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17 **UNITED STATES DISTRICT COURT**
18 **DISTRICT OF NEVADA**

19 Roberto JUAREZ FERNANDEZ,
20 *Petitioner,*

Case Number

21 v.

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

26 John MATTOS, Warden, Nevada Southern
27 Detention Center;

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

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

***NOT SEEKING EX PARTE
ADJUDICATION**

PETITIONER'S NOTICE OF MOTION FOR A TEMPORARY RESTRAINING ORDER

I. INTRODUCTION AND STATEMENT OF FACTS

1
2 1. Petitioner is currently detained by Immigration and Customs Enforcement (“ICE”) at the
3 Nevada Southern Detention Center, in Pahrump, Nevada, pending removal proceedings.

4 2. Upon information and belief, Petitioner has been detained since October 19, 2025, even
5 though no neutral decisionmaker—whether a Federal Judge or an Immigration Judge (“IJ”)—has
6 conducted a hearing to determine whether this incarceration is warranted based on danger to the
7 community or a flight risk.

8 3. Petitioner’s detention without a hearing regarding any purported danger to the community
9 or posing a flight risk violates the Due Process Clause of the Fifth Amendment.

10 4. Petitioner’s case is similar to other cases recently filed before this District and across the
11 country. *See Maldonado Vazquez v. Feely*, Case No. 2:25-cv-01542-RFB-EJY, *Sanchez Roman v.*
12 *Noem*, Case No. 2:25-cv-01551-GMN-EJY, *Rodriguez Cabrera v. Mattos*, Case No. 2:25-cv-
13 01684-GMN-EJY.

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

16 6. Petitioner simply seeks to have an impartial, neutral decisionmaker decide if his continued
17 detention is warranted, as has been the practice of similarly situated noncitizens who have been
18 detained under 8 U.S.C. § 1226(a) since the enactment of the Illegal Immigration Reform and
19 Immigrant Responsibility Act (“IIRIRA”) of 1996. Pub. L. No. 104-208, Div. C 110 Stat. 3009-
20 546 (1996).

21 7. Petitioner is a 47-year-old Mexican national who has resided in the United States for over
22 25 years. In that time he has had a U.S. Citizen daughter, born in January 2011. Petitioner has
23 been in a loving and committed relationship with his longtime partner, and they will be married
24 within weeks.

25 8. On October 19, 2025, Mr. Juarez Fernandez, was present observing horse races at the
26 Wilder, Idaho racetrack.

27 9. At that same time, Immigration and Customs Enforcement (“ICE”) undertook a large-
28 scale enforcement operation and Mr. Juarez Fernandez was arrested and detained as a collateral

1 arrest.

2 10. He was not involved in, nor has any law-enforcement entity alleged that he was involved
3 in any illegal or illicit activity at the time of his arrest.

4 11. His only criminal record in more than half of his lifetime in the United States are two
5 misdemeanor convictions for driving under the influence in 2003 and 2009 in Canyon County and
6 Ada County, Idaho.

7 12. Mr. Juarez Fernandez has a serious recent history of poor health. He suffered a heart
8 attack last year. Petitioner was thereafter diagnosed with coronary artery disease and diabetes. He
9 has been prescribed seven (7) daily medications, at least one of which is essential to prevent heart
10 attacks. Upon information and belief, he has only been able to obtain two of his seven required
11 medications while under the custody of the Nevada Southern Detention Center. His continued
12 detention places his life in imminent danger.

13 13. Even though the BIA's decision in *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is
14 binding on the Immigration Court, Mr. Juarez Fernandez first sought to challenge said detention
15 via a motion for bond redetermination hearing before the Las Vegas Immigration Court. The
16 Immigration Court received evidence demonstrating his longstanding ties to the community, his
17 US Citizen family members, his criminal record, and the serious state of his present medical
18 condition.

19 14. On October 30, 2025, the Immigration Court denied his motion for bond, citing *Yajure*
20 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), stating that the Immigration Court no longer had
21 jurisdiction to hear his claim for bond.

22 II. ARGUMENT

23 a. Requirements for a Temporary Restraining Order

24 15. On a motion for a TRO, the movant "must establish that he is likely to succeed on the
25 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
26 balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat.*
27 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*,
28 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are

1 “substantially identical”). A TRO may issue where “serious questions going to the merits [are]
2 raised and the balance of hardships tips sharply in [plaintiff’s] favor.” *All. for the Wild Rockies v.*
3 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified). To succeed under the “serious
4 question” test, Mr. Juarez Fernandez must also show that he is likely to suffer irreparable injury
5 and that an injunction is in the public’s interest. *Id.* at 1132.

6 **b. Mr. Juarez Fernandez Will Suffer Irreparable Harm**

7 16. First, his allegations of constitutional violations permit a per se finding of irreparable
8 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
9 have held that the alleged violation of a constitutional right triggers a finding of irreparable
10 injury.”) (internal citations and quotation marks omitted); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d
11 Cir. 1996) (“[An] alleged violation of a constitutional right . . . triggers a finding of irreparable
12 harm.”) (emphasis in original).

13 17. Here, Mr. Juarez Fernandez was detained, and the government has failed to provide him
14 adequate medical care, they have severely jeopardized his health, and they have failed to provide
15 any procedural protections.

16 18. Second, Mr. Juarez Fernandez satisfies irreparable harm by demonstrating that but for this
17 Court’s granting of equitable relief, there is a substantial chance he cannot be returned to the
18 position he previously occupied. Specifically, he has suffered a heart attack in the past and is at
19 higher risk of suffering from another without proper medication and medical care. He is being
20 denied the opportunity to continue on his medications while detained and every day that passes
21 heightens the risk of harm. Petitioner’s removal would result in loss of access to his treating
22 physician and cause additional delay in obtaining his necessary medications.

23 19. Third, Mr. Juarez Fernandez is likely to win on the merits of his claim that the
24 government’s detention of him without independent review is unlawful. *See Rodriguez v.*
25 *Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (finding irreparable harm in continued detention of
26 noncitizens who would likely be granted conditional release if afforded a bond hearing). Only
27 individuals who are flight risks or dangers may be detained. *Zadvydas v. Davis*, 533 U.S. 678,
28 693 (2001). Mr. Juarez Fernandez is neither.

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

5 20. The Fifth Amendment of the Constitution guarantees that people in civil detention may
6 not be subject to conditions of confinement or denial of medical care that “amount to
7 punishment.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The federal government violates a
8 detained individual’s substantive due process rights if it “takes [that] person into custody,
9 severely limiting his ability to care for himself, and then is deliberately indifferent to his medical
10 needs[.]” *Charles v. Orange Cnty.*, 925 F.3d 73, 85 (2d Cir. 2019); *see also Helling v. McKinney*,
11 509 U.S. 25, 32 (1993) (“[W]hen the State by the affirmative exercise of its power so restrains an
12 individual’s liberty that it renders him unable to care for himself, and at the same time fails to
13 provide for his basic human needs—e.g., . . . medical care and reasonable safety—it transgresses
14 the substantive limits on state action set by the Eighth Amendment.”).

15 21. Substantive due process precludes a state actor from affirmatively acting to create or
16 enhance a danger that will ultimately harm an individual. *See Butera v. D.C.*, 235 F.3d 637, 649–
17 51 (D.C. Cir. 2001) (citing cases). The State “owes a duty of protection when its agents create or
18 increase the danger to an individual.” *Id.*; *see also Paine v. Cason*, 678 F.3d 500, 510 (7th Cir.
19 2012) (due process was violated where police officers left detainee in a more dangerous
20 neighborhood, away from public transportation, and without a cell phone); *Wang v. Reno*, 81 F.3d
21 808, 817 (9th Cir. 1996) (noncitizen could not be removed to China after the U.S. government
22 convinced him to testify about a topic that would lead the Chinese government to torture and
23 possibly execute him). Due process is implicated when the state actor’s conduct in such a case is
24 “so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.”
25 *Butera*, 235 F.3d at 651 (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998)).
26

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1 22. The Fifth Amendment of the Constitution guarantees that noncitizens receive adequate
2 procedural protections in the course of any executions of the government’s detention and removal
3 authorities. *See, e.g., Zadvydas*, 533 U.S. at 690. Such protections are flexible and guided by
4 considerations for the “private interest that will be affected[,]” “the risk of an erroneous
5 deprivation of such interest through the procedures used[,]” and “the Government’s interest,
6 including the function involved and the fiscal and administrative burdens that the additional or
7 substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
8 The government’s actions toward effectuating Mr. Juarez Fernandez’ removal without ensuring a
9 licensed cardiologist reviews his condition, as well as their failure to supply him with a detailed
10 medical plan in advance of removal, create a substantial risk of an erroneous deprivation of Mr.
11 Juarez Fernandez’ core interest in life and liberty.
12

13
14 23. The Administrative Procedures Act (APA) provides that a court “shall . . . hold unlawful
15 and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or
16 otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). When the government has
17 promulgated “[r]egulations with the force and effect of law,” those regulations “supplement the
18 bare bones” of federal statutes, such that the agencies are bound to follow their own “existing
19 valid regulations.” *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268 (1954)¹; *see*
20

21 ¹ *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 226 (1954), originated in the context
22 of an immigration case and held that agencies are bound to follow their own rules that affect the
23 fundamental rights of individuals, including self-imposed policies and processes that limit
24 otherwise discretionary decisions. In *Accardi*, the court held that the Board of Immigration
25 Appeals (BIA) must follow its own regulations in its exercise of discretion. *Id.* at 268. In *Morton*
26 *v. Ruiz*, 415 U.S. 199, 235 (1974), the court struck down a Bureau of Indian Affairs benefits
27 determination because it did not comply with procedures set forth in the agency’s internal manual.
28 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

1 *also Montilla v. I.N.S.*, 926 F.2d 162, 166-167 (2d Cir. 1991).

2 24. Pursuant to the *Accardi* doctrine, the government is bound to apply and uphold the rules
3 and regulations contained in the Performance-Based National Detention Standards (PBNDS). It is
4 further restricted from taking any actions that are arbitrary, capricious, an abuse of discretion, or
5 not in accordance with law. The government's failure to abide by the PBNDS—particularly the
6 standards indicating it must provide adequate medical clearance and medical planning in advance
7 of removal—constitutes impermissible agency action.

9 **d. Mr. Juarez Fernandez is Likely to Succeed Because This Court Has Already
10 Found His Continued and Unreviewable Detention Under § 1225(b)(2)(A) to
11 be Unlawful**

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

15 26. As a longstanding noncitizen resident of the United States, Mr. Juarez Fernandez has a
16 significant interest and stake in being able to challenge and receive review of his detention under
17 §1225.

18 **e. A TRO Serves the Public Interest**

19 27. Mr. Juarez Fernandez merits a TRO because a TRO would not significantly impede the
20 government or public interest. In *Maldonado Vazquez*, this court explained, at length, the
21 requirements for determining whether detention violates due process under *Mathews v. Eldridge*,
22 424 U.S. 319 (1976). *See Maldonado Vazquez v. Feely*, Case No. 2:25-cv-01542-RFB-EJY, at
23 30-41.

24 28. This case, as in *Maldonado Vazquez*, presents a similar situation where it is squarely
25 within Mr. Juarez Fernandez' and the public's interest that a hearing be held to determine whether
26

27 _____
28 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.”)

1 he is a danger to the community, a risk of flight, and what safeguards could be created to
2 determine, on balance, if his continued detention is necessary in his case.

3 **III. BOND**

4
5 29. Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary
6 injunction or a temporary restraining order only if the movant gives security in an amount that the
7 court considers proper to pay the costs and damages sustained by any party found to have been
8 wrongfully enjoined or restrained.” However, “Rule 65(c) invests the district court with discretion
9 as to the amount of security required, if any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir.
10 2003) (internal quotation marks and citation omitted). District courts routinely exercise this
11 discretion to require no security in cases brought by indigent and/or incarcerated people. *See, e.g.,*
12 *Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes–*
13 *Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants). This
14 Court should do the same here.
15

16 **IV. CONCLUSION**

17 30. For the foregoing reasons, Mr. Juarez Fernandez respectfully requests the Court grant his
18 motion for a temporary restraining order and order his immediate release, or alternatively, order
19 that a bond redetermination hearing be held by the Immigration Court within 7 days.
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21 Dated: November 24, 2025

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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Roberto JUAREZ FERNANDEZ,
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.

[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. Juarez Fernandez 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

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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 November 2025,

Hon.

United States District Judge