

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 26-cv-02410-PAB

EDGAR URIEL MARTINEZ-SALAMANCA,

Petitioner,

v.

JUAN BALTAZAR, Warden, Aurora ICE Processing Center,  
DAVID VENTURELLA, Acting Director of U.S. Immigration and Customs  
Enforcement,

MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security, and  
TODD BLANCHE, Acting Attorney General of the United States,

Respondents.

---

**RESPONSE TO SUPPLEMENTAL BRIEFING REGARDING PETITIONER'S  
DUE PROCESS CLAIMS RELATED TO SIJ STATUS**

---

Respondents offer this response to the court's order (ECF No. 14) to brief the issue of whether petitioner's detention violates substantive due process given his allegations of special immigrant juvenile (SIJ) status. It does not.

As the court notes, *Alfaro Herrera v. Baltazar*, 2026 WL 91470, at \*2 (D. Colo. Jan. 13, 2026), concluded that an SIJ beneficiary cannot be removed for having entered the country at someplace other than an official checkpoint. That decision relied upon the text of 8 U.S.C. § 1227(c) and § 1255(h)(2), as well as cases citing those provisions. *Id.* Because that court concluded that SIJ status precluded removal, there was no legitimate

purpose for detaining the petitioner, so it found a substantive due process violation. *Id.* at \*7-\*9.

But, as the Third Circuit has concluded, an SIJ beneficiary *can* be removed. See *Cortez-Amador v. Attorney General*, 66 F.4th 429, 432-33 & n. 11 (3d Cir. 2023). That is because *Alfaro Herrera* incorrectly read the text of § 1227 and § 1255. “The starting point in discerning congressional intent is the existing statutory text,” and “when the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.” *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004).

As an initial matter, § 1227(c) does not apply to Martinez-Salamanca (nor to the alien in *Alfaro Herrera* who had not been admitted). It is an exception to § 1227(a), which addresses aliens *who were admitted* to the United States. 8 U.S.C. § 1227(a) (“Any alien (including an alien crewman) in and admitted to the United States”). But Martinez-Salamanca has not been admitted. He is being held under 8 U.S.C. § 1225 because he is an applicant for admission. He entered the United States without inspection. See ECF 1 at 8-9.

Nor does § 1255(h) provide the exemption to removal that *Alfaro Herrera* identified.

Section 1255 permits the Attorney General to adjust the status of “an alien who was inspected and admitted or paroled into the United States” to that of a lawful

permanent resident when (1) the alien applies for such status, (2) the alien is eligible for an immigrant visa and “is admissible” for permanent residence, and (3) a visa is immediately available when the application is filed. 8 U.S.C. § 1255(a). Ordinarily “[a]n alien present in the United States without being admitted or paroled . . . is inadmissible,” 8 U.S.C. § 1182(a)(6)(A)(i), so they could not satisfy § 1255(a)’s second requirement. But when adjusting an alien’s status under § 1255, the statute invokes 8 U.S.C. § 1101(a)(27)(J) to make an exception for SIJ status by (1) deeming the applicant paroled into the United States and (2) rendering § 1182(a)(6)(A)(i)’s inadmissibility provision inapplicable:

In applying this section to a special immigrant described in section 1101(a)(27)(J) of this title--

(1) such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States; and

(2) in determining the alien’s admissibility as an immigrant--

(A) paragraphs (4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) of section 1182(a) of this title shall not apply. . .

8 U.S.C. § 1255(h). This is the statutory language that *Alfaro Herrera* (and the cases it cited) relied upon to find that SIJ status rendered the petitioner unremovable. 2026 WL 91470, at \*2.

But the prefatory language “[i]n applying this section” makes plain that § 1255(h) applies only to adjustment of status under § 1255. It allows someone with SIJ status to

qualify as one who can get an adjustment of status under § 1255(a), *i.e.*, to qualify as “an alien who was . . . paroled into the United States.” *Compare* § 1255(a) *with* § 1255(h)(1). And § (h)(2)(A) allows the person to satisfy § 1255(a)’s requirement that they are “admissible to the United States for permanent residence” despite being otherwise inadmissible under § 1182(a)(6)(A)(i).

Nothing in § 1255(h) references detention or removal under 8 U.S.C. § 1229a (the statute that provides for formal removal proceedings). Rather, § 1255(h) provides an exception as to parole status and admissibility for purposes of “applying this section,” *i.e.*, the section providing for adjustment of status. This reading of the text is “unambiguous.” *Cortez-Amador*, 66 F.4th at 433 n.7. The absence of such a reference to detention and removability is the best indication of Congress’s intent. *Id.* at 432.

The Third Circuit has interpreted its precedent in *Osorio-Martinez v. U.S. Att’y Gen.*, 893 F.3d 153 (3d Cir. 2018), differently than *Alfaro Herrera*. *Compare Cortez-Amador*, 66 F.4th at 433 n.12 *with Alfaro Herrera*, 2026 WL 91470, at \*8-\*9. *Alfaro Herrera* expands § 1255(h) beyond its prefatory language “in applying this section” based on its assumptions as to Congress’s intent and goals regarding SIJ status. But “[c]ourts may not replace the actual text with speculation as to Congress’ intent,” *Hooper v. City of Tulsa*, 71 F.4th 1270, 1282 (10th Cir. 2023), and “[n]o legislation pursues its purposes at all costs without consideration of competing goals and concerns,” *In re Dawes*, 652 F.3d 1236, 1243 (10th Cir. 2011).

It is not an absurd reading of the statute to conclude that “Congress could have rationally decided that SIJS recipients should be given the opportunity to apply for adjustment of status, while also contemplating that they may be removed if their application is denied or for another appropriate basis.” *Cortez-Amador*, 66 F.4th at 432 n.11. Indeed, it is the statutory reading compelled by the text. The Board of Immigration Appeals agrees with this reading. *See Matter of N-A-G-C-*, 29 I. & N. Dec. 662, 666 (BIA 2026) (holding that § 1255(h) does not “create an exception to the detention provisions of” § 1225(b)).

Because SIJ status does not preclude removal—contrary to the ruling in *Alfaro Herrera*—there is a legitimate purpose in detaining a petitioner with SIJ status for removal. ECF 1 at 27-28. His detention does not therefore violate substantive due process.

Dated: June 29, 2026.

PETER MCNEILLY  
United States Attorney

s/J. Bishop Grewell  
J. Bishop Grewell  
Assistant United States Attorney  
U.S. Attorney’s Office  
1801 California Street, Suite 1600  
Denver, CO 80202  
Telephone: (303) 454-0100  
Email: bishop.grewell@usdoj.gov

Counsel for Respondents

**CERTIFICATE OF SERVICE**

I certify that on June 29, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all persons who have registered for such notifications.

*s/ J. Bishop Grewell*  
U.S. Attorney's Office