

Leanne Reetz Hightower
Barringer Law Firm, P.C.
5660 Greenwood Plaza Boulevard
Suite 445
Greenwood Village, CO 80111
Counsel for Petitioner

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

Carlos TAFOYA BARRIOS,)	
)	Case No. 26-cv-492
Petitioner,)	
)	PETITION FOR WRIT OF
v.)	HABEAS CORPUS PURSUANT
)	TO 28 U.S.C. § 2241
JUAN BALTASAR, Warden, Aurora ICE)	
Processing Center;)	
TODD LYONS, Acting Director of)	
U.S. Immigration and Customs Enforcement;)	
KRISTI NOEM, Secretary of the U.S. Department)	
of Homeland Security; and)	
PAM BONDI, Attorney General of the United)	
States)	
in their official capacities,)	
)	
Respondents.)	
_____)	

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

I. INTRODUCTION

Petitioner, Carlos Tafoyo Barrios ("Petitioner" or "Carlos") is a 43-year-old citizen of Mexico who has resided in the United States ("U.S.") for more than 30 years without any encounters with Immigration and Customs Enforcement ("ICE") until December 9, 2025. Carlos has two children who also reside in the U.S.: Carlos's daughter has maintained status under Deferred Action for Childhood Arrivals ("DACA") and his minor son is a U.S. citizen. Carlos has built a life in the U.S. and earned the love and respect of his family and community, as evidenced by the evidence submitted in support of his motion for custody redetermination. 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 decades. 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 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.

II. FACTUAL BACKGROUND

A. Legal Authority for Immigration Detention.

The Department of Homeland Security's ("DHS") 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) ("§ 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 were detained pursuant to § 1225 as "applicants for admission," whereas noncitizens detained in the interior of the U.S. under § 1226.

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 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 is whether a 2025 policy change that states all noncitizens who entered the U.S. without inspection are "applicants for admission" and, consequently, detained under § 1225(b) is lawful.

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 Executive Office for Immigration Review (EOIR), the immigration court that hears custody redetermination requests, applied § 1226(a) when a noncitizen was detained in the interior after entry without inspection

and said noncitizen requested a custody redetermination hearing. 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 majority of IJs presiding at the AIPC continue to assert they lack jurisdiction to hear a request for custody determination, including IJ Melanie Corrin, who is currently presiding over Petitioner's custody and removal cases at the AIPC.

A minority IJs who preside at the AIPC have held they are bound by the class certification and final order entered in *Maldonado Bautista, et. al. v. Santa Cruz, et. al.* and reversed course and hold that they have jurisdiction to hear requests for custody redetermination hearings follow the same procedure that was followed for 29 years: IJs assess whether the noncitizen establishes by the preponderance of the evidence that they are neither a danger to the community nor a flight risk. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

C. DHS incorrectly asserted that Petitioner is detained under § 1225(b)(2)(A) as an “applicant for admission.”

Petitioner entered the U.S. more than 30 years ago and did not encounter immigration officials until 2025. Prior to being detained, Petitioner lived and supported his wife and two children and provided emotional and economic support for his family. Because Petitioner entered the U.S. more than 30 years prior and did not encounter immigration officials until 2025, Petitioner should have been detained under § 1226(a). However, at Petitioner's custody redetermination hearing before IJ Melanie Corrin on January 21, 2026, the DHS asserted that Petitioner was detained pursuant to § 1225(b)(2)(A) and the IJ did not have jurisdiction to hear Petitioner's request for custody redetermination. As Petitioner and undersigned counsel had heard IJ Corrin repeatedly sustain this argument, Petitioner, through undersigned counsel, withdrew his request for a custody redetermination to file a petition for habeas corpus before this Court.

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 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 Carlos.¹

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

¹ *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

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 Unknown, on or about unknown date" 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 Notice to Appear ("NTA") filed on December 9, 2026. Petitioner is entitled to a custody redetermination hearing because he asserts that he has been present in the U.S. for over 30 years, DHS does not contest this fact, and he has no criminal history that would cause him to be detained under § 1225(c).

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 her of liberty without due process of law by failing to provide her with meaningful individualized review of her ongoing detention and by failing to justify her 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.

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, a grandfather, and a respected member of his community. He is the primary provider for his family, and his detention will have long-lasting impacts on his entire family's economic standing. 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. Ziriya*, 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.

V. 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,

/s/ Leanne Reetz Hightower
Leanne Reetz Hightower
Barringer Law Firm, P.C.
5660 Greenwood Plaza Boulevard
Suite 445
Greenwood Village, CO 80111
Counsel for Petitioner

Dated: February 9, 2026

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Carlos TAFOYA BARRIOS,)	
)	Case No. 26-cv-492
Petitioner,)	
)	PETITION FOR WRIT OF
v.)	HABEAS CORPUS PURSUANT
)	TO 28 U.S.C. § 2241
JUAN BALTASAR, Warden, Aurora ICE)	
Processing Center;)	
TODD LYONS, Acting Director of)	
U.S. Immigration and Customs Enforcement;)	
KRISTI NOEM, Secretary of the U.S. Department)	
of Homeland Security; and)	
PAM BONDI, Attorney General of the United)	
States)	
in their official capacities,)	
)	
Respondents.)	
<hr/>		

[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.

Hon. _____, U.S.D.J.