UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JEAN CARLOS VERA VERGARA,
Petitioner–Plaintiff,

v.

KRISTI NOEM,
Secretary of Homeland Security, et al.,
Respondents–Defendants.

Civil No. 3:25-cv-02075-E-BT

PETITIONER'S BRIEF IN REPLY TO RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

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TO THE HONORABLE JUDGE BROWN:

Petitioner–Plaintiff Jean Carlos Vera Vergara ("Mr. Vera") respectfully submits this brief in reply to Respondents' Opposition, filed October 20, 2025, to Petitioner's Motion for a Temporary Restraining Order ("TRO") (ECF No. 17), filed with the Court on August 21, 2025 (ECF No. 15), and as specifically directed by the Court in its order, dated September 18, 2025 (ECF No. 14).

I. INTRODUCTION

Respondents' opposition confirms the need for immediate judicial intervention. They concede that the Department of Homeland Security ("DHS") dismissed Mr. Vera Vergara's removal proceedings under 8 U.S.C. § 1229a ("§ 240 proceedings") over his objection, arrested him, and now claims to detain him under the separate and far harsher regime of 8 U.S.C. § 1225(b)(2). Yet, in nearly the same breath, DHS admits it has sought to restore those same § 240 proceedings by re-filing a new Notice to Appear ("NTA")—a filing rejected by the Immigration Court clerk only because DHS's own appeal of the dismissal remains pending before the Board of Immigration Appeals ("BIA"). *See* Gov't App'x at 4–9. This procedural whiplash lays bare the problem: DHS is toggling between statutory frameworks to deny Mr. Vera Vergara any opportunity for a neutral bond hearing.

Under DHS's shifting theory, Mr. Vera Vergara is simultaneously an "applicant for admission" under § 235(b)(2) and a respondent in § 240 proceedings. That position is not merely inconsistent—it is legally impossible. Once the government initiates or seeks to reinstate § 240 removal proceedings, detention is governed by 8 U.S.C. § 1226, not § 1225(b). *See Jennings v. Rodriguez*, 583 U.S. 281, 288–90 (2018) (distinguishing the two detention statutes by the procedural posture of the removal case); *Matter of M-S-*, 27 I. &

N. Dec. 509, 510-12 (A.G. 2019) (same). DHS's own filings thus demonstrate that its reliance on § 1225(b) is untenable.

The government's exhaustion argument fares no better. It insists Mr. Vera Vergara must first seek bond from an Immigration Judge—while simultaneously maintaining that Immigration Judges lack jurisdiction to grant such relief because he is held under § 235. That circular logic proves exhaustion is futile, and that only this Court can prevent irreparable harm from indefinite detention without judicial review. *See McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (waiving exhaustion where administrative relief is unavailable or inadequate, and "federal courts must balance the interest of the individual in retaining prompt access to a federal judicial forum against countervailing institutional interests favoring exhaustion").

Nor does *Jennings v. Rodriguez* foreclose relief. *Jennings* addressed whether § 1225(b) and § 1226(c) contain implicit statutory time limits on detention; it expressly declined to decide the constitutional question, and it nowhere authorizes DHS to choose between detention regimes at will. 583 U.S. at 852–53. And while DHS invokes *Matter of Yajure Hurtado*, 28 I. & N. Dec. 389 (BIA 2024), that decision—issued after the Supreme Court's abrogation of *Chevron* deference in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024)—is entitled to, at most, *Skidmore* weight. Under ordinary principles of statutory construction, § 1226 governs.

Because DHS's statutory position is self-contradictory, its exhaustion defense collapses, and the ongoing detention violates both statute and due process. Mr. Vera Vergara has shown a clear likelihood of success on the merits, irreparable injury from continued confinement without a bond hearing, and a balance of equities and public interest

that favor prompt judicial correction. This Court should therefore grant the temporary restraining order and direct DHS either to provide a bond hearing under § 1226 within seven days or to release Mr. Vera Vergara forthwith.

II. FACTUAL BACKGROUND

The Government's opposition and supporting appendix confirm the key facts underlying Petitioner's request for emergency relief—facts that are largely undisputed and, indeed, drawn from DHS's own record.

A. DHS Initiated Removal Proceedings Under § 240, Then Dismissed Them Over Petitioner's Objection

On July 2, 2024, the Department of Homeland Security ("DHS") issued a Notice to Appear ("NTA") placing Petitioner, Jean Carlos Vera Vergara, in formal removal proceedings pursuant to 8 U.S.C. § 1229a ("§ 240 proceedings"). *See* Gov't App'x at 1–3. Those proceedings were properly docketed before the Immigration Court, where Petitioner appeared through counsel and contested removability.

On September 18, 2024, however, DHS abruptly moved to dismiss those § 240 proceedings. Petitioner opposed the motion, warning that dismissal would deprive him of the statutory right to seek release under 8 U.S.C. § 1226. The Immigration Judge nonetheless granted DHS's motion to dismiss on October 3, 2024. *See id.* at 4–7.

B. DHS Immediately Re-Arrested Mr. Vera Vergara and Claimed to Hold Him Under § 235(b)(2)

Following the dismissal, DHS took Petitioner back into custody and re-classified him as an "arriving alien" detained under 8 U.S.C. § 1225(b)(2)(A)—a provision designed for noncitizens who have never been admitted to the United States and are stopped at or

near a port of entry. *See* Gov't Opp. at 5–6. In reality, Mr. Vera Vergara had long resided within the United States and was previously placed in standard § 240 removal proceedings.

This re-designation had profound legal consequences: under DHS's own theory, it stripped the Immigration Judge of bond jurisdiction and rendered Petitioner's detention mandatory and indefinite, with no neutral review. *See id.* at 7–8 (asserting that § 235(b)(2) detainees are not entitled to custody hearings).

C. DHS Then Attempted to Restore § 240 Proceedings by Filing a New NTA

Even as DHS now argues in this Court that § 235(b)(2) governs, its own filings show the agency has tried to return Mr. Vera Vergara to § 240 proceedings. On October 22, 2024, DHS filed a new NTA seeking to place him once again before the Immigration Court. *See* Gov't App'x at 8–10. The Immigration Court clerk rejected that filing because DHS's appeal of the prior dismissal order was still pending before the Board of Immigration Appeals ("BIA"). *Id.*

In its subsequent Motion to Dismiss Appeal, DHS told the BIA that the filing of the new NTA "renders this appeal moot" because it affords Mr. Vera Vergara "the relief he seeks." *Id.* at 11–12. That concession fatally undermines the Government's current position that Petitioner remains a § 235(b) detainee with no bond rights.

D. The BIA Appeal Remains Pending, Leaving Mr. Vera Vergara in Legal Limbo

As of the Government's filing, the BIA had not yet ruled on DHS's motion to dismiss the appeal or on Petitioner's own opposition. Thus, by DHS's own account, Mr. Vera Vergara is caught between two incompatible postures: (1) DHS asserts in federal court that he is detained under § 235(b)(2) and ineligible for bond; yet (2) DHS

simultaneously represents to the BIA that it has reinstated § 240 proceedings, which would bring his custody squarely within § 1226.

This procedural limbo has lasted months. During that time, Petitioner has remained confined at the Prairieland Detention Center in Alvarado, Texas, without a bond hearing, without the ability to seek parole on a meaningful record, and without clarity as to which statutory framework even governs his detention.

E. Petitioner Filed This Action to Preserve His Liberty and Prevent Further Jurisdictional Gamesmanship

On October 28, 2025, Petitioner filed this action under 28 U.S.C. § 2241 and § 1331, seeking a temporary restraining order to enjoin DHS from continuing to detain him under § 235(b)(2) and to compel a bond hearing under § 1226. Petitioner also sought to prevent DHS from using procedural maneuvers—such as dismissing and re-filing removal proceedings—to evade judicial review.

The Government's response does not dispute these facts. Instead, it relies entirely on its own inconsistent characterizations of the statutory basis for detention. That inconsistency confirms the urgent need for this Court's intervention to prevent indefinite, unreviewable confinement of a noncitizen already once placed in regular removal proceedings.

III. ARGUMENT

A. Exhaustion Is Prudential and Futile on the Government's Own Theory.

The Government argues that Mr. Vera Vergara must first exhaust administrative remedies by seeking a bond hearing from an Immigration Judge before turning to federal court. *See* Gov't Opp. at 9–11. But that argument collapses under its own weight. In the same brief, the Government insists that Immigration Judges lack jurisdiction to grant bond

hearings to individuals detained under 8 U.S.C. § 1225(b)(2). *Id.* at 7–8. In other words, DHS demands exhaustion of a remedy it simultaneously claims does not exist. That contradiction renders the exhaustion requirement futile as a matter of law.

Exhaustion of administrative remedies in habeas or immigration detention cases is not jurisdictional; rather, it is a prudential doctrine that courts apply flexibly, and "'[u]nder the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.'" *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 U.S. Dist. LEXIS 206527, at *12 (S.D. Tex. 2025) (quoting *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337, 2025 WL 2691828, at *6 (W.D. Tex. Sept. 22, 2025). Federal courts routinely waive exhaustion where resort to administrative procedures would be futile or inadequate to prevent irreparable harm, including in the context of habeas. *Id.*

Here, futility is not speculative—it is conceded. DHS maintains that because Mr. Vera Vergara is now labeled an "applicant for admission," the Immigration Judge has no bond jurisdiction under 8 C.F.R. § 1003.19(h)(2)(i)(B). *See* Gov't Opp. at 7. Thus, according to DHS's own position, the agency forum to which Mr. Vera Vergara is supposedly required to apply cannot grant the relief sought. Requiring exhaustion in such circumstances would be little more than a purposeless formality. *Cf. McCarthy*, 503 U.S. at 149.

The prudential nature of exhaustion also permits courts to bypass it where a petitioner raises a substantial constitutional claim or faces irreparable harm from ongoing detention. *Cf. Garza v. Lappin*, 253 F.3d 918, 923 (7th Cir. 2001) (in § 2255 case, noting that exhaustion is unnecessary where delay would cause irreparable injury). Mr. Vera Vergara's detention is already prolonged, and DHS's own conflicting positions make clear

that no administrative mechanism presently exists to adjudicate his custody. The Fifth Circuit has excused exhaustion in precisely such circumstances, recognizing that a detainee is not required to pursue a process that offers no potential for relief. *See Dilworth v. Johnson*, 215 F.3d 497, 501 n.3 (5th Cir. 2000) ("[E]xhaustion is not necessary where resort to state remedies would be futile, because the necessary delay before entrance to a federal forum which would be required is not justified where the state court's attitude towards a petitioner's claims is a foregone conclusion.")).

Furthermore, even if the Immigration Judge theoretically had jurisdiction (which the Government denies), the exhaustion requirement would still not bar review because Mr. Vera Vergara challenges the legal authority under which DHS purports to detain him—not merely the discretionary outcome of a bond proceeding. Courts consistently hold that statutory and constitutional challenges to the source of detention authority fall outside any exhaustion requirement. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (federal courts retain jurisdiction to determine "whether detention is statutorily authorized").

In short, the Government cannot both (1) deny Immigration Judges the power to release Mr. Vera Vergara and (2) claim he must first seek that nonexistent relief. The exhaustion doctrine was never meant to be weaponized as a trapdoor to avoid judicial review. Because the Government's own position makes administrative relief unavailable, and because continued detention without review inflicts irreparable harm, exhaustion is excused and this Court properly exercises jurisdiction over Mr. Vera Vergara's habeas and TRO claims.

B. Detention of a Noncitizen in § 240 Proceedings Is Governed by 8 U.S.C. § 1226, Not § 1225(b)(2).

DHS's opposition rests on a false premise: that it may unilaterally reclassify Mr. Vera Vergara—an individual already placed in regular removal proceedings under 8 U.S.C. § 1229a—as an "arriving alien" subject to mandatory detention under § 1225(b)(2). That contention is contrary to the text, structure, and purpose of the Immigration and Nationality Act ("INA"), as well as decades of consistent interpretation distinguishing the two detention regimes.

1. The statutory framework separates detention under § 1225(b) from detention under § 1226.

Congress drew a bright line between the detention of "applicants for admission" at or near the border, governed by § 1225(b), and the detention of noncitizens already present in the United States and placed in removal proceedings, governed by § 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 288–90 (2018) (observed that § 1225(b) applies to aliens seeking admission into the United States, while § 1226 governs detention of aliens already in the country pending their removal proceedings). The distinction is not a matter of discretion; rather, it reflects fundamentally different statutory purposes.

Section 1225(b)(2) mandates detention only for individuals seeking admission who are undergoing inspection and have not yet been admitted or paroled. By contrast, § 1226(a) provides discretionary detention authority pending a decision on whether the alien is to be removed, expressly encompassing respondents in § 240 proceedings. Once DHS initiates a § 240 case by issuing and filing the NTA, the agency's detention authority shifts to § 1226. *See Matter of M-S-*, 27 I. & N. Dec. 509, 510 (BIA 2019) (when DHS initiates formal removal proceedings, noncitizen's detention is under § 1226(a)).

2. DHS elected § 240 proceedings—and is now attempting to restore them.

Here, DHS's own filings establish that it initiated § 240 proceedings against Mr. Vera Vergara on July 2, 2024; moved to dismiss those proceedings over his objection; and now seeks to reinstate them by filing a new NTA. *See* Gov't App'x at 1–10. DHS even told the Board of Immigration Appeals ("BIA") that the new NTA "renders this appeal moot" because it affords Petitioner "the relief he seeks." *Id.* at 11–12. In other words, DHS has acknowledged that Mr. Vera Vergara belongs in § 240 proceedings. Its attempt to simultaneously detain him under § 1225(b)(2) while pursuing § 240 jurisdiction before the BIA defies the statutory structure.

An individual cannot be both an "applicant for admission" under § 1225(b)(2) and a "respondent in removal proceedings" under § 1229a at the same time. The INA provides no mechanism for DHS to toggle between these frameworks at will. Once DHS exercised its prosecutorial discretion to place Mr. Vera Vergara in § 240 proceedings, it was bound by § 1226 for custody purposes. *See Matter of M-S-*, 27 I. & N. Dec. at 510; *Jennings*, 583 U.S. at 288–90.

3. DHS's reading would collapse the statutory distinction and authorize limitless detention.

If DHS's position were accepted, it could evade § 1226 at any time simply by dismissing and re-filing a charging document—transforming any interior arrest into an "arriving-alien" case and stripping federal courts and immigration judges of bond jurisdiction. That outcome would erase Congress's deliberate differentiation between §§ 1225 and 1226 and permit precisely the kind of unreviewable, indefinite detention the Supreme Court has repeatedly cautioned against. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("[T]he Court has never held that the Constitution permits indefinite detention

without a bond hearing."); *Demore v. Kim*, 538 U.S. 510, 529 (2003) (upholding mandatory detention only because it was brief and tied to ongoing § 240 proceedings).

Indeed, by DHS's logic, even long-term residents arrested deep within the United States could be re-designated as "arriving aliens," bypassing the § 1226 bond framework entirely. Such an interpretation would render § 1226 superfluous and contradict the rule that immigration statutes must be construed to avoid constitutional concerns. *See Zadvydas*, 533 U.S. at 689; *see Clark v. Suarez Martinez*, 543 U.S. 371, 380–81 (2005).

4. The Government's reliance on *Yajure Hurtado* and *Jennings* is misplaced.

The Government cites *Matter of Yajure Hurtado*, 28 I. & N. Dec. 389 (BIA 2024), for the proposition that DHS may treat any noncitizen apprehended within 14 days and 100 miles of the border as an "arriving alien" subject to § 1225(b)(2). *See* Gov't Opp. at 8–9. But *Yajure Hurtado* is a recent agency interpretation, issued after the Supreme Court's elimination of Chevron deference in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024). It therefore merits, at most, the limited *Skidmore* deference accorded to agency reasoning that is persuasive, not binding. *United States v. Mead Corp.*, 533 U.S. 218, 234–35 (2001). Moreover, *Yajure Hurtado* conflicts with both *Jennings* and *M-S-* by collapsing the statutory distinction between border inspection and domestic removal proceedings.

Nor does *Jennings* support the Government. *Jennings* held only that § 1225(b) does not imply a six-month time limit on detention; it did not address, let alone approve, DHS's ability to shift an interior detainee between § 1225(b) and § 1226 regimes. *Jennings*, 583 U.S. at 313–14. The Court expressly remanded the constitutional question of prolonged

detention without bond. *Id.* at 314. DHS's reliance on *Jennings* to justify Mr. Vera Vergara's indefinite, unreviewable detention therefore misses the mark.

5. Because DHS has chosen—and continues to pursue—§ 240 proceedings, § 1226 governs eligibility for bond.

The record establishes that Mr. Vera Vergara's removal case is, and always has been, within the § 240 framework. DHS's pending motion before the BIA to dismiss its own appeal confirms as much. *See* Gov't App'x at 11–12. Under that posture, detention authority lies squarely in § 1226, which provides for a bond hearing before an Immigration Judge. The Court should therefore order DHS to treat Mr. Vera Vergara's custody as governed by § 1226 and to afford him a prompt bond hearing—or release him if no such hearing occurs within seven days.

C. The Government's Authorities Do Not Compel Its Result.

The Government invokes a handful of authorities—*Jennings v. Rodriguez*, *Matter of Yajure Hurtado*, *Department of Homeland Security v. Thuraissigiam*, and *Demore v. Kim*—to justify detaining Mr. Vera Vergara indefinitely under § 1225(b)(2). None withstands scrutiny. Each either addresses a different statutory posture, pre-dates the Supreme Court's repudiation of Chevron deference, or turns on factual and legal contexts wholly absent here.

1. *Jennings v. Rodriguez* does not authorize indefinite § 1225(b)(2) detention or permit DHS to toggle between statutes.

The Government's reliance on *Jennings*, 583 U.S. 281 (2018), is misplaced. *Jennings* merely held that §§ 1225(b) and 1226(c) do not contain an implicit six-month limitation on detention; it did not hold that DHS may detain individuals indefinitely, nor did it bless the agency's ability to reclassify detainees at will. *Id.* at 311-14. Far from endorsing DHS's position, the Court expressly declined to reach the constitutional question

and remanded for further proceedings on whether prolonged detention without a bond hearing violates due process. *Id.* at 320.

Yet, *Jennings* itself recognizes the precise distinction that DHS seeks to erase here—that § 1225(b) applies to "aliens seeking admission" into the United States, whereas § 1226 governs the detention of aliens already in the country pending their removal proceedings. *Id.* at 289-90 (emphasis added). Mr. Vera Vergara falls squarely in the latter category, as DHS's own filings to the BIA confirm. *See* Gov't App'x at 11-12 (conceding DHS sought to "restore" § 240 proceedings). Thus, *Jennings* undermines rather than supports the Government's claim.

2. *Matter of Yajure Hurtado* carries no *Chevron* deference and conflicts with higher authority.

The Government's heaviest weight rests on *Matter of Yajure Hurtado*, 28 I. & N. Dec. 389 (BIA 2024), which expanded the definition of "arriving alien" to encompass noncitizens arrested within 100 miles of the border and within 14 days of entry. That decision, however, was issued after the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), which eliminated *Chevron* deference and reaffirmed that the Courts' role is to interpret the law. Post-*Loper Bright*, agency interpretations receive at most *Skidmore* deference—that is, deference proportional to their persuasiveness. *Cf. United States v. Mead Corp.*, 533 U.S. 218, 234-35 (2001) (analyzing *Skidmore* deference). *Yajure Hurtado* merits no such weight. It disregards the statutory and structural division between border inspection (§ 1225) and domestic removal (§ 1226), and it directly conflicts with both *Jennings* and *Matter of M-S-*, 27 I. & N. Dec. 509 (BIA 2019).

Moreover, DHS's reliance on *Yajure Hurtado* is self-defeating: even as it cites that case to claim § 235 authority, DHS has filed a new NTA to restore § 240 proceedings,

conceding that Petitioner belongs in the § 1226 framework. *See* Gov't App'x at 11-12. The agency cannot simultaneously rely on an interpretation that presupposes initial entry-inspection detention while it pursues full removal proceedings under § 240.

3. The Government's *Thuraissigiam* is inapposite and, if anything, reinforces Petitioner's position.

The Government also gestures toward *Department of Homeland Security v. Thuraissigiam*, 591 U.S. ___, 140 S. Ct. 1959 (2020), which upheld the limited judicial review provisions applicable to expedited removal under § 1225(b)(1). But *Thuraissigiam* involved an alien apprehended within yards of the border, seeking judicial review of a negative credible-fear determination—a context far removed from Mr. Vera Vergara's interior arrest and pending § 240 proceedings.

Critically, *Thuraissigiam* emphasized that the petitioner there had "no prior connection to this country" and was seeking only to enter. *Id.* at 1982. Mr. Vera Vergara, by contrast, was long present in the United States, previously in § 240 proceedings, and has ongoing ties to the community. DHS's attempt to invoke *Thuraissigiam* thus collapses the distinction between an alien stopped at the threshold and a resident respondent whose removal must be adjudicated under § 240. Nothing in *Thuraissigiam* authorizes indefinite civil detention or the procedural manipulation of charging documents to evade judicial review.

4. *Demore v. Kim* supports, rather than undermines, the need for a prompt bond hearing.

Finally, *Demore v. Kim*, 538 U.S. 510 (2003), cannot salvage DHS's position. *Demore* upheld the constitutionality of mandatory detention for a narrow class of criminal aliens under § 1226(c), relying on Congress's finding that such detention was typically

brief—lasting an average of 47 days and rarely more than five months. *Id.* at 529 & n.12. The Court expressly distinguished prolonged or indefinite confinement, noting that the justification for detention is premised upon its limited duration. *Id.* at 530.

Mr. Vera Vergara's situation bears no resemblance. He is not a criminal alien; he faces protracted, open-ended detention with no bond hearing and no foreseeable adjudicative resolution. As the numerous courts have held, detention of this nature far exceeds the brief, categorical custody *Demore* contemplated and implicates the due-process concerns left unresolved in *Jennings*. *See, e.g.*, *Gonzalez v. ICE*, 975 F.3d 788, 815 (9th Cir. 2020) (en banc) (observing prolonged detention under § 1226 is distinguishable from "detainer" authority and implicates due process concerns).

5. None of the cited authorities authorizes the agency's procedural gamesmanship.

Taken together, the Government's cases do not empower DHS to manipulate detention statutes by dismissing and re-filing removal proceedings to deny access to bond review. Nothing in *Jennings*, *Yajure Hurtado*, *Thuraissigiam*, or *Demore* condones such administrative gamesmanship. The INA's structure, the Supreme Court's decisions, and bedrock due-process principles all require that once DHS elects the § 240 framework—as it repeatedly has here—custody must proceed under § 1226, with the attendant right to a bond hearing before a neutral adjudicator.

D. Due Process Requires a Prompt, Neutral Bond Determination.

Even if the Court were to accept the Government's statutory theory (it should not), Mr. Vera Vergara's continued confinement without a hearing offends the Fifth Amendment's Due-Process Clause. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that

Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Civil immigration detention, while permissible in limited circumstances, is constitutionally tolerable only when it serves a valid regulatory purpose and is subject to adequate procedural safeguards. *See generally Demore v. Kim*, 538 U.S. 510, 526 (2003); *Clark v. Martinez*, 543 U.S. 371, 380–81 (2005).

1. Prolonged, indeterminate detention without review violates due-process norms.

Mr. Vera Vergara has now been confined for months with no opportunity to contest his custody before a neutral decision-maker. The Government's position would allow that detention to persist indefinitely while DHS and the BIA resolve their own procedural inconsistencies. Such open-ended confinement bears no resemblance to the "brief" and "definite" detention that *Demore* upheld. 538 U.S. at 529–30 (noting an average of 47 days). The Supreme Court has made clear that once detention becomes prolonged, due process requires an individualized hearing to determine whether continued confinement is justified. *Zadvydas*, 533 U.S. at 690–91 (holding that civil detention is presumptively unreasonable beyond six months); *see also Jennings*, 583 U.S. at 313 (remanding for consideration of constitutional limits on prolonged detention).

2. DHS's "no-hearing" regime offers neither notice nor a neutral forum.

Under DHS's shifting theory, Mr. Vera Vergara has no statutory right to a bond hearing because he is an "applicant for admission," and no meaningful avenue for discretionary parole because that process is entirely opaque and unreviewable. The Supreme Court has long held that due process requires, at minimum, "notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). When the Government detains a person for

months without articulating a timeframe for release or providing any hearing, it fails that basic constitutional test. *See Rodriguez-Diaz v. Garland*, 53 F.4th 1189, 1198 (9th Cir. 2022) (indefinite or prolonged detention without hearing raises "serious constitutional concerns," as "*Demore* had assumed that any detention period would be brief").

3. The Government's asserted interests do not justify indefinite detention.

The only governmental interests asserted—ensuring appearance at removal and protecting the community—can be fully addressed through a bond hearing where DHS bears the burden of proving necessity by clear and convincing evidence. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (requiring Government to carry burden of proving that detention is justified). A narrowly tailored hearing satisfies those interests without subjecting a presumptively innocent civil detainee to prolonged incarceration. The Constitution requires no less.

4. Equitable relief is necessary to remedy the ongoing violation.

Because Mr. Vera Vergara's detention is prolonged, lacks any neutral review mechanism, and results directly from DHS's contradictory procedural maneuvers, the equities and public interest overwhelmingly favor judicial intervention, especially in light of the absence of any criminal history by Petitioner. *See Nken v. Holder*, 556 U.S. 418, 435-36 (2009) (public interest served by ensuring the Government acts within the law, but public interest may be heightened and require swift execution of removal order in some cases, such as where alien is particularly dangerous). A temporary restraining order directing DHS to provide a bond hearing within seven days—or to release him if it fails to do so—merely restores the constitutional baseline recognized in *Zadvydas* and *Demore*: that liberty, not detention, is the default condition in civil immigration proceedings.

IV. THE TRO FACTORS STRONGLY FAVOR IMMEDIATE RELIEF.

Generally, in order to obtain a temporary restraining order, the movant for such relief must show the following:

(1) a substantial likelihood of success on the merits;

(2) a substantial threat of irreparable harm if relief is not granted;

(3) that the threatened injury outweighs any harm the injunction might cause the opposing party; and

(4) that granting the injunction will not disserve the public interest.

See Janvey v. Alguire, 647 F.3d 585, 595 (5th Cir. 2011) (in interlocutory appeal, cited *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009) and upheld injunction by receiver in Ponzi scheme case to freeze assets of financial advisors and employees pending outcome of trial by SEC); *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987) (restated requirements for preliminary injunction in case denying injunction of policy to deny public assistance benefits to probationers). As shown herein below, each of these factors weighs heavily in Mr. Vera Vergara's favor.

A. Mr. Vera Vergara Is Likely to Succeed on the Merits.

Mr. Vera Vergara is highly likely to succeed because DHS's claimed authority under § 1225(b)(2) cannot lawfully apply to him. The record shows that DHS placed him in § 240 proceedings, dismissed those proceedings over his objection, and is now actively seeking to restore them. *See* Gov't App'x at 1–12. Once the Government initiates or resumes § 240 proceedings, detention authority lies exclusively in 8 U.S.C. § 1226, which provides a statutory right to bond review before an Immigration Judge. *See Jennings v.*

Rodriguez, 583 U.S. 281, 288–90 (2018) (distinguishing between detention authorities under § 1225(b) and § 1226); *Matter of M-S-*, 27 I. & N. Dec. 509, 510 (BIA 2019).

Even if the statute were ambiguous (it is not), *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), eliminated *Chevron* deference, so the Court must independently interpret the statute. Under ordinary principles of construction and separation of powers, DHS cannot expand its detention authority by procedural sleight of hand.

On the constitutional merits, Mr. Vera Vergara's ongoing confinement without a neutral bond hearing violates the Fifth Amendment's Due Process Clause under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and exceeds the "brief and limited" detention *Demore v. Kim*, 538 U.S. 510 (2003), found permissible. Because his detention serves no legitimate purpose beyond bureaucratic delay, success on the merits is not just likely—it is overwhelming.

B. Mr. Vera Vergara's Unlawful Detention Is Causing Irreparable Harm.

Every day of unlawful detention constitutes irreparable injury. *See Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011) (loss of liberty cannot be undone through monetary remedies). Mr. Vera Vergara remains confined in the Prairieland Detention Center without access to a bond hearing, without clarity as to which statutory regime governs his custody, and without any definite end in sight. His ongoing loss of liberty, family separation, and psychological harm satisfy the irreparable injury requirement many times over.

C. The Balance of Equities Tip in Mr. Vera Vergara's Favor.

The balance of hardships tips sharply toward Petitioner. A TRO would simply require the Government to comply with existing statutory and constitutional limits—to provide a bond hearing or release a civil detainee who has not been charged with a crime. The Government identifies no cognizable harm from obeying the law. By contrast, denying relief would subject Mr. Vera Vergara to indefinite incarceration with no prospect of review. The balance of hardships virtually always tips sharply in favor of those challenging detention without bond, because the government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *See Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013).

D. The Injunction of Illegal Government Conduct Serves the Public Interest.

Finally, the requested injunction serves the public interest by preserving the integrity of the immigration system and ensuring that executive detention remains subject to the rule of law. The Fifth Circuit has long recognized that the public has a strong interest in the enforcement of constitutional rights. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 298 (5th Cir. 2012) (affirmed that "Injunctions protecting First Amendment freedoms are always in the public interest.") (internal citation omitted). The undersigned Counsel can find no case supporting the proposition that the public interest can ever be disserved by ensuring that detention is lawful, transparent, and constitutionally bounded. By the same token, ordering DHS to provide a prompt bond hearing—or release Petitioner if it fails to do so—does precisely that.

V. CONCLUSION & PRAYER

For the reasons set forth above, Petitioner Jean Carlos Vera Vergara respectfully submits that the Department of Homeland Security lacks statutory authority to detain him under 8 U.S.C. § 1225(b)(2) and that his continued confinement without a neutral custody determination violates both the Immigration and Nationality Act and the Fifth Amendment's Due Process Clause.

The Government's own filings demonstrate that it has initiated—and continues to pursue—removal proceedings under § 240, thereby subjecting Petitioner's custody to 8 U.S.C. § 1226. Yet DHS has invoked § 235(b)(2) to deny him access to any bond hearing, trapping him in administrative limbo and depriving this Court of the orderly judicial review that Congress and the Constitution require.

Immediate judicial intervention is therefore warranted to prevent further unlawful detention and to preserve Mr. Vera Vergara's constitutional right to liberty pending resolution of his removal case. Accordingly, Petitioner respectfully prays that the Court issue a Temporary Restraining Order:

1. Declaring that Petitioner's detention is governed by 8 U.S.C. § 1226. not § 1225(b)(2);
2. Enjoining Respondents from detaining Petitioner under § 1225(b)(2);
3. Ordering Respondents to provide Petitioner with an individualized custody redetermination hearing before an Immigration Judge pursuant to § 1226(a) within seven (7) days of the Court's order, at which the Government shall bear the burden of proving by clear and convincing evidence that Petitioner's continued detention is necessary to prevent flight or danger to the community;

4. Requiring Respondents to release Petitioner forthwith if no such hearing is held within seven days; and

5. Granting such other relief as the Court deems just and proper in law or equity.

DATE: November 4, 2025.

Respectfully submitted,

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ATTORNEY FOR PETITIONER-PLAINTIFF

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing PETITIONER'S BRIEF IN REPLY TO RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER, as well as any and all attachments thereto, on Counsel for Respondents-Defendants by serving the same via email to Assistant U.S. Attorney Ann Cuce-Haag via Ann.Haag@ice.dhs.gov and/or by filing the same using the Court's CM/ECF system.

/s/ John M. Bray
John M. Bray
Attorney for Petitioner-Plaintiff

DATE: November 4, 2025.