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9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF NEVADA

11 Bryan Vladimir OSORIO SERMENO,
12 Petitioner-Plaintiff,

13 v.

14 Kristi NOEM, in his Official Capacity, Secretary,
15 U.S. Department of Homeland Security;

16 Pam BONDI, in his Official Capacity, Attorney
17 General of the United States;

18 Todd M. LYONS, Acting Director, Immigration and
19 Customs Enforcement, U.S. Department of Homeland
20 Security;

21 Jason KNIGHT, Salt Lake City Field Office Director
22 for Detention and Removal, U.S. Immigration and
23 Customs Enforcement, Department of Homeland
24 Security; and

25 Darin BALAAM, Sherriff, Washoe County Detention
26 Center.

27 Respondents-Defendants.
28

Agency No.



**MOTION FOR
TEMPORARY
RESTRAINING
ORDER**

**POINTS AND
AUTHORITIES IN
SUPPORT OF EX
PARTE MOTION FOR
TEMPORARY
RESTRAINING
ORDER AND MOTION
FOR PRELIMINARY
INJUNCTION**

Challenge to Unlawful
Incarceration; Request for
Declaratory and Injunctive Relief

NOTICE OF MOTION

1
2 Petitioner, Bryan Vladimir Osorio Sermeno, by and through undersigned counsel,
3 respectfully moves this Court for a Temporary Restraining Order (“TRO”) and Preliminary
4 Injunction pursuant to Federal Rule of Civil Procedure 65, enjoining Respondents from
5 continuing his unlawful detention and ordering his immediate release, or in the alternative, a
6 constitutionally adequate bond hearing within seven (7) days at which the government bears the
7 burden of proving, by clear and convincing evidence, that his detention is necessary. If the Court
8 deems oral argument necessary, Petitioner requests to appear by video.

9 Dated this 4th day of February 2026


Respectfully submitted,

10 *Karen Monrreal*

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Karen S. Monrreal, Esq.

12 Attorney for Petitioner Mr. Osorio Sermeno
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1 **I. INTRODUCTION**

2 Petitioner Bryan Vladimir Osorio Sermeno (“Mr. Osorio Sermeno”), Agency Number
3 , by and through his undersigned counsel, respectfully moves this Court for a
4 Temporary Restraining Order and preliminary injunctive relief to immediately halt his continued
5 and unlawful detention by the U.S. Department of Homeland Security (DHS) and U.S.
6 Immigration and Customs Enforcement (ICE).

7 Mr. Osorio Sermeno is currently detained at the Washoe County Detention Center pending
8 the outcome of his immigration proceedings, despite the government’s failure to establish, by
9 clear and convincing evidence, that he poses either a danger to the community or a flight risk, as
10 required by the Due Process Clause of the Fifth Amendment.

11 Mr. Osorio Sermeno has been in immigration custody since December 19, 2025. He first
12 came to the attention of Immigration and Customs Enforcement (“ICE”) following his arrest on
13 September 25, 2025, for violating the conditions of a previously imposed suspended sentence,
14 specifically for failing to pay ordered restitution. That suspended sentence stemmed from a prior
15 charge of making, uttering, or attempting to utter, or possessing with intent to utter, a fictitious
16 bill, note, or check.

17 After serving ninety-two days in state custody, Mr. Osorio Sermeno’s suspended sentence
18 was reinstated on December 17, 2025. Upon completion of his criminal custody, ICE assumed
19 custody of Mr. Osorio Sermeno on December 19, 2025, and initiated removal proceedings. He
20 has remained in immigration detention since that time.

21 Mr. Osorio Sermeno has not received a constitutionally adequate bond hearing at which
22 the government bears the burden of justifying his continued detention. He remains detained
23 without any individualized determination that he poses a danger to the community or a risk of
24 flight.

25 His continued detention, without meaningful procedural safeguards and without a lawful
26 basis for mandatory detention, violates the Due Process Clause of the Fifth Amendment. There is
27 no legal justification for treating Mr. Osorio Sermeno as subject to mandatory detention, yet ICE
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1 has refused to release him or provide a bond hearing at which the government must meet its
2 burden of proof.

3 Mr. Osorio Sermeno respectfully requests that this Court issue a Temporary Restraining
4 Order enjoining the Department of Homeland Security and ICE from continuing to detain him
5 without due process. He seeks immediate release or, in the alternative, a prompt and
6 constitutionally compliant bond hearing before a neutral adjudicator at which the government
7 must demonstrate, by clear and convincing evidence, that his continued detention is warranted.

8 Absent emergency relief from this Court, Mr. Osorio Sermeno will continue to suffer
9 irreparable harm as a result of his unlawful and ongoing detention.

10 **II. STATEMENT OF FACTS AND CASE**

11 **Background and Personal History**

12 Mr. Osorio Sermeno was born on [REDACTED], in El Salvador. He entered the United
13 States in December 2003 without inspection, accompanying his mother, and has resided in the
14 United States continuously since that time. He has spent the majority of his life in this country
15 and has established deep family ties within the United States.

16 **Family Relationships and Dependents**

17 Mr. Osorio Sermeno is the father of one child, [REDACTED], who was born on [REDACTED]
18 [REDACTED], and is a United States citizen. Mr. Osorio Sermeno maintains a close and meaningful
19 relationship with his son.

20 In addition, Mr. Osorio Sermeno has three siblings who are United States citizens and
21 are currently 24, 20, and 17 years old. His mother is a lawful permanent resident of the United
22 States. These family relationships further confirm Mr. Osorio Sermeno's significant ties to the
23 United States and the hardship imposed by his continued detention.

24 **Circumstances Leading to Detention**

25 Mr. Osorio Sermeno first came to the attention of ICE following his arrest on September
26 25, 2025. He was arrested for violating the conditions of a previously imposed suspended
27 sentence, specifically for failing to pay ordered restitution. That suspended sentence stemmed
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1 from a prior charge of making, uttering, or attempting to utter, or possessing with intent to utter,
2 a fictitious bill, note, or check.

3 Following his arrest, Mr. Osorio Sermeno served ninety-two days in custody. On
4 December 17, 2025, his suspended sentence was reinstated.

5 **Immigration Proceedings and Current Custody**

6 On December 19, 2025, after the completion of his criminal custody, ICE assumed
7 custody of Mr. Osorio Sermeno and initiated removal proceedings. He has remained in
8 immigration detention since that date and is currently under the custody and control of the
9 Department of Homeland Security.

10 Mr. Osorio Sermeno’s continued detention has resulted in prolonged separation from his
11 United States citizen child, siblings, and his lawful permanent resident mother, causing
12 significant hardship to his family while his immigration case remains pending.

13 **III. JURISDICTION**

14 This Court has jurisdiction to review Mr. Osorio Sermeno’s TRO Application.
15 Further, jurisdiction is not stripped by 8 U.S.C. §§ 1252(b)(9) or 1252(g).

16 **A. Jurisdiction Is Not Barred by 8 U.S.C. § 1252(b)(9)**

17 Section 1252(b)(9) provides:

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19 “Judicial review of all questions of law and fact, including interpretation and
20 application of constitutional and statutory provisions, arising from any action
21 taken or proceeding brought to remove an alien from the United States... shall be
available only in judicial review of a final order under this section...”

22 Mr. Osorio Sermeno’s detention is not so intertwined with the broader removal process
23 that it can only be reviewed after a final removal order is issued. The Supreme Court addressed
24 this precise issue in *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018), where it rejected an overly
25 expansive reading of the phrase “arising from” in 8 U.S.C. § 1252(b)(9). The Court warned that
26 interpreting the statute so broadly as to include constitutional challenges to detention—merely
27 because they are tangentially related to removal—would lead to “absurd results” and deprive
28 noncitizens of “any meaningful opportunity for judicial review.” *Id.*

1 Here, Mr. Osorio Sermeno is not seeking to challenge his removal proceedings, nor the
2 decision to initiate them. Rather, he challenges his prolonged civil detention without a
3 constitutionally sufficient bond hearing under 8 U.S.C. § 1226(a)—a discrete legal and
4 constitutional issue that is wholly independent of whether he is ultimately removable. Moreover,
5 as the Court in *Jennings* made clear, § 1252(b)(9) does not apply where the petitioner is “not
6 asking for review of an order of removal,” and where the claim does not “challenge the decision
7 to detain them in the first place or to seek removal.” *Id.* at 294. Mr. Osorio Sermeno’s challenge
8 arises from the denial of a bond hearing, not the initiation of removal proceedings.

9 Accordingly, § 1252(b)(9) does not bar this Court from exercising jurisdiction over Mr.
10 Osorio Sermeno’s TRO Application.

11 **B. Jurisdiction Is Not Barred by 8 U.S.C. § 1252(g)**

12 8 U.S.C. § 1252(g) statute states:

13
14 “...no court shall have jurisdiction to hear any cause or claim by or on behalf of
15 any alien arising from the decision or action by the Attorney General to
commence proceedings, adjudicate cases, or execute removal orders...”

16 However, the Supreme Court has explicitly interpreted § 1252(g) as a narrow
17 jurisdictional limitation. In *Jennings*, the Court reiterated that § 1252(g) applies only to the three
18 specific actions listed: the commencement of proceedings, adjudication of cases, and execution
19 of removal orders. *Jennings*, 583 U.S. at 293.

20 Mr. Osorio Sermeno’s claim does not arise from any of these three enumerated actions.
21 Instead, it challenges the government’s decision to classify his as an “applicant for admission”
22 and deny his access to a bond hearing under § 1226(a)—a procedural and constitutional due
23 process violation. As *Jennings* reaffirmed, courts should not interpret the phrase “arising from”
24 so broadly as to “sweep in any claim that can technically be said to ‘arise from’” removal
25 proceedings. *Id.* Doing so would insulate virtually all governmental actions from judicial review,
26 including those that raise serious constitutional questions—a result the Court expressly rejected.
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1 Accordingly, because Mr. Osorio Sermeno's TRO Application does not challenge the
2 government's authority to commence proceedings, adjudicate removability, or execute a removal
3 order, § 1252(g) does not apply.

4 In sum, neither § 1252(b)(9) nor § 1252(g) precludes this Court from hearing Mr. Osorio
5 Sermeno's constitutional claims. He is not challenging a final order of removal or the
6 government's authority to initiate proceedings. Rather, he seeks urgent judicial relief from his
7 detention without a constitutionally required bond hearing. This Court therefore retains
8 jurisdiction to review his claims and grant the requested temporary restraining order.

9 **IV. LEGAL STANDARD**

10 Pursuant to Federal Rule of Civil Procedure 65, a court may grant preliminary injunctive
11 relief to prevent "immediate and irreparable injury." Fed R. Civ. P. 65(b). A preliminary
12 injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the
13 plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 129 S.
14 Ct. 365, 172 L. Ed. 2d 249 (2008). To obtain a preliminary injunction, a plaintiff must establish
15 four elements: "(1) a likelihood of success on the merits, (2) that the plaintiff will likely suffer
16 irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its
17 favor, and (4) that the public interest favors an injunction." *Wells Fargo & Co. v. ABD Ins. &*
18 *Fin. Servs. Inc.*, 758 F.3d 1069, 1071 (9th Cir. 2014), as amended (Mar. 11, 2014) (*citing Winter*,
19 555 U.S. at 20).

20 In the Ninth Circuit, a preliminary injunction may also issue under the "serious
21 questions" test. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)
22 (affirming the continued viability of this doctrine post-*Winter*). According to this test, "serious
23 questions going to the merits and a balance of hardships that tips sharply towards the plaintiff
24 can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a
25 likelihood of irreparable injury, and that the injunction is in the public interest." *Id.* at 1135.
26 Courts in the Ninth Circuit evaluate "these factors on a sliding scale, such that a stronger
27 showing of one element may offset a weaker showing of another." *Recycle for Change v. City of*
28 *Oakland*, 856 F.3d 666, 669 (9th Cir. 2017).

1 **V. ARGUMENT**

2 **Mr. Osorio Sermeno warrants a Temporary Restraining Order.**

3 A temporary restraining order should be issued if “immediate and irreparable injury, loss,
4 or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P.
5 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a
6 preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*
7 *Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Osorio Sermeno
8 is likely to remain in unlawful custody in violation of his due process rights without intervention
9 by this Court. Mr. Osorio Sermeno will continue to suffer irreparable injury if he continues to be
10 detained without due process.

11 **A. Likelihood of Success on the Merits.**

12 Under the clear terms of the statute and well-established case law, 8 U.S.C. § 1226(a)
13 governs the detention of individuals who, like Mr. Osorio Sermeno, are physically present within
14 the United States and are undergoing removal proceedings. Because Mr. Osorio Sermeno entered
15 the United States in December 2003 and has resided in this country for more than two decades,
16 and because he was not apprehended at the border or at the time of entry, his detention is governed
17 by 8 U.S.C. § 1226(a). Accordingly, he is entitled to a bond hearing that comports with the due
18 process protections required under that provision.

19 Section 1226 distinguishes between two classes of individuals in immigration detention.
20 Section 1226(a) applies to individuals within the United States pending removal proceedings and
21 allows for discretionary release on bond. In contrast, § 1226(c) applies to a narrow category of
22 so-called “criminal aliens” and imposes mandatory detention under more limited circumstances.

23 Critically, individuals detained under § 1226(a) are entitled to an initial bond hearing
24 before an immigration judge, with the opportunity to present evidence, be represented by counsel,
25 and seek subsequent bond redeterminations if circumstances materially change. *See Rodriguez*
26 *Diaz v. Garland*, 53 F.4th 1189, 1201 (9th Cir. 2022).

1 Here however, it was alleged that Mr. Osorio Sermeno is not detained under § 1226(a),
2 but rather under § 1225(b)(2), based on the claim that he qualifies as an “applicant for admission”
3 due to his entry without inspection. That provision mandates detention for arriving noncitizens
4 unless they are “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).
5 The government suggest that this provision applies not only to arriving aliens at ports of entry but
6 also to individuals already physically present in the country without having been formally
7 “admitted.”

8 This argument, however, misreads the statute. If Congress had intended § 1225 to apply
9 universally to all individuals who entered without inspection—even those long-settled in the
10 interior of the country—§ 1226 would serve no meaningful function, particularly with respect to
11 noncitizens charged under § 1226(c). Respondents' position improperly creates an irreconcilable
12 conflict where none exists.

13 In *Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018), the Supreme Court clarified that
14 § 1225 applies at the Nation’s borders and ports of entry, where the government determines
15 admissibility of arriving noncitizens. In contrast, § 1226 governs individuals already inside the
16 United States, including those who may be removable but have developed significant ties to the
17 country. As the Court explained, § 1226 applies to “aliens who are already present in the United
18 States but who have not been admitted and are nonetheless subject to removal,” while § 1225
19 applies to aliens at the border seeking admission.

20 Accepting Respondents’ interpretation would render large portions of § 1226 superfluous,
21 violating the canon of statutory construction that requires giving effect to all parts of a statute.
22 See *Corely v. United States*, 556 U.S. 303, 314 (2009) (“A statute should be construed so that no
23 part will be inoperative or superfluous, void or insignificant.”).

24 Because Mr. Osorio Sermeno is a long-term resident of the United States who was not
25 apprehended at a port of entry, and because he does not fall within the limited scope of § 1226(c),
26 he is plainly detained under § 1226(a) and is entitled to a bond hearing with full due process
27 protections.

28

1 Accordingly, Mr. Osorio Sermeno is likely to succeed on the merits of his claim that the
2 government has wrongfully denied his a bond hearing in violation of § 1226(a) and the Fifth
3 Amendment.

4 **B. Irreparable Harm**

5 To obtain a temporary restraining order, a petitioner must show that they are likely to
6 suffer irreparable harm in the absence of preliminary relief. *Winter v. Natural Resources Defense*
7 *Council, Inc.*, 555 U.S. 7, 20 (2008).

8 Mr. Osorio Sermeno has been detained by U.S. Immigration and Customs Enforcement
9 since December 19, 2025, and has been denied a bond hearing throughout that period. The
10 Supreme Court has long recognized that “[f]reedom from imprisonment— from government
11 custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due
12 Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The ongoing deprivation
13 of this fundamental liberty, without an individualized bond determination, constitutes a clear and
14 continuing constitutional injury.

15 The Ninth Circuit has emphasized that the loss of constitutional rights “unquestionably
16 constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting
17 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). This principle squarely applies here. Mr. Osorio
18 Sermeno remains detained without due process, in violation of his Fifth Amendment rights.

19 Moreover, Mr. Osorio Sermeno’s continued detention has caused substantial and ongoing
20 harm not only to him, but also to his family. Mr. Osorio Sermeno is the father of a United States
21 citizen child, [REDACTED], born on [REDACTED], with whom he maintains a close and
22 meaningful relationship. His detention has separated him from his young child and deprived
23 [REDACTED] of his father’s presence, guidance, and emotional support.

24 In addition, Mr. Osorio Sermeno’s detention has imposed significant hardship on his
25 immediate family members in the United States, including his lawful permanent resident mother
26 and his United States citizen siblings, with whom he has longstanding and close family ties. The
27 prolonged separation has strained these relationships and caused emotional and familial hardship.
28 As the Ninth Circuit recognized in *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017),

1 prolonged immigration detention results not only in a deprivation of liberty, but also in serious
2 emotional, financial, and familial harm—harms that are present here and that underscore the
3 irreparable nature of Mr. Osorio Sermeno’s injury.

4 Petitioner’s continued detention without the opportunity for a constitutionally adequate
5 bond hearing violates due process and inflicts immediate and serious harm on him and his family.
6 Accordingly, the second prong of the TRO standard—irreparable harm—is clearly satisfied.

7 **C. Balance of the Equities and Public Interest**

8 The Balance of Equities and Public Interest Strongly Favor Mr. Osorio Sermeno. When
9 the government is the opposing party, the final two TRO factors—the balance of equities and the
10 public interest—merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). In this case, both weigh
11 decisively in favor of Mr. Osorio Sermeno.

12 As demonstrated above, Petitioner’s continued detention without a bond hearing—
13 violates federal statutory and constitutional protections. Detaining a person without due process
14 offends core principles of federal law and undermines the constitutional guarantee of liberty. As
15 the Ninth Circuit has made clear, “it would not be equitable or in the public’s interest to allow the
16 state to violate the requirements of federal law.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006,
17 1029 (9th Cir. 2013). Accordingly, both the public interest and the balance of equities weigh in
18 favor of granting relief.

19 While the government undoubtedly has an interest in the consistent application of
20 immigration policy, this interest does not extend to the unlawful denial of liberty in contravention
21 of statutory protections. As the Ninth Circuit has recognized, “there is no public interest in the
22 perpetuation of unlawful agency action.” *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C.
23 Cir. 2016) (internal citation omitted).

24 Moreover, the government’s refusal to provide a bond hearing relies on a novel and
25 disputed interpretation of immigration detention statutes. This approach departs from decades of
26 statutory practice under 8 U.S.C. § 1226(a), which has long required an individualized assessment
27 of flight risk and danger before depriving a person of liberty. Enforcing Petitioner’s right to a
28 bond hearing does not disturb the law; it restores it.

1 By contrast, continuing to detain Petitioner without a bond hearing inflicts ongoing and
2 irreparable harm. He has lived in the United States for over three decades, has strong family and
3 community ties, and has no history indicating danger or flight risk. The balance of equities
4 overwhelmingly favors ensuring a prompt, constitutionally required bond hearing—not allowing
5 prolonged detention based on an untested expansion of mandatory detention under *Yajure*
6 *Hurtado*.

7 Accordingly, both the balance of equities and the public interest support the issuance of a
8 temporary restraining order in Mr. Osorio Sermeno’s favor.

9 **VI. CONCLUSION**

10 For the reasons stated above, Petitioner respectfully requests that this Court issue a
11 Temporary Restraining Order prohibiting Respondents from continuing to detain his without
12 providing a bond hearing. Petitioner has shown a strong likelihood of success on the merits
13 because his detention properly falls under 8 U.S.C. § 1226(a), not § 1225, and *Matter of Yajure*
14 *Hurtado* does not authorize his continued detention without individualized review—particularly
15 where the underlying criminal charges have been dismissed. Accordingly, he is entitled to a
16 constitutionally compliant bond hearing.

17 Mr. Osorio Sermeno’s continued detention—without any individualized determination of
18 whether he poses a flight risk or danger to the community—violates the governing statutory
19 framework and the Due Process Clause of the Fifth Amendment. Every additional day he
20 remains incarcerated without due process inflicts irreparable harm, depriving his of his liberty
21 and causing profound emotional, medical, and financial hardship to his U.S. citizen child and
22 other dependent family members who rely on his for care and stability.

23 The balance of equities and the public interest overwhelmingly support injunctive relief.
24 There is no legitimate public benefit in detaining a long-term resident with deep community ties,
25 no criminal history, and no finding of dangerousness—particularly where his detention is based
26 on a misapplication of immigration statutes.

27 For these reasons, Mr. Osorio Sermeno respectfully requests that this Court grant a
28 Temporary Restraining Order and order his immediate release. In the alternative, the Court

1 should require the government to provide a prompt and constitutionally adequate bond hearing—
2 at which the government bears the burden of proving, by clear and convincing evidence, that
3 continued detention is necessary.

4 Dated this 4th day of February 2026

Respectfully submitted,

Karen Monrreal

Karen S. Monrreal, Esq.
Attorney for Petitioner, Mr. Osorio Sermeno

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