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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Juan GARCIA DEHUMA,
Petitioner,

v.

Jason KNIGHT, Field Office Director, Salt Lake City Field Office, U.S. Immigration and Custom Enforcement, Enforcement and Removal Operations Division;

John MATTOS, Warden, Nevada Southern Detention Center;

Kristi NOEM, Secretary, United States Department of Homeland Security;

Pamela BONDI, Attorney General of the United States,
Respondents.

Case No. 2:26-cv-00455

PETITIONER'S NOTICE OF MOTION FOR A TEMPORARY RESTRAINING ORDER

I. INTRODUCTION AND STATEMENT OF FACTS

1. Petitioner is currently detained by Immigration and Customs Enforcement ("ICE") in Las Vegas, Nevada, pending removal proceedings.

2. Upon information and belief, Petitioner was detained today, February 18, 2026, even though an Immigration Judge ("IJ") had previously conducted a hearing to determine whether this incarceration is warranted based on danger to the community or a flight risk.

3. Petitioner was re-detained because although he was granted bond, the Board of Immigration Appeals ("BIA") overturned his bond on February 2, 2026.

4. Petitioner's detention without any purported danger to the community or posing a flight risk that cannot be overcome by the bond already determined by the IJ violates the Due Process Clause of the Fifth Amendment.

5. Petitioner's case is similar to other cases recently filed before this District and across the country. *See Maldonado Vazquez v. Feely*, Case No. 2:25-cv-01542-RFB-EJY, *Sanchez Roman v. Noem*, Case No. 2:25-cv-01551-GMN-EJY, *Rodriguez Cabrera v. Mattos*, Case No. 2:25-cv-01684-GMN-EJY.

6. Petitioner is seeking to challenge the policy recently adapted by the Board of Immigration Appeals ("BIA"). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

7. Petitioner simply seeks to be released under the bond that has already been determined for him, and for which he has been complying with since his release. This has been the practice of similarly situated noncitizens who have been detained under 8 U.S.C. § 1226(a) since the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996. Pub. L. No. 104-208, Div. C 110 Stat. 3009-546 (1996).

8. Petitioner is a 43-year-old Mexican national who has resided in the United States

for nearly 24 years. In that time, he worked hard to support himself, his community, and his family.

9. His only crime was a DUI offense in 2003.

10. He has 9 U.S. Citizen Children who love him and depend on his work to support them.

11. Today, February 18, 2026, Immigration and Customs Enforcement ("ICE") undertook an enforcement operation and Mr. Garcia Dehuma was arrested and detained.

12. He was not involved in, nor has any law-enforcement entity alleged that he was involved in any illegal or illicit activity; whether at the time of his arrest or otherwise.

13. Because the BIA's decision in *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Mr. Garcia Dehuma will not be released without this Court's entry of an order of Writ of Habeas Corpus, even though he had been complying with a bond order entered in July 2025.

II. ARGUMENT

a. Requirements for a Temporary Restraining Order

15. On a motion for a TRO, the movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush &Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are "substantially identical"). A TRO may issue where "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified). To succeed under the "serious question" test, Mr. Gandara Simental must also show that he is likely to suffer irreparable injury and that an injunction is in the public's interest. *Id.* at 1132.

b. Mr. Garcia Dehuma Will Suffer Irreparable Harm

16. First, his allegations of constitutional violations permit a per se finding of irreparable harm. *See e.g., Conn. Dep't of Envtl. Prot. V. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) ("[W]e have held that the alleged violation of a constitutional right triggers a finding of irreparable injury.") (internal citations and quotation marks omitted); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) ("[An] alleged violation of a constitutional right . . . triggers a finding of irreparable harm.") (emphasis in original).

17. Here, Mr. Garcia Dehuma satisfies irreparable harm by demonstrating that but for this Court's granting of equitable relief, there is a substantial chance he cannot be returned to the position he previously occupied. Specifically, he is being denied the opportunity to be with his family and allow him to defend his case outside of detention.

18. Third, Mr. Garcia Dehuma is likely to win on the merits of his claim that the government's detention of him without independent review is unlawful. See *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (finding irreparable harm in continued detention of noncitizens who would likely be granted conditional release if afforded a bond hearing). Only individuals who are flight risks or dangers may be detained. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Mr. Garcia Dehuma is neither.

c. Mr. Garcia Dehuma is Likely to Succeed on His Claims that his Ongoing Detention Violates his Fifth Amendment Right to Substantive Due Process and Procedural Due Process, the Administrative Procedures Act and Runs Afoul of the *Accardi* Doctrine.

19. The Fifth Amendment of the Constitution guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that "amount to

punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The federal government violates a detained individual's substantive due process rights if it "takes [that] person into custody, severely limiting his ability to care for himself, and then is deliberately indifferent to his medical needs[.]" *Charles v. Orange Cnty.*, 925 F.3d 73, 85 (2d Cir. 2019); *see also Helling v. McKinney*, 509 U.S. 25, 32 (1993) ("[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., . . . medical care and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment.").

20. Substantive due process precludes a state actor from affirmatively acting to create or enhance a danger that will ultimately harm an individual. *See Butera v. D.C.*, 235 F.3d 637, 649– 51 (D.C. Cir. 2001) (citing cases). The State "owes a duty of protection when its agents create or increase the danger to an individual." *Id.*; *see also Paine v. Cason*, 678 F.3d 500, 510 (7th Cir. 2012) (due process was violated where police officers left detainee in a more dangerous neighborhood, away from public transportation, and without a cell phone); *Wang v. Reno*, 81 F.3d 808, 817 (9th Cir. 1996) (noncitizen could not be removed to China after the U.S. government convinced him to testify about a topic that would lead the Chinese government to torture and possibly execute him). Due process is implicated when the state actor's conduct in such a case is "'so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.'" *Butera*, 235 F.3d at 651 (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998)).

21. The Fifth Amendment of the Constitution guarantees that noncitizens receive adequate procedural protections in the course of any executions of the government's detention and removal authorities. *See, e.g.*, *Zadvydas*, 533 U.S. at 690. Such protections are flexible and guided by considerations for the "private interest that will be affected[,]" "the risk of an erroneous

deprivation of such interest through the procedures used[,]" and "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The government's actions toward effectuating Mr. Gandara Simental's removal, without any individualized review or oversight or due process deprive him of his vital right to liberty, especially when he poses no danger to his community and no danger has been alleged.

22. The Administrative Procedures Act (APA) provides that a court "shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). When the government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes, such that the agencies are bound to follow their own "existing valid regulations." *United States ex rel. Accardi Shaugnessy*, 347 U.S. 260, 266, 268 (1954)[1]; *see also Montilla v. I.N.S.*, 926 F.2d 162, 166-167 (2d Cir. 1991).

23. Pursuant to the *Accardi* doctrine, the government is bound to apply and uphold the rules and regulations contained in the Performance-Based National Detention Standards (PBNDS).

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[1] *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 226 (1954), originated in the context of an immigration case and held that agencies are bound to follow their own rules that affect the fundamental rights of individuals, including self-imposed policies and processes that limit otherwise discretionary decisions. In *Accardi,* the court held that the Board of Immigration Appeals (BIA) must follow its own regulations in its exercise of discretion. *Id.* at 268. In *Morton v. Ruiz*, 415 U.S. 199, 235 (1974), the court struck down a Bureau of Indian Affairs benefits determination because it did not comply with procedures set forth in the agency's internal manual. The court explained that *Accardi* applies with particular force in those cases in which "the rights of individuals are affected," stating that "it is incumbent upon agencies to follow their own procedures . . . even where [they] are possibly more rigorous than otherwise would be required." *Id.* at 235; *see also Battle v. F.A.A*, 393 F.3d 1330, 1336 (D.C. Cir. 2005) *("Accardi* has come to stand for the proposition that agencies may not violate their own rules and regulations to the prejudice of others."); *Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("[T]he premise underlying the *Accardi* doctrine is that agencies can be held accountable to their own codifications of procedures and policies — and particularly those that affect individual rights.")

It is further restricted from taking any actions that are arbitrary, capricious, an abuse of discretion, or not in accordance with law. The government's failure to abide by the PBNDS—particularly the standards indicating it must provide adequate medical clearance and medical planning in advance of removal—constitutes impermissible agency action.

d. Mr. Garcia Dehuma is Likely to Succeed Because This Court Has Already Found His Continued and Unreviewable Detention Under § 1225(b)(2)(A) to be Unlawful

25. In *Maldonado Vazquez v. Feely*, Case No. 2:25-cv-01542-RFB-EJY, this court already found that §1225 subjects, "noncitizens who are present and who have resided in the U.S. for an extended period—to permissive detention." *Id.*, at 26.

26. As a longstanding noncitizen resident of the United States, Mr. Garcia Dehuma has a significant interest and stake in being able to challenge and receive review of his detention under §1225.

e. A TRO Serves the Public Interest

27. Mr. Garcia Dehuma merits a TRO because a TRO would not significantly impede the government or public interest. In *Maldonado Vazquez*, this court explained, at length, the requirements for determining whether detention violates due process under *Matthews v. Eldridge*, 424 U.S. 319 (1976). *See Maldonado Vazquez v. Feely*, Case No. 2:25-cv-01542-RFB-EJY, at 30-41.

28. This case, as in *Maldonado Vazquez*, presents a similar situation where it is squarely within both Mr. Garcia Dehuma and the public's interest that where a bond hearing has already been held, and a noncitizen has been complying with said bond conditions, there is no lawful purpose for the re-dentention of said noncitizen.

III. BOND

29. Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." However, "Rule 65(c) invests the district court with discretion as to the amount of security required, if any." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotation marks and citation omitted). District courts routinely exercise this discretion to require no security in cases brought by indigent and/or incarcerated people. *See, e.g., Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes–Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants). This Court should do the same here.

IV. CONCLUSION

30. For the foregoing reasons, Mr. Garcia Dehuma respectfully requests the Court grant his motion for a temporary restraining order and order his immediate release under the bond conditions ordered on July 23, 2025.

DATED this 19th day of February, 2026.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Juan GARCIA DEHUMA,
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Jason KNIGHT, Field Office Director, Salt Lake City Field Office, U.S. Immigration and Custom Enforcement, Enforcement and Removal Operations Division;

Kristi NOEM, Secretary, United States Department of Homeland Security;

Pamela BONDI, Attorney General of the United States,
Respondents.

Case No.

[PROPOSED] ORDER

Upon consideration of Petitioner's Motion for a Temporary Restraining Order, the Memorandum of Law in Support of the Motion, and his Petition for a Writ of Habeas Corpus and Complaint for Injunctive Relief ("Petition"), and together with the exhibits annexed thereto,

IT IS HEREBY ORDERED that:

1. Pending consideration of all claims before this Court, Respondents ARE HEREBY RESTRAINED from transferring the Petitioner from the State of Nevada;

2. Pending consideration, Respondents ARE HEREBY RESTRAINED from moving Mr. Gandara Simental unless seventy-two (72) hours written notice of any movement is provided to Petitioner's counsel;

3. Pending consideration, Respondents ARE HEREBY RESTRAINED from detaining the Petitioner for the purposes of civil immigration detention;

4. Respondents are ORDERED to file a return as to why the Petition should not be granted by_____;

5. Petitioner shall have an opportunity to reply by_____;

6. The merits of the Petition shall be heard by the Court on_____;

7. It is further ORDERED that security is not required;

8. And such other and further relief as the Court may find appropriate;

9. Service of this Order shall be effected by Petitioner on the United States Attorney for the State of Nevada by electronic mail by ____am/pm on_____and shall constitute good and sufficient service.

IT IS SO ORDERED.

DATED this _____ day of February 2026,

_____

Hon.

United States District Judge