, 2025.

51. On October 10, 2025, DHS filed their appeal brief which, again, focused entirely on the issue of jurisdiction. DHS did not address any of the factual determinations made by the IJ.

52. Plaintiff, Juan Jose Leon Loza ("Mr. Leon Loza"), is a 49 years old and is a citizen and national of Mexico. He first arrived into the United States around August 1999. Mr. Leon Loza was detained at a check point located in the interior of the United States. He has been detained at the Otero County Processing Center in Chaparral, New Mexico since August 16, 2025.

53. Prior to his detention, Mr. Leon Loza was imbedded in his community as he resided in New Mexico and was the owner of two restaurants. One restaurant, Los Agaves, has been in business for almost ten years in Artesia, New Mexico. The other restaurant is located in Ruidoso, New Mexico and has been in business for about four years.

54. Mr. Leon Loza is considered an applicant for admission is not eligible for bond under § 1225(a) despite his long-term residence in the United States. Around February 2020, however, Respondent was previously granted bond by an immigration judge.

CLASS ALLEGATIONS

55. Plaintiffs, Antonio Angel Castillo and Juan Jose Leon Loza, bring this action on behalf of themselves and all other people who are similarly situated, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). A class action is proper because this case involves questions of law and fact common to the classes, the classes are so numerous that joinder of all members is impracticable, Mr. Castillo's and Mr. Leon Loza's claims are typical of the claims of the classes, they will fairly and adequately protect the interest of the classes, and Defendants have acted on grounds that apply generally to the cases, so that final declaratory and injunctive relief is appropriate respecting the classes as a whole.

Bond Denial Class

56. Plaintiffs seeks to represent a "*Bond Denial Class*" comprised of:

All noncitizens apprehended in the interior of the United States and detained at the Otero Conty Processing Detention Center, Chaparral New Mexico, or any other ICE-contracted or local facility within the District of New Mexico, who (1) have entered or will enter the United States without inspection; (2) are not apprehended upon arrival at a port of entry or its functional equivalent, and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing in the Otero Immigration Court

57. The Bond Denial Class is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the exact number of putative class members, as Defendants are uniquely positioned to identify such persons. Upon information and belief, there are hundreds of individuals

detained each year in the District of New Mexico whom the Otero Immigration Court's post-July 8, 2025, policy applies. This class will also include many future members.

58. The proposed class meets the requirements of FRCP 23(a)(2). All class members present the same legal question which is whether § 1225(b)(2)'s mandatory detention provisions apply to them and thereby prevent them from receiving a bond hearing under § 1226(a) and its implementing regulations, despite having been apprehended in the interior and not at or near the border, and, where bond is granted, being subjected to an EOIR-43 automatic stay triggered by OPLA's appeal.

59. The Plaintiffs' claims are typical of the class, as they faces the same injury as the class and asserts the same statutory and constitutional claims as all other members.

60. The proposed class meets the requirements of FRCP 23(a)(4). Plaintiffs' seeks a declaration of rights applicable to the whole class, is represented by competent class counsel, and will fairly and adequately protect the class's interests.

Bond Appeal Class

61. Plaintiffs seek to represent a class entitled the "Bond Appeal Class" which consists of:

All detained noncitizens who has a pending bond appeal, or will file an appeal, of an Immigration Judge's bond hearing ruling to the Board of Immigration Appeals, including, without limitation, where the appeal was initiated by OPLA's filing of a Form EOIR-43, which under 8 C.F.R. § 1003.19(i)(2) stays the grant of bond during the pendency of the appeal.

62. The proposed class meets the requirements of FRCP 23(a)(2). All class members present the same legal question which is whether § 1225(b)(2)'s mandatory detention provisions apply to them and thereby prevent them from receiving a bond hearing under § 1226(a) and its implementing regulations, despite having been apprehended in the interior and not at or near the

border, and, where bond is granted, being subjected to an EOIR-43 automatic stay triggered by OPLA's appeal.

63. The Plaintiffs' claims are typical of the class, as they faces the same injury as the class and asserts the same statutory and constitutional claims as all other members. Namely, the continued detention during prolonged Board appeals.

64. The proposed class meets the requirements of FRCP 23(a)(4). Plaintiffs' seek a declaration of rights applicable to the whole class, are represented by competent class counsel, and will fairly and adequately protect the class's interests.

CAUSE OF ACTION

COUNT 1

Violation of 8 U.S.C. § 1226(a) Unlawful Denial of Bond Hearings (*On Behalf of Plaintiff and the Bond Denial Class*)

65. Plaintiffs incorporate by reference the allegations of fact set forth in paragraphs 1-64.

66. The mandatory-detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are charged as inadmissible because they have previously entered the country without being admitted. Such noncitizens who are detained as part of interior enforcement, far from any port of entry, are detained under § 1226(a), unless subject to another provision such as § 1225(b)(1), § 1226(c), or § 1231.

67. The Defendants, in applying the July 8, 2025, Interim Guidance, have adopted a policy and practice of deeming Bond Denial Class members subject to § 1225(b)(2) mandatory detention and ineligible for bond hearings under § 1226(a).

68. The application of § 1225(b)(2) to Bond Denial Class members violate the Immigration and Nationality Act.

COUNT II
Violation of the Administrative Procedure Act
Unlawful Denial of Bond Hearings
(On Behalf of Plaintiff and the Bond Denial Class)

69. Plaintiffs incorporate by reference the allegations of fact set forth in paragraphs 1-64.

70. The mandatory-detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are charged as inadmissible because they have previously entered the country without being admitted. Such noncitizens who are detained as part of interior enforcement, far from any port of entry, are detained under § 1226(a), unless subject to another provision such as § 1225(b)(1), § 1226(c), or § 1231.

71. The Otero Immigration Court have a policy and practice of applying § 1225(b)(2) to Bond Denial Class members and, even when bond is granted under § 1226(a), OPLA routinely files a Form EOIR-43 to appeal and trigger the automatic stay under 8 C.F.R. § 1003.19(i)(2), nullifying the release order and perpetuating detention under the same unlawful interpretation.

72. The application of § 1225(b)(2) to Bond Denial Class is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT III
Violation of the Due Process of the Fifth Amendment
Delayed Adjudication of the Bond Appeals
(On Behalf of Plaintiff and the Bond Appeal Class)

73. Plaintiffs incorporate by reference the allegations of fact set forth in paragraphs 1-64.

74. The Due Process Clause guarantees persons in civil detention timely appellate review of the decision to detain, particularly where an automatic stay under 8 C.F.R. § 1003.19(i)(2), triggered by OPLA’s filing of a Form EOIR-43, nullifies an IJ’s release order notwithstanding explicit findings of no danger and no flight risk.

75. By failing to adjudicate custody appeals within a reasonable period, the Board of Immigration Appeals does not provide timely appellate review of detention decisions.

76. This failure to provide timely appellate review, in cases where liberty has been curtailed through an EOIR-43 automatic stay, violates the Due Process Clause of the Fifth Amendment.

COUNT IV
Violation of the Administrative Procedure Act
Delayed Adjudication of the Bond Appeals
(On Behalf of Plaintiff and the Bond Appeal Class)

77. Plaintiffs incorporate by reference the allegations of fact set forth in paragraphs 1-64.

78. The APA requires that agencies act on matters presented to them within a “reasonable time.” 5 U.S.C. § 555(b). It also empowers courts to “compel agency action unlawfully withheld or unreasonably delayed.” *See Id.* § 706(1).

79. Concerning physical liberty, a reasonable time for appellate review of a civil-detention is not more than thirty (30) days from filing of the notice of appeal, while the individual remains detained.

80. For proposed Bond Appeal Class members in the District of New Mexico, the Board appellate review of custody determination, often stayed automatically by OPLA's EOIR-43 filings, regularly extends well beyond thirty (30) days.

81. The failure to provide timely appellate review of bond appeals violates the APA.

PRAYER FOR RELIEF

WHEREFORE,

A. Plaintiffs respectfully request that this Court:

1. **Jurisdiction:** Assume jurisdiction over this matter.
2. **Class Certification:** Certify this case as a class action under Rule 23(a) and 23(b)(2), and certify the Bond Denial Class and the Bond Appeal Class as defined herein.
3. **Class representatives:** Appoint Named Plaintiffs, Antonio Angel Castillo and Juan Jose Leon Loza, as representative of the Bond Denial Class and Bond Appeal Class.
4. **Class counsel:** Appoint undersigned counsel as class counsel pursuant to Rule 23(g).

B. As remedies for each of the causes of action asserted above, Plaintiffs and proposed class member's request:

5. **Declaratory relief – Bond Denial Class:** Declare that 8 U.S.C. § 1225(b)(2) does not apply to Bond Denial Class members apprehended in the interior and that they are detained under 1226(a) and entitled to individualized bond hearings.
6. **Injunctive Relief – Bond Denial Class:** Enjoin Defendants from applying § 1225(b)(2) mandatory detention to Bond Denial Class members and require that

such individuals receive prompt, individualized bond hearings under § 1226(a) before an Immigration Judge.

7. **Declaratory relief – Bond Appeal Class:** Declare that the Due Process clause and/or the Administrative Procedure Act entitle Bond Appeal Class members to timely adjudication of their bond appeal while detained, and that an automatic stay imposed by 8 C.F.R. § 1003.19(i)(2) following OPLA’s filing of Form EOIR-43 is unconstitutional facially and as applied.
8. **Injunctive/APA relief – Bond Appeal Class:** Order Defendants to adjudicate detained bond appeals within thirty (30) days of the notice of appeal; enjoin Defendants from continuing to detain Bond Appeal Class members pursuant to an automatic stay under 8C.F.R. § 1003.19(i)(2) more than ten (10) days after the appeal is filed absent a Board decision; and require prompt vacatur of the stay or release if the deadline is not met.
9. **Individual Habeas – Bond Enforcement/Alternative Hearing:** Grant a writ of habeas corpus as to Plaintiffs, Antonio Angel Castillo and Juan Jose Leon Loza, ordering their immediate release pursuant to any amount and conditions previously set by the Immigration Judge, notwithstanding any automatic stay trigger by OPLA’s Form EOIR-43 appeal.
10. **No-transfer/no-removal stay:** Enjoin Defendants, their agents, and anyone acting in concert with them from transferring Antonio Angel Castillo or Juan Jose Leon Loza out of the District of New Mexico, removing them from the United States, and to prevent the scheduling and commencement of an Individual Hearing during the pendency of this action.

C. **Fees and costs:** Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, and any other applicable law.

D. **Further relief:** Grant such other and further relief as the Court deems just and proper.

/S/ FELIPE D.J. MILLAN

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Attorney for Plaintiffs and the Proposed Class

CERTIFICATE OF SERVICE

I, **Felipe D.J. Millan**, do hereby certify that a true and correct copy of the foregoing instrument was mailed to the following on this 29th day of October 2025:

1. Mary De Andra-Ybarra, Field Office Director of the El Paso Field Office of U.S. Immigration and Customs Enforcement's Enforcement and Removal Operations division, 11541 Montana Ave, Suite E, El Paso, TX 79936;
2. Dora Castro, Warden, Otero County Processing Center, 26 McGregor Range Road, Chaparral, NM 88081;
3. Kristi Noem, Secretary, United States Department of Homeland Security Washington, DC 20528;
4. Pamela Bondi, Attorney General of the United States, 950 Pennsylvania Ave. NW, Washington DC 20530; and
5. Sirce Owen, Director of Executive Office for Immigration Review, 5107 Leesburg Pike, Falls Church, VA 22041

/S/ FELIPE D.J. MILLAN

FELIPE D.J. MILLAN