

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS – DALLAS DIVISION**

JEAN CARLOS VERA VERGARA,

Petitioner-Plaintiff,

v.

KRISTI NOEM, Secretary of Homeland
Security, in her official capacity;

TODD LYONS, Acting Director of
Immigration and Customs Enforcement,
in his official capacity; and

JOSH JOHNSON, Acting Director of the
Dallas Field Office of ICE, Enforcement
and Removal Operations, in his official
capacity,

Defendants.

CIVIL ACTION NO. 3:25-CV-02075

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS UNDER 28
U.S.C. § 2241 AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF;
EMERGENCY APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

I. INTRODUCTION.

1. This is an emergency, verified petition for a writ of habeas corpus and complaint for declaratory and injunctive relief to stop the unlawful civil detention and imminent placement of Petitioner–Plaintiff Jean Carlos Vera Vergara (“Mr. Vera”) into expedited removal, following a same-day dismissal of his removal proceedings in the Dallas Immigration Court over Mr. Vera’s objection.

2. Immediately after the Immigration Judge granted the Department of Homeland Security (“DHS”) trial counsel’s motion to dismiss—on asserted grounds of “changed circumstances” and that the Notice to Appear (“NTA”) was “improvidently issued”—two plain-clothes men who briefly flashed what appeared to be ICE badges seized Mr. Vera in a courthouse hallway. They refused to identify themselves beyond that.

3. Mr. Vera seeks individual relief to: (a) enjoin DHS from placing or keeping him in expedited removal or otherwise removing him during the pendency of his immigration case; (b) require DHS to maintain him, if detained at all, only under 8 U.S.C. § 1226 with a prompt custody hearing before an Immigration Judge; (c) preserve his access to counsel and this Court; and (d) declare that dismissal cannot be used as a pretext to evade ongoing § 240 adjudication and the right to seek asylum before an IJ.

II. JURISDICTION AND VENUE.

4. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202. This action also invokes the Court’s authority under the All Writs Act, 28 U.S.C. § 1651.

5. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar this suit. Petitioner does not challenge a final order of removal, nor seek classwide relief. Detention-based habeas claims are not channeled by Section 1252(b)(9). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018). Section 1252(g) is narrowly construed and does not foreclose review of unlawful custody or *ultra vires* attempts to switch a non-final INA § 240 case into expedited removal. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999) (hereinafter also referred to as “*Reno v. AADC*”). Individual injunctive relief is not barred by Section 1252(f)(1). *See Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 2065–66 (2022).

6. Venue is proper in this District and Division under 28 U.S.C. § 1391(e) because Petitioner was arrested at the Earle Cabell Federal Building and Courthouse in Dallas,

Texas, and is detained within, or subject to transfer from, this District; relevant events and records are located here; and Respondents include local DHS officials.

III. PARTIES.

7. Petitioner–Plaintiff JEAN CARLOS VERA VERGARA is a native and citizen of Ecuador. He was Respondent in removal proceedings under 8 U.S.C. § 1229a (INA § 240) in the Dallas Immigration Court. He seeks asylum, withholding of removal, and protection under the Convention Against Torture.

8. Respondent–Defendant KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security (DHS). She is sued in her official capacity.

9. Respondent–Defendant TODD LYONS is the Acting Director of Immigration and Customs Enforcement (“ICE”), an executive branch agency within the Department of Homeland Security. He is sued in his official capacity.

10. Respondent–Defendant JOSH JOHNSON is the Acting Director of the Dallas Field Office of ICE – Enforcement and Removal Operations. He is sued in his official capacity as Petitioner’s local custodian and DHS’s local decisionmaker, and as Petitioner’s immediate physical custodian as of the filing of this verified petition.

11. Respondent–Defendants Noem and Lyons, who represent DHS and ICE, are properly included herein as the executives of federal agencies within the meaning of the Administrative Procedure Act (“APA”).

IV. FACTUAL ALLEGATIONS.

12. Mr. Vera appeared as scheduled for removal proceedings under INA § 240 [8 U.S.C. § 1229a] in the Dallas Immigration Court on August 5, 2025. DHS trial counsel John Bartlett orally moved to dismiss, asserting that Mr. Vera was no longer an

enforcement priority due to ‘changed circumstances.’ When the undersigned Counsel stated on the record that he suspected that the requested dismissal was merely a ruse to render Mr. Vera amenable to apprehension and placement into expedited removal proceedings by ICE, Mr. Bartlett modified his argument, further asserting that the NTA had been ‘improvidently issued’—an assertion that the IJ accepted without offering the undersigned Counsel for Mr. Vera the chance to brief the issue.

13. Through counsel, Mr. Vera opposed dismissal on the record, explaining that he intended to pursue asylum, withholding, and CAT relief before an Immigration Judge and objected to DHS’s stated rationales.

14. As articulated above, the undersigned Counsel further warned on the record that he anticipated DHS/ICE would arrest Mr. Vera immediately upon issuance of a dismissal order, and placed DHS on notice that such action would be challenged.

15. The Immigration Judge stated that the parties’ positions were clear and granted DHS’s motion to dismiss. *See* Ex. A. Immediately thereafter, in the courthouse hallway, two men in plain clothes briefly flashed a badge that appeared to say ‘ICE’ and arrested Mr. Vera. They declined to identify themselves further. When asked under what authority they were arresting him, they stated only that he was in the country illegally and that they could place him in custody whenever they wanted.

16. Although the undersigned Counsel attempted to speak with Mr. Vera after he was pulled aside by the purported ICE officers, Mr. Vera was only allowed to speak with his attorney very briefly, for less than a minute. At one point, one of the men who claimed to be an ICE officer told Mr. Vera and his counsel that they “only had twenty seconds” to finish speaking, an apparent attempt to hinder Mr. Vera’s constitutional right to counsel.

17. Counsel attempted to identify the arresting officers by inquiring with security at the Jackson Street entrance. A security guard (Officer Wilson) stated that ICE officers entered so frequently that they were no longer required to sign a logbook or show identification. FPS personnel on the first floor, however, stated the opposite—that ICE officers are required to sign logbooks whenever they enter the courthouse.

18. On information and belief, DHS intends to use the dismissal to remove Mr. Vera from the Section 240 track in order to place him into expedited removal proceedings under INA § 235(b)(1) [8 U.S.C. § 1225(b)(1)]—foreclosing his pursuit of asylum before an impartial Immigration Judge. Mr. Vera has not received a final removal order, and he has filed a timely appeal of the dismissal to the Board of Immigration Appeals (“BIA”), which will keep the immigration case non-final. *See* 8 C.F.R. §§ 1003.39, 1240.14; *see* Ex. B, Notice of Appeal to the BIA.

19. Despite having an administrative appeal of the IJ’s order of dismissal pending with the BIA, Mr. Vera faces the immediate risk of removal or transfer out of this District, and the undersigned Counsel’s access has already been impaired by the manner of the arrest. As of the filing of this verified petition, Mr. Vera remains in ICE custody. However, without emergency injunctive relief, he faces irreparable harm.

V. LEGAL FRAMEWORK.

20. Any noncitizen physically present in the United States may apply for asylum. 8 U.S.C. § 1158(a)(1). Mr. Vera has been pursuing protection claims and opposed dismissal in order to seek adjudication before an IJ.

21. DHS’s courthouse arrest and threatened shift to expedited removal to foreclose IJ review is arbitrary, capricious, and contrary to law. *See* 5 U.S.C. § 706(2).

22. Detention must be lawful and non-punitive; civil immigration custody is governed by statute. *See* 8 U.S.C. § 1226 (pre-final-order detention). The government may not leverage dismissal to bypass ongoing § 240 adjudication and access to counsel.

23. Section 1252(b)(9) does not preclude detention-based habeas claims. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). Section 1252(g) is narrowly construed and does not bar challenges to unlawful custody or ultra vires procedural tactics. *Reno v. AADC*, 525 U.S. at 482–83. Individual injunctive relief is available. *Garland v. Aleman Gonzalez*, 142 S. Ct. at 2065–66.

24. Arresting officers are required to identify themselves and state the reasons for the arrest as soon as practicable and safe. *See* 8 C.F.R. § 287.8(c)(2).

VI. CLAIMS FOR RELIEF.

COUNT I – Habeas Corpus (28 U.S.C. § 2241): Unlawful Civil Detention.

25. Mr. Vera’s custody is unlawful because DHS is detaining him to evade ongoing Section 240 adjudication and to place him into expedited removal despite the non-final posture of his immigration case and his intent to appeal. Detention should be ordered terminated, or, alternatively, converted to § 1226 custody with a prompt IJ bond hearing.

COUNT II – Administrative Procedure Act (5 U.S.C. § 706): Arbitrary, Capricious, Contrary to Law; Ultra Vires.

26. DHS’s tactic of dismissing the § 240 case and immediately arresting Mr. Vera to force expedited removal is arbitrary/capricious, an abuse of discretion, and contrary to law, including 8 U.S.C. § 1158(a)(1) and the regulatory framework that preserves § 240 jurisdiction until finality. *See* 8 C.F.R. §§ 1003.39, 1240.14.

COUNT III – Fifth Amendment: Due Process and Interference with Access to the Courts and Counsel.

27. The courthouse “ambush” arrest, refusal to identify, and threatened transfer/removal impair Mr. Vera’s ability to consult counsel and pursue statutory protection claims, violating due process.

COUNT IV – Declaratory Judgment (28 U.S.C. §§ 2201–2202).

28. An actual controversy exists regarding DHS’s authority to switch Mr. Vera into expedited removal while his § 240 case remains non-final. The Court should declare that DHS may not do so and must preserve his ability to seek protection before an IJ.

COUNT V – All Writs Act (28 U.S.C. § 1651): Preservation of Status Quo and Court’s Jurisdiction.

29. The Court should issue such writs/orders as necessary to preserve its jurisdiction and the status quo—including a temporary restraining order.

VII. EMERGENCY RELIEF REQUESTED (TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION).

30. Mr. Vera satisfies the factors for temporary and preliminary relief: likelihood of success on the merits; irreparable harm absent relief; balance of equities in his favor; and the public interest. *See Nken v. Holder*, 556 U.S. 418, 434 (2009).

31. He requests an immediate TRO and, after notice, a preliminary injunction ordering that Respondents:

- (a) STAY any removal, expedited removal initiation (I-860), or execution;
- (b) PROVIDE immediate and continued access to counsel and to this Court;
- (c) PRODUCE Petitioner for hearing as needed and refrain from transferring him outside the Northern District of Texas absent 48 hours’ notice to counsel and the Court;

(d) MAINTAIN Petitioner, if detained at all, solely under 8 U.S.C. § 1226 and afford him a prompt custody/bond hearing before an Immigration Judge; and

(e) PRESERVE all records and ESI relevant to the Aug. 5, 2025 arrest, EOIR dismissal, and any DHS decisions concerning Petitioner.

VIII. PRAYER FOR RELIEF.

32. WHEREFORE, Petitioner–Plaintiff respectfully prays that the Court take the following actions:

- A. Assume jurisdiction over this action and grant a writ of habeas corpus ordering his immediate release; or in the alternative, order that any custody be under 8 U.S.C. § 1226 with a prompt bond hearing before an IJ;
- B. Declare that DHS may not initiate or pursue expedited removal against Mr. Vera while his § 240 case remains non-final and while he seeks asylum, withholding, and CAT protection before an IJ;
- C. Issue a Temporary Restraining Order and Preliminary Injunction as set forth above;
- D. Order Respondents to preserve and produce records sufficient to identify the arresting officers and to document the basis for the dismissal and arrest;
- E. Award reasonable attorneys’ fees and costs as permitted by law; and
- F. Grant all other relief the Court deems just and proper.

DATE: August 5, 2025.

Respectfully submitted,

THE LAW OFFICE OF JOHN M. BRAY, PLLC
911 N. Bishop Ave.
Dallas, Texas 75208
Tel: (855) 566-2729
Fax: (214) 960-4164
Email: john@jmblawfirm.com

By: /s/ John M. Bray
John M. Bray
Texas Bar No. 24081360
ATTORNEY FOR PETITIONER-PLAINTIFF

VERIFICATION

By my signature below, I hereby declare that the foregoing facts, which have been read to me in Spanish, are true and correct to the best of my knowledge and belief, and I make this declaration under penalty of perjury.

X 

08/05/2025

Sean Carlos Vera Vergara

INDEX OF ATTACHED EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Immigration Judge's Order of Dismissal (Aug. 5, 2025)
B	Proof of Pending Appeal with the Board of Immigration Appeals
C	Proof Petitioner Remains in ICE Detention Custody