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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

Derick NAVARRO GUILLEN,

Petitioner,

v.

Kristi NOEM, Secretary, U.S. Department of  
Homeland Security, in her official capacity, et  
al.,

Respondents.

Case No. **2:25-cv-02447-CDS-NJK**

**EMERGENCY MOTION FOR  
PRELIMINARY AND MANDATORY  
INJUNCTION**

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## I. INTRODUCTION

This Court’s intervention is now required not to prevent a threatened harm, but to undo a constitutional injury that has already occurred.

After removal proceedings were initiated in the Las Vegas Immigration Court, after a master calendar hearing was scheduled for December 22, 2025, and after counsel entered an appearance, Immigration and Customs Enforcement (“ICE”) unilaterally transferred Petitioner Derick Navarro Guillen out of Nevada and into California. That transfer occurred without an Immigration Judge order changing venue and after EOIR jurisdiction had attached.

The consequences were immediate and severe. Because of ICE’s action:

- The scheduled Las Vegas hearing disappeared without adjudication;
- A properly prepared bond motion was rejected solely because ICE moved Petitioner;
- EOIR now treats a different immigration court as controlling, despite no venue order; and
- Petitioner remains detained without any pending or scheduled master calendar hearing before any Immigration Judge.

ICE has thus engineered a procedural vacuum in which it continues to detain Petitioner while simultaneously preventing the statutory and regulatory mechanisms designed to review that detention from operating at all.

This Motion seeks a mandatory injunction restoring the status quo ante and compelling Respondents to comply with the constitutional and regulatory framework governing immigration proceedings. Where the government creates an adjudicatory impossibility and then relies on that impossibility to prolong detention, injunctive relief is not only appropriate — it is required.

## II. FACTUAL AND PROCEDURAL BACKGROUND

- 1 1. Petitioner has resided continuously in the United States since approximately 2005; he has  
2 specifically resided in Rigby, Idaho, since 2014, establishing long-standing ties to this  
3 country. He is married, is the father of two U.S.-citizen children, M [REDACTED]  
4 [REDACTED] age 17, and E [REDACTED] age 11, and has maintained steady  
5 employment for over a decade, most recently as a property management professional.  
6 These substantial family, employment, and community ties are directly relevant to any  
7 individualized custody determination under 8 U.S.C. § 1226(a).
- 8 2. Petitioner was taken into ICE custody following a single misdemeanor arrest stemming  
9 from an alleged violation of a temporary protection order obtained by a resident at the  
10 apartment complex where he had worked as a property manager for over ten years; he  
11 retained counsel, posted a \$500 bond, and has no other criminal history. He was  
12 subsequently taken into ICE custody and transported to the Nevada Southern Detention  
13 Center in Pahrump, Nevada.
- 14 3. On November 25, 2025, DHS issued a Notice to Appear initiating removal proceedings  
15 against Petitioner in the Las Vegas Immigration Court. EOIR assigned case administrative  
16 control in Las Vegas, Nevada.
- 17 4. EOIR scheduled the Petitioner's first master calendar hearing for December 22, 2025, in  
18 Las Vegas. The EOIR Case Portal reflected a pending removal case with Las Vegas  
19 retaining jurisdiction.
- 20 5. Petitioner retained undersigned counsel, based in Las Vegas, who timely entered an  
21 appearance before the Las Vegas Immigration Court.
- 22 6. On December 9, 2025, Petitioner filed an emergency Petition for Writ of Habeas Corpus  
23 and Request for TRO in this Court seeking to prevent an imminent out-of-state transfer.  
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- 1 7. Despite the pending habeas petition and the scheduled Las Vegas hearing, ICE transferred  
2 Petitioner on December 10, 2025, to the California City Processing Center in California.  
3 ICE formally notified EOIR of the transfer.
- 4 8. Petitioner thereafter prepared and attempted to file a Motion for Bond with the Las Vegas  
5 Immigration Court, the court with existing jurisdiction over his removal proceedings.
- 6 9. Days after, on December 12, 2025, EOIR rejected the bond filing, stating that the filing  
7 was in the “wrong immigration court” because ICE had transferred Petitioner to California.  
8 The rejection explicitly relied on the transfer as the sole basis for denial.
- 9 10. As a direct consequence of ICE’s transfer, Petitioner’s December 22, 2025 master calendar  
10 hearing before the Las Vegas Immigration Court was cancelled. No Immigration Judge has  
11 issued a new hearing notice, and as of the filing of this Motion, no master calendar hearing  
12 has been docketed in any immigration court.
- 13 11. No Immigration Judge has issued an order changing venue under 8 C.F.R. § 1003.20(b).  
14 EOIR’s docket continues to show no adjudicated venue transfer.
- 15 12. Petitioner remains detained in California, without any pending or scheduled master  
16 calendar hearing before any Immigration Judge. ICE’s detainee locator confirms continued  
17 detention at the California City facility.

18 **III. LEGAL STANDARD**

19 A party seeking a temporary restraining order or preliminary injunction must show:

- 20 1. A likelihood of success on the merits;
- 21 2. A likelihood of irreparable harm in the absence of relief;
- 22 3. That the balance of equities tips in the movant’s favor; and
- 23 4. That an injunction is in the public interest.
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1 *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

2 In the Ninth Circuit, a preliminary injunction may also issue when the plaintiff raises  
3 serious questions going to the merits, the balance of hardships tips sharply in his favor, and the  
4 other Winter factors are satisfied. See *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–  
5 35 (9th Cir. 2011). Because Petitioner seeks relief that is mandatory in effect (release or ordered  
6 bond hearings), they recognize that they must make a strong showing of likely success and that  
7 the court should exercise “extreme caution.” Here, the injunction sought is mandatory — requiring  
8 affirmative action to restore the status quo ante. Courts grant relief when necessary to remedy  
9 ongoing constitutional violations and to prevent agencies from benefiting from unlawful conduct.

#### 10 IV. ARGUMENT

##### 11 A. ICE’s Post-Jurisdiction Transfer Violated Petitioner’s Fifth Amendment Right to 12 Due Process

13 Noncitizens in removal proceedings are entitled to due process of law, including a full and  
14 fair hearing and a meaningful opportunity to be heard with the assistance of counsel. *Reno v. Flores*,  
15 507 U.S. 292, 306 (1993); 8 U.S.C. § 1362. This protection encompasses not only the formal  
16 availability of hearings, but the practical ability to participate meaningfully in those proceedings.  
17 *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000).

18 Because this case arises in the Ninth Circuit, Petitioner need not show that the outcome of  
19 his proceedings would certainly have been different absent the government’s conduct. Rather, a  
20 due process violation is established where government action “may have affected the outcome of  
21 the proceedings.” *Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000); *Colmenar*, 210 F.3d at 971.  
22 This is a deliberately protective standard, reflecting the Ninth Circuit’s recognition that  
23 immigration proceedings demand heightened procedural fairness where liberty is at stake.

1 ICE's actions here readily satisfy that standard.

2 After removal proceedings were initiated in the Las Vegas Immigration Court, after a  
3 master calendar hearing was scheduled, and after counsel entered an appearance, ICE unilaterally  
4 transferred Petitioner out of Nevada and into California. That transfer occurred without a motion  
5 for change of venue and without any order from an Immigration Judge, despite EOIR regulations  
6 vesting venue control exclusively in the Immigration Court. See 8 C.F.R. § 1003.20(b).

7 The prejudice flowing from this transfer is concrete and ongoing. Although a bond motion  
8 may theoretically be refiled, ICE's action conditioned access to a bond hearing on Petitioner's  
9 submission to a different jurisdiction—one imposed by the Executive rather than designated by  
10 the Immigration Judge vested with jurisdiction over his case. In effect, ICE did not merely relocate  
11 Petitioner's physical detention; it relocated custody adjudication itself, forcing Petitioner to choose  
12 between pursuing bond in a foreign forum or preserving his established venue, counsel, and  
13 pending proceedings in Las Vegas.

14 That coercive choice constitutes a denial of meaningful process. The Ninth Circuit has  
15 repeatedly held that due process is violated where government action interferes with access to  
16 counsel, disrupts ongoing proceedings, or materially alters the forum or fairness of adjudication.  
17 See *Rios-Berrios v. INS*, 776 F.2d 859, 862–63 (9th Cir. 1985) (condemning transfer that severed  
18 access to counsel); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 565–66 (9th Cir. 1990)  
19 (affirming injunction against transfer practices interfering with representation); *Maldonado-Cruz*  
20 *v. INS*, 883 F.2d 788, 790 (9th Cir. 1989) (rejecting transfer practices that manipulate jurisdiction  
21 and applicable law).

22 Here, ICE's transfer foreseeably and actually altered the forum in which Petitioner could  
23 seek release from detention. EOIR rejected Petitioner's bond filing in Las Vegas on the ground  
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1 that ICE had transferred him, thereby treating detention location—not Immigration Judge control  
2 of the Record of Proceedings—as determinative of bond jurisdiction. This executive-driven  
3 displacement of adjudication authority is precisely the type of interference the Ninth Circuit has  
4 condemned.

5 ICE's transfer not only displaced custody adjudication but also halted removal proceedings  
6 altogether. Petitioner's master calendar hearing was cancelled, and no replacement hearing has  
7 been docketed. Thus, ICE's unilateral action has left Petitioner in custodial limbo, detained without  
8 bond adjudication and without any scheduled removal hearing. Detention without any scheduled  
9 removal hearing is not merely inconvenient; it is fundamentally inconsistent with the structure of  
10 civil immigration detention, which presumes ongoing adjudication subject to judicial oversight.

11 At minimum, ICE's conduct may have affected the outcome of Petitioner's custody  
12 proceedings by forcing bond adjudication into a different jurisdiction, before a different court,  
13 under materially different practical and procedural conditions. That is sufficient to establish  
14 prejudice under Ninth Circuit law.

15 Moreover, where government action materially impairs an established attorney-client  
16 relationship, prejudice need not be shown at all. See *Montes-Lopez v. Holder*, 694 F.3d 1085, 1092  
17 (9th Cir. 2012) (denial of counsel in removal proceedings constitutes structural error not subject  
18 to harmless-error review). ICE's post-appearance transfer here disrupted counsel continuity and  
19 access at a critical stage of proceedings, independently establishing a due process violation.

20 **B. ICE Effectuated an *Ultra Vires*, De Facto Change of Venue in Violation of**  
21 **Governing Regulations**

22 Moreover, EOIR regulations are unequivocal: venue in removal proceedings may be  
23 changed only by order of an Immigration Judge with administrative control over the Record of  
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1 Proceedings. 8 C.F.R. § 1003.20(b). Administrative transfers of custody by ICE do not alter venue,  
2 jurisdiction, or the controlling law. Matter of M-N-I-, 28 I&N Dec. 803 (BIA 2024).

3 ICE did not seek a change of venue in Petitioner's case. No Immigration Judge ordered  
4 one. Nevertheless, ICE's unilateral transfer caused EOIR to reject Petitioner's bond filing and to  
5 treat a different immigration court as controlling. That sequence demonstrates a constructive  
6 change of venue accomplished through executive detention decisions, not judicial order.

7 ICE lacks authority to effectuate venue changes by logistics. Agency action that conflicts  
8 with binding regulations and BIA precedent is unlawful and ultra vires. See *United States ex rel.*  
9 *Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954). Petitioner is therefore likely to succeed on  
10 his claim that ICE's conduct violated both the INA's regulatory framework and the Due Process  
11 Clause.

12 **C. ICE's Transfer and the Government's Recent Reliance on Matter of Yajure**  
13 **Hurtado, 29 I&N Dec. 216 (BIA 2025) threaten to Foreclose Any Meaningful**  
14 **Custody Review**

15 Respondents have increasingly asserted that individuals who entered without inspection  
16 are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and therefore categorically  
17 ineligible for bond under 8 U.S.C. § 1226(a), relying on *Matter of Yajure Hurtado*, 29 I&N Dec.  
18 216 (BIA 2025). That position, if invoked here, would foreclose any meaningful custody review  
19 and nullify the relief this Court is asked to provide.

20 Petitioner was apprehended in the interior of the United States, long after entry, and placed  
21 in removal proceedings before the Las Vegas Immigration Court. For decades, DHS and EOIR  
22 have treated such individuals as detained under § 1226(a), eligible for individualized bond  
23 determinations. See 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). The categorical reclassification  
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1 advanced in *Yajure Hurtado* represents a sharp departure from longstanding practice and raises  
2 serious constitutional concerns when used to deny jurisdiction rather than to guide discretionary  
3 custody determinations. This Court should therefore construe its injunctive relief to avoid any  
4 application of *Yajure Hurtado* that would raise serious constitutional doubts by eliminating  
5 custody review altogether.

6 If Respondents are permitted to invoke *Yajure Hurtado* or the EOIR-43 automatic-stay  
7 regulation to deny bond jurisdiction, Petitioner will remain detained notwithstanding this Court's  
8 intervention, rendering injunctive relief illusory. Equity does not permit the government to cure  
9 one constitutional violation (venue manipulation) by substituting another (categorical detention  
10 without jurisdictional review).

11 Accordingly, any injunctive relief must ensure that Petitioner receives a custody  
12 redetermination hearing under § 1226(a) that is not foreclosed by *post hoc* jurisdictional  
13 reclassification or automatic stays.

#### 14 **D. The Availability of Refiling Does Not Cure the Constitutional Violation**

15 Respondents may argue that any prejudice is cured because Petitioner can refile a bond  
16 motion in California. That argument misunderstands the Ninth Circuit due process doctrine.

17 The Constitution does not require that relief be theoretically available somewhere; it  
18 requires a meaningful opportunity to be heard in the proper forum, without coercion, and consistent  
19 with governing rules. Conditioning access to liberty on surrender of venue and counsel is not a  
20 cure—it is the violation.

21 Courts applying even more demanding prejudice standards have found due process  
22 violations where ICE transfers vacated or disrupted scheduled bond hearings. The Ninth Circuit's  
23 lower "may have affected" standard makes the violation here all the more apparent.

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1 The public interest is served by enforcing EOIR’s venue rules, preserving the integrity of  
2 immigration court jurisdiction, and preventing executive agencies from nullifying judicial process  
3 through unilateral action.

4 **VII. REQUESTED RELIEF**

5 For all the foregoing reasons, Petitioner respectfully requests that the Court:

6 1. Issue a Temporary Restraining Order, followed by a Preliminary and Mandatory Injunction,  
7 providing that:

8 a. Respondents are temporarily restrained and preliminarily enjoined from  
9 detaining Petitioner under 8 U.S.C. § 1225(b)(2) in a manner that forecloses  
10 individualized custody review under § 1226(a) or from treating him as an  
11 “applicant for admission” for purposes of mandatory detention;

12 b. Respondents are temporarily restrained and preliminarily enjoined from  
13 invoking 8 C.F.R. § 1003.19(i)(2) (Form EOIR-43 automatic stay), or any  
14 similar automatic-stay mechanism, to delay, stay, or nullify an Immigration  
15 Judge’s custody determination in Petitioner’s case;

16 c. Respondents shall immediately release Petitioner from custody under  
17 reasonable conditions of supervision (including bond, recognizance, or  
18 alternatives to detention), or, in the alternative, shall provide Petitioner with  
19 a prompt, individualized custody redetermination hearing under 8 U.S.C. §  
20 1226(a) before an Immigration Judge, at which:

- 21 • The government bears the burden to demonstrate, by clear and  
22 convincing evidence, that continued detention is necessary to prevent  
23 flight or danger to the community;

- 1 • The Immigration Judge may not treat Petitioner as detained under §  
2 1225(b)(2), may not deny jurisdiction, and may not rely on Matter of  
3 Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), or any similar agency  
4 interpretation, to deny jurisdiction or foreclose an individualized bond  
5 determination in Petitioner’s case;
  - 6 • The Immigration Judge must consider Petitioner’s family ties,  
7 employment history, community support, length of residence, and less  
8 restrictive alternatives to detention, including conditions of supervision.
- 9 2. Declare that venue over Petitioner’s removal proceedings remains vested in the Las Vegas  
10 Immigration Court;
  - 11 3. Enjoin Respondents from transferring Petitioner again absent prior court approval;
  - 12 4. Grant such other and further relief as the Court deems just and proper, including attorneys’  
13 fees and costs as permitted by law.

14 **VIII. CONCLUSION**

15 ICE cannot both obstruct adjudication and rely on that obstruction to justify continued  
16 detention. Because Respondents’ actions have stripped Petitioner of access to counsel, bond, and  
17 venue without lawful authority, this Court should grant immediate injunctive relief.

18 Respectfully submitted this 18<sup>th</sup> day of December, 2025.

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