UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 25-cv-3981-DDD-CYC

PEREZ RIVAS,

Petitioner,

v.

Baltasar, et. al.,

Respondents.

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

I. INTRODUCTION

Petitioner, Gerson Perez Rivas ("Mr. Perez"), is a noncitizen in the custody of Immigration and Customs Enforcement ("ICE") at Aurora ICE Processing Center ("AIPC"), operated by GEO Group, Inc. Petitioner was detained on March 12, 2025, and has remained in custody since that date. No neutral decisionmaker, whether a federal judge or an immigration judge ("IJ"), have conducted a hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk. Petitioner's prolonged detention without a hearing on danger and flight risk violates the Due Process Clause of the Fifth Amendment.

Respondents assert that an IJ does not have jurisdiction to hear Petitioner's Motion for Custody Redetermination because Petitioner is detained pursuant to 8 U.S.C. § 1225(b). Under Respondents' theory, Petitioner was designated as an "arriving alien" when he entered the U.S., and as such, he will remain an "arriving alien" and subject to mandatory detention under § 1225(b) until USCIS adjudicates his Application to Adjust Status to that of a Permanent Resident, Form I-485, regardless of whether the United States ("U.S.") Customs and Immigration Service ("CIS") takes six months or six years.

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 3 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.

II. FACTUAL BACKGROUND

The Department's authority to detain noncitizens is proscribed by the Immigration and Nationality Act ("INA"). This case concerns the two provisions governing immigrant detention: 8 U.S.C. § 1225(b) and 8 U.S.C. § 1226(a). The scope of Respondents authority to detain a noncitizen and whether a noncitizen has a statutory right to a custody redetermination hearing before an IJ differs between § 1225(b) and § 1226(a).

It is uncontested that noncitizens detained by DHS under § 1225(b) are subject to mandatory detention and the IJ does not have jurisdiction to hear a custody redetermination request. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), enacted a mandatory detention provision for noncitizens apprehended on arrival to the U.S. in 8 U.S.C. § 1225(b). *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…").

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). 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."). Therefore, if a noncitizen is detained under § 1226(a), and 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 IJ at any time prior to a final order of removal. 8 U.S.C. § 1226(a).

Respondents argue that because Petitioner was classified as an "arriving alien" he is an applicant for admission and properly detained pursuant to 8 U.S.C. § 1225(b)(2). In support of their position, the Respondents cite *Depelian v. Baltazar*, wherein the court concluded a noncitizen was properly detained under § 1225 because he was an applicant for admission. *See Depelian v. Baltazar*, et. al., No. 25-cv-03765-SKC-TPO. Notably, the court in *Depelian* described the petitioner's release as resulting from a hunger strike - essentially forcing the hand of the respondents by making them choose between the physical safety of the petitioner and the immigration laws. While Deplian complied with every condition of his parole, the regulations stat that parole may be terminated when "the original purpose for the parole has been accomplished." *See* 8 C.F.R. § 212.5. Arguably, when Deplian ceased his hunger strike, the original purpose for the parole had been accomplished. Mr. Perez's fact pattern is materially and significantly different from *Depelian* and more closely reflects the fact pattern in *Buitrago Murzi v. Noem, et. al.*, 1:26-cv-00359-CNS.

Mr. Perez is a native and citizen of Venezuela. Mr. Perez entered the U.S. on January 16, 2024, by requesting asylum at a port of entry. Mr. Perez was served with a Notice to Appear ("NTA") that listed his first master calendar hearing for February 4, 2027, and released with a discretionary grant of parole received a grant of parole, under INA § 212(d)(5) for humanitarian reasons/public benefit. Petitioner's parole was valid through April 6, 2025. Petitioner applied for authorization to seek employment through Form I-765 pursuant to this parole, and Petitioner was granted employment authorization from April 3, 2024, through January 14, 2026.

Mr. Perez established significant ties to the community during this time, including meeting his wife [redacted] who became pregnant with their child.

Then, after 416 days, Petitioner re-detained by Respondents on March 12, 2025, and denied the opportunity to have a custody redetermination hearing because the IJ held he had no jurisdiction because Mr. Perez was an "arriving alien."[1] However, an analysis of whether a noncitizen is properly detained under § 1225 must go further than simply stating that a noncitizen was at one point in time an "arriving alien."

Petitioner filed a Motion to Terminate Proceedings on May 13, 2025, alleging the Department revoked Petitioner's parole without notice and detained him without lawful authority and without notice in violation of the Fifth Amendment. As such, Petitioner alleged his detention was arbitrary and lacked statutory foundation required by *Zadvydas v. Davis*, 533 U.S. 678 (2001).

In response, the Department argued Petitioner's parole was terminated as a matter of discretion. The Department also argued that because the Department's Form I-213 stated that an ICE detainer (Form I-247) and warrant for arrest (Form I-200) were approved, that Petitioner was lawfully arrested and detained. Additionally, the Department that Petitioner's parole expired on April 6, 2025. The Department argued that upon termination of parole, the regulations mandate a noncitizen be "restored to the status he or she had at the time of parole." The Department also argued that Petitioner was arrested pursuant to a warrant for arrest, however the Department did not produce said warrant for arrest.[2]

On May 21, 2025, an IJ denied Petitioner's Motion to Terminate, finding Petitioner did not provide evidence he was admitted into the U.S. or that he had a valid entry document, such as a visa, reentry permit, or border crossing card.

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[1] Of note, Respondents did not revoke Petitioner's parole until February 17, 2026.
[2] The Department's only evidence that a warrant for arrest existed was a notation in Petitioner's Form I-213 that stated a warrant for arrest was approved.

On September 15, 2025, Petitioner's wife filed Form I-130, and an interview for this application was held on November 13, 2025, with CIS. The application was approved on November 14, 2025.

Petitioner filed an application to Register Permanent Residence or Adjust Status, Form I-485, with USCIS on or about November 19, 2025. Because Petitioner was classified as an arriving alien, USCIS has exclusive jurisdiction to adjudicate Petitioner's Application to Adjust Status. *See* 8 C.F.R. § 1245.2(a)(1)(ii).

On December 2, 2025, USCIS issued Policy Memorandum ("PM") 602-0192 that states effective that same day, USCIS personnel must place a hold on pending benefit requests for aliens from countries listed in Presidential Proclamation (PP) 10949. PP10949 includes Venezuela as a "high-risk" country. PM 602-0192 lists Application to Register Permanent Residence or Adjust Status, Form I-485, as a "pending benefit request". *See* PM 602-0192, footnote 4.

On December 2, 2025, Petitioner submitted the approved I-130 and Form I-485 to USCIS, Petitioner again moved to terminate his proceedings with the court pursuant to INA § 1003.18(d)(1)(ii)(B). However, the Department objected stating that USCIS can adjudicate Petitioner's Form I-485 while he is detained. The Department made no objections based on danger or flight risk. The Department's sole argument was that since it is possible for USCIS to adjudicate Petitioner's application to adjust status to that of a lawful permanent resident while he is detained, Petitioner should remain detained. Undersigned counsel noted that PM-602-0192 will cause Petitioner to effectively remain detained indefinitely. Petitioner's Motion to Terminate was denied.

On December 21, 2025, at another master calendar hearing, the IJ reconsidered Petitioner's Motion to Terminate sua sponte, and terminated Petitioner's removal proceedings, stating, "[h]ere, the respondent has an approved I-130 petition, has a pending I-485 before USCIS, and is prima

facie eligible for adjustment of status. Further, as an arriving alien, USCIS has exclusive jurisdiction to adjudicate his I-485. 8 CFR § 245.2(a)(1). Termination would allow for conservation of judicial resources." ECF No. 9-1.

Rather than release Mr. Perez after his removal proceedings were terminated by the IJ, DHS filed an appeal with the Board of Immigration Appeals citing Mr. Perez's criminal history and that no pending motion to terminate was pending before the court. ECF No. 9-2.

III. 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 courts have made clear in a myriad of cases across the nation that for a noncitizen to be properly detained under 8 U.S.C. § 1225, a noncitizen must be (a) an "applicant for admission"; (2) "seeking admission"; (3) "not clearly and beyond a doubt entitled to be admitted." *See Nava v. Baltazar, et. al.*, 25-cv-, *citing Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025). The key part of this analysis is determining whether a noncitizen is "seeking admission." The phrase "seeking admission" uses the present participle verb tense. Merriam

Webster defines the present participle as, a participle that typically expresses present action in relation to the time expressed by the finite verb in its clause and formed with the suffix *-ing*; used in the formation of the progressive tenses. Put simply, "seeking admission" is a verb tense that indicates something is currently happening. In the instant case, Petitioner was not "seeking admission" to the U.S. on March 10, 2025, because he entered the U.S. on January 16, 2024.

The District of Colorado came to this same conclusion in *Buitrago Murzi v. Noem*, when Judge Sweeney adopted the reasoning of district courts nationwide that have held that petitioners who are released through parole are released on their own recognizance, and therefore § 1226 applies, not § 1225. *Buitrago Murzi v. Noem, et. al.*, 1:26-cv-00359-CNS, pp. 2-3. As such, the court held that detention under § 1225 is improper detention and amounts to a due process violation - the petitioner was ordered released. *Id.* at pp. 5-6.

Because Respondents sole argument is that that Petitioner is detained under § 1225 because he is "an applicant for admission," the Petitioner respectfully requests this court adopt the reasoning in *Buitrago Murzi v. Noem*.

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 and will continue to suffer irreparable harm because of his continued detention. As detailed above, Petitioner asserts that DHS is depriving his 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 custody redetermination 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.

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 and 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 is an economic provider for his family, and his detention is having an extreme financial impact on his family's immediate economic standing, and his continued detention will lead to long-lasting impacts on his entire family's economic standing. Additionally, Mr. Perez's family is enduring emotional hardship: Mr. Perez's wife gave birth to their child without her husband, and she has been raising an infant alone every day since August 2025.

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. Ziriax,* 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.

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, order Respondents to provide an individualized custody hearing before a neutral decisionmaker within 7 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.

Respectfully submitted,

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Dated: April 16, 2026

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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.