

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

**Case No. 26-cv-2410**

**EDGAR URIEL MARTINEZ SALAMANCA,**

Petitioner,

v.

**BALTAZAR, et. al.**

Respondents.

**PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR  
PRELIMINARY INJUNCTION**

Petitioner, Edgar Uriel Martinez Salamanca ("Petitioner" or "Edgar") is a 22-year-old citizen of Mexico who has resided in the United States ("U.S.") for more than three years. Edgar entered the United States on September 1, 2022, and was placed in removal proceedings pursuant to 8 U.S.C. § 1229. Since his arrival almost three years ago, Edgar has diligently pursued lawful status in the U.S. and earned the love and respect of his community.

Petitioner received an approved Form I-360, Petition for Amerasian, Widower, or Special Immigrant with USCIS on July 28, 2025, in which he was granted Special Immigrant-Juvenile Status ("SIJS") pursuant to 8 U.S.C. § 1101(a)(27)(J); however, given the numerical limitation and current visa backlog under 8 U.S.C. § 1153(b)(4), Edgar is not eligible to apply for a visa and/or adjustment of status to a Lawful Permanent Resident ("LPR") because a visa is not available at this moment. Additionally, Petitioner applied for Asylum, Withholding of Removal, Protection Under the Convention Against Torture with the Executive Office for Immigration Review

("EOIR") on April 7, 2026.

Through his habeas petition, Petitioner is challenging his detention at the Aurora ICE Processing Center ("AIPC"). He seeks immediate injunctive relief to protect him from ongoing and imminent harm caused by Respondents' decision to detain Petitioner during the pendency of his immigration removal case and deny him the opportunity to have an immigration judge ("IJ") hear his request for custody redetermination.

Respondents assert that the IJ does not have jurisdiction to hear Petitioner's Motion for Custody Redetermination because Petitioner was detained pursuant to 8 U.S.C. § 1225. Under Respondents' theory, Petitioner is "seeking admission" to the U.S. and thus subject to mandatory detention under § 1225(b)(2) despite having lived here for years. This is a sharp contrast to Respondents' decades-long prior practice where § 1225 applied only "at the Nation's borders and ports of entry." *See Jennings v. Rodriguez*, 583 U.S. 281 (2018).

Petitioner is entitled to preliminary relief, as numerous federal courts have held, "The language of ... § 1226 is ... clear[], ... [it] applies to [noncitizens] already present in the [U.S.] ... [And] permits ... release on bond." *Jennings*, 583 U.S. at 303.

Petitioner asks this Court to provide immediate relief, enjoining Respondents from removing Petitioner outside the District of Colorado during the pendency of these proceedings, order Respondents to provide an individualized custody hearing before a neutral decisionmaker within seven days, at which the government bears the burden of justifying continued detention by clear and convincing evidence; or, in the alternative, order Petitioner's immediate release under reasonable conditions.

## **I. FACTUAL BACKGROUND**

### **A. Legal Authority for Immigration Detention.**

The Immigration and Nationality Act ("INA") grants authority to the Department of Homeland Security ("DHS") to detain noncitizens. This case concerns two provisions governing immigrant detention: 8 U.S.C. § 1225(b) ("§ 1225(b)") and 8 U.S.C. § 1226(a) ("§ 1226(a)"). The distinction between the two determines whether a detained noncitizen may be released on bond issued by an immigration judge or is subject to mandatory detention that deprives an immigration judge of jurisdiction to grant a bond. Prior to 2025, generally, noncitizens arrested at arrival or shortly thereafter (14 days), and within 100 air miles of the border were detained pursuant to § 1225 as "applicants for admission," whereas noncitizens detained in the interior of the U.S. after 14 days were detained under § 1226.

It is uncontested that noncitizens detained under § 1225(b) are subject to mandatory detention and the IJ does not have jurisdiction to hear a custody redetermination hearing. Before the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), the statutory authority for custody determinations was found at 8 U.S.C. § 1252(a) (1994), and authorized detention during "deportation" proceedings and release on bond. Those "deportation" proceedings governed the detention of anyone in the United States, regardless of manner of entry. IIRIRA maintained the same authority for detention and release on bond at 8 U.S.C. § 1226(a). *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining the new § 1226(a) "restate[d] the current provisions in [then 8 U.S.C. § 1252(a)] regarding the authority ... to ... detain, and release on bond...").

The IIRIRA enacted new mandatory detention provisions for noncitizens apprehended on arrival to the U.S. In implementing the IIRIRA's detention authority, the then-INS clarified that people entering the U.S. without inspection and who were not apprehended while "arriving" would

continue to be detained under § 1226(a) with access to bond. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond ... This procedure maintains the status quo.”).

Likewise, it is uncontested that § 1226(a) establishes discretionary detention for noncitizens “[o]n a warrant issued by the Attorney General ... pending a decision on whether the [noncitizen] is to be removed from the U.S.” See 8 U.S.C. § 1226(a). If a noncitizen is detained under § 1226(a), and the DHS determines the noncitizen is to be detained during the pendency of his removal proceedings, the noncitizen may request a custody redetermination hearing before an immigration judge (“IJ”) at any time prior to a final order of removal. 8 U.S.C. § 1226(a).

The sole controversy the Petitioner asks this Court is to consider whether the 2025 policy change that states all noncitizens who entered the U.S. without inspection are “applicants for admission” and subject to mandatory detention under § 1225(b) is lawful and applies to Petitioner’s case.

**B. In 2025, DHS and the Board of Immigration Appeals began asserting that all noncitizens who entered the U.S. without inspection are subject to mandatory detention under § 1225(b) because such noncitizens are “applicants for admission.”**

During the 29 years since the IIRIRA’s passage, DHS and the EOIR, the court that hears immigration custody redetermination requests, applied § 1226(a) when a noncitizen was detained in the interior after entry without inspection. However, in July 2025, DHS “in coordination with the [DOJ]” issued a memo stating “effective immediately, it is the position of DHS” that anyone who entered without inspection is “subject to detention under [8 U.S.C. § 1225(b)] and may not be released from ICE custody...” In September 2025, the Board of Immigration Appeals (“BIA”) followed suit and affirmed this position in *Matter of Yajure Hurtado* when it held that based on the plain language of the INA, IJs lack authority to hear bond requests or to grant bond to

[noncitizens] who are present in the United States without admission pursuant to 8 U.S.C. § 1225(b)(2)(A). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Since DHS's change in position, the majority of IJs presiding at the AIPC have complied with the 2025 interpretation of the INA's detention scheme and held they lack jurisdiction to hear a request for custody redetermination by a detained noncitizen who is an "applicant for admission" pursuant to § 1225(b)(2)(A). As of the filing of this brief, the IJs presiding at the AIPC continue to assert they lack jurisdiction to hear a request for custody determination.

## II. ARGUMENT

To obtain temporary and preliminary injunctive relief, Petitioner must demonstrate that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1255 (10th Cir. 2003). When the government is a party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Under the circumstances presented herein, no security bond is required under Federal Rule of Civil Procedure 65(c).

### A. Petitioner is likely to succeed on the merits.

The Supreme Court explained in *Jennings v. Rodriguez*, § 1225 is concerned "primarily [with those] seeking entry," i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 297 & 287. In contrast, § 1226 applies to people who, like Petitioner, are "already in the country" and are detained "pending the outcome of removal proceedings." *Id.* at 289. The INA's plain text, canons of statutory construction, the statutes' legislative history, the

implementing regulations, and decades of agency practice all support this conclusion. Thus, district courts nationwide, and specifically in the District of Colorado, considering the issue have repeatedly sided with petitioners who stand in the same or similar position as Edgar. *See Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880, at \*3 (D. Colo. Sept. 16, 2025); *Valera v. Baltazar*, No. 1:25-cv-03744-CNS, 2025 WL 3496174, at \*2 (D. Colo. Dec. 5, 2025), *Hernandez v. Baltazar*, No. 1:25-cv-03094-CNS, 2025 WL Case No. 1:26-cv-00039-CNS Document 18 filed 01/27/26 USDC Colorado pg 2 of 4 3 2996643

The Supreme Court stated the canon of statutory interpretation requires that courts presume that the "legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992). There are two separate and distinct provisions of the INA that address detention of a noncitizen: 8 U.S.C. § 1225 and 8 U.S.C. §1226.

The plain text of 8 U.S.C. § 1226(a) states, "on a warrant issued by the Attorney General ("A.G."), a [noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the U.S." Under § 1226(a) the A.G. may continue to detain, release on bond, or release on parole the noncitizen. *See* 8 U.S.C. § 1226(a)(1)-(3). Subsection 1226(a)(1)-(2) provides the A.G. may continue to detain a noncitizen or release the noncitizen with a bond, conditions, or conditional parole. 8 U.S.C. § 1226(a)-(b). Subsection 1226(c) carves out discrete categories of noncitizens who are subject to mandatory detention due to certain criminal history. 8 U.S.C. § 1226(c). These carve-outs include noncitizens who are inadmissible for entering without inspection and who meet certain other crime-related criteria. *See* 8 U.S.C. § 1226(c)(1)(E). If Congress had intended for all noncitizens who entered the U.S. without

inspection to be detained, there would have been no reason to create a § 1226 at all, let alone § 1226(c) specifically calling out a category of noncitizens who are subject to mandatory detention.

DHS alleged Petitioner entered the country without inspection "at or near Laredo, TX, on or about September 1, 2022" and is removable as a noncitizen, "present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General" in the NTA served on Edgar on January 13, 2026. *See* ECF No. 1-1.

**B. Petitioner has suffered and will continue to suffer irreparable harm absent Injunctive Relief.**

Parties seeking preliminary injunctive relief must also show they are "*likely* to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013). It is well settled that infringement of a constitutional right enough and require no further showing of irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976), *Nken v. Holder*, 556 U.S. 418, 435 (2009), *Free the Nipple–Fort Collins v. City of Fort Collins*, 916 F.3d 792 (10th Cir. 2019).

Petitioner is currently suffering or will suffer irreparable harm resulting from his continued detention. As detailed above Respondents continue to detain Petitioner without allowing him a custody redetermination hearing before an IJ. These actions have caused, and are causing, irreparable harm in the form of both to his constitutional rights and to his physical and mental health.

Petitioner contends that DHS is depriving him of liberty without due process of law by failing to provide him with meaningful individualized review of his ongoing detention and by

failing to justify his prolonged detention in a bond hearing. This allegation alone entitles petitioner to a presumption of irreparable harm. Even absent that presumption, petitioner's continued detention absent a bond hearing will cause irreparable harm to his physical and mental health.

Absent injunctive relief, Respondents will continue to detain Petitioner, and the Petitioner will continue to suffer. For these reasons, Petitioner has demonstrated irreparable harm and has satisfied the second condition required to obtain temporary and preliminary injunctive relief.

**C. The balance of hardships and public interest weigh heavily in Petitioner's favor.**

The final two factors for injunctive relief, balance of hardships and public interest, "merge when the Government is the opposing party." *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976), *Nken v. Holder*, 556 U.S. 418, 435 (2009). Of note, the Tenth Circuit has held that no further showing of irreparable injury is required when the harm alleged is violation of the Petitioner's Constitutional rights because the relief available would not adequately compensate him for the alleged violations. See *Kikumura v. Hurley*, (242 F.3d 950 (10th Cir. 2001), *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003).

Petitioner faces weighty hardships, namely the deprivation of his statutory right to a custody redetermination hearing, constitutional right to due process, deprivation of his liberty, emotional hardship as well as economic hardship. Petitioner is detained in jail-like conditions at the AIPC. "The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972). Detention causes "potentially irreparable harm every day [one] remains in custody." *Rodriguez Vazquez*, 779 F.Supp.3d at 1262. This injury is "certain, great, actual, and not theoretical." See *Heideman v. S. Salt Lake City, Utah*, 348 F.3d 1182, 1189 (10th Cir. 2003) (citations omitted). Petitioner is a husband, a father, and a respected member of his community.

He contributes to his community by volunteering to help those in need.

Respondents, by contrast, face minimal hardship. The Respondents would merely incur administrative costs associated with providing procedural due process to which Respondent has a Constitutional right.

Moreover, Respondents “cannot suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing “the public interest in having the immigration laws applied correctly and evenhandedly”); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting “the public’s interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors”); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing “the public interest in Government observance of the Constitution and laws”).

Finally, the Tenth Circuit held that it is “always in the public interest to prevent the violation of a party’s constitutional rights.” *Awad v. Ziriox*, 670 F.3d. 1111, 1132 (10th Cir. 2012), *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1147 (10th Cir. 2013), *Colorado v. DeJoy*, 487 F.Supp.3d. 1061.

**D. Immediate Release is Necessary to Prevent Irreparable Constitutional Harm.**

Petitioner’s continued detention serves no legitimate governmental purpose and inflicts ongoing irreparable injury. This Court possesses broad habeas authority to order release where detention violates the Constitution or exceeds statutory authority. *See* 28 U.S.C. 2241; *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Petitioner is the beneficiary of an approved Form I-360 granting SIJS. *See* ECF No. 1-2.

Through that approval, USCIS determined that Petitioner satisfies the requirements of INA 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J), a humanitarian classification created by Congress to protect children who have been abused, neglected, abandoned, or subjected to similar circumstances. Although Petitioner is unable to apply for status of a lawful permanent resident at this time, Petitioner's approved SIJS establishes that USCIS determined that Petitioner falls within a specially protected class of vulnerable noncitizens.

Detention undermines Congress's purpose in creating SIJS protections. Rather than facilitating Petitioner's ability to pursue the immigration benefits for which Congress made him eligible, Respondents continue to detain him despite the existence of a recognized pathway to lawful permanent residence. As such, Petitioner's detention bears no reasonable relationship to any legitimate immigration objective.

Additionally, Petitioner presents no meaningful flight risk or danger to the community. He has already been identified, screened, and adjudicated by federal immigration authorities. His approved I-360 demonstrates substantial ties to the U.S. and a strong incentive to continue to comply with all future immigration proceedings in order to pursue permanent lawful status. Unlike individuals with no available immigration relief, Petitioner has every reason to remain engaged with the immigration process and appear for future proceedings.

Continued detention also inflicts irreparable harm. Every additional day of confinement deprives Petitioner of liberty protected by the Due Process Clause. The Supreme Court has repeatedly recognized that freedom from physical restraint lies at the core of the liberty protected by the Constitution. *Zadvydas*, 533 U.S. at 690. These injuries cannot be adequately remedied through monetary damages or post hoc relief.

The equities overwhelmingly favor release. Petitioner requests the opportunity to reside in

the community and support himself while pursuing the immigration benefits for which the USCIS has already determined he qualifies. Respondents will suffer no cognizable prejudice from release. Conversely, continued detention threatens ongoing constitutional injury and frustrates the humanitarian objectives embodied in the SIJ statute.

Accordingly, because Petitioner's continued detention is unlawful and because ongoing confinement causes irreparable constitutional harm, the Court should order Petitioner's immediate release pending resolution of his immigration proceedings and pursuit of status of a lawful permanent resident.

### III. CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant preliminary injunctive relief, enjoining Respondents from removing from transferring Petitioner outside the District of Colorado during the pendency of these proceedings, and order Respondents immediately release the Petitioner, or, in the alternative, to provide an individualized custody hearing before a neutral decisionmaker within seven days, at which the government bears the burden of justifying continued detention by clear and convincing evidence.

Respectfully submitted,

/s/ Leanne Reetz Hightower  
Leanne Reetz, Esq.

*Counsel for Petitioner*

Dated: June 1, 2026

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

**Case No.**

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**[PROPOSED] ORDER GRANTING PRELIMINARY INJUNCTION**

This matter having come before the Court on Petitioner's Motion for a Preliminary Injunction [Dkt. #\_\_\_], and this Court having reviewed the pleadings and heard arguments from counsel, the Court hereby GRANTS petitioner's Motion for a Preliminary Injunction.

Petitioner has satisfied the requirements for preliminary injunctive relief. In particular, Petitioner has demonstrated that he is substantially likely to succeed in proving that prolonged detention without a bond hearing under 8 U.S.C. § 1225(b) is unconstitutional. Petitioner has also demonstrated that, without relief, he would suffer irreparable harm to his constitutional rights and physical and psychological health.

Accordingly, Respondents are ordered to immediately release petitioner from detention, or, in the alternative, provide petitioner a bond hearing before an Immigration Judge where the

Department of Homeland Security bears the burden of establishing the necessity of petitioner's continued detention and considers alternatives to detention that could mitigate flight risk.

SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2026.

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Hon. \_\_\_\_\_, U.S.D.J.