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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

9 Rafael PEÑA TREJO,
10 *Petitioner,*

Case No.

10 v.

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

14 Reggie RADER, Chief of Police for the
15 City of Henderson, Henderson Detention
Center;

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

17 Pamela BONDI, Attorney General of the
18 United States,

Respondents.

***NOT SEEKING EX PARTE
ADJUDICATION**

21 **PETITIONER’S NOTICE OF MOTION FOR A TEMPORARY RESTRAINING ORDER**

22 **I. INTRODUCTION AND STATEMENT OF FACTS**

23 1. Petitioner is currently detained by Immigration and Customs Enforcement (“ICE”) at the
24 Henderson Detention Center, in Henderson, Nevada, pending removal proceedings.

25 2. Upon information and belief, Petitioner has been detained since January 12, 2026, even
26 though no neutral decisionmaker—whether a Federal Judge or an Immigration Judge (“IJ”)—has
27 conducted a hearing to determine whether this incarceration is warranted based on danger to the
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1 community or a flight risk.

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

4 4. Petitioner's case is similar to other cases recently filed before this District and across the
5 country. *See Maldonado Vazquez v. Feely*, Case No. 2:25-cv-01542-RFB-EJY, *Sanchez Roman v.*
6 *Noem*, Case No. 2:25-cv-01551-GMN-EJY, *Rodriguez Cabrera v. Mattos*, Case No. 2:25-cv-
7 01684-GMN-EJY.

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

10 6. Petitioner simply seeks to have an impartial, neutral decisionmaker decide if his continued
11 detention is warranted, as has been the practice of similarly situated noncitizens who have been
12 detained under 8 U.S.C. § 1226(a) since the enactment of the Illegal Immigration Reform and
13 Immigrant Responsibility Act ("IIRIRA") of 1996. Pub. L. No. 104-208, Div. C 110 Stat. 3009-
14 546 (1996).

15 7. Petitioner is a 57-year-old Mexican national who has resided in the United States for over
16 25 years. In that time he has had five U.S. citizen children, Mirna Pena Cervantes, 26 years old,
17 Nadia Pena Cervantes, 18 years old, [REDACTED] 15 years old, M [REDACTED]
18 [REDACTED], 7 years old, and A [REDACTED], 1 year old.

19 8. On January 12, 2026, Petitioner was detained during a targeted enforcement operation. He
20 was merely on his way to work early in the morning when he was detained. Petitioner was placed
21 into ICE custody and transported to the Henderson Detention Center in Henderson, Nevada.

22 9. Petitioner has no prior arrests or criminal convictions.

23 10. Petitioner's children have been greatly impacted by his detention. His daughter Nadia, has
24 a history with mental health issues, and his partner is facing difficulties without his help with their
25 son [REDACTED]'s autism spectrum disorder and mood dysregulation disorder. His continued
26 detention places a major burden on family's well-being.

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1 11. On January 13, 2026, the Chief Immigration Judge of EOIR sent a nationwide email to
2 Immigration Court Judges instructing them to continue to apply the erroneous limitations set forth
3 in the BIA’s statutory interpretation in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025),
4 and to disregard the declaratory judgment in *Maldonado Bautista et. al. v. Ernesto Santacruz Jr.*
5 *et. al.*, No. 5:25-cv-01873-SS-BFM (C.D. Cal. Nov. 25, 2025). Essentially stripping jurisdiction
6 from an Immigration Judge to hear his claim for bond.

7 II. ARGUMENT

8 a. Requirements for a Temporary Restraining Order

9 12. On a motion for a TRO, the movant “must establish that he is likely to succeed on the
10 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
11 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat.*
12 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*,
13 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are
14 “substantially identical”). A TRO may issue where “serious questions going to the merits [are]
15 raised and the balance of hardships tips sharply in [plaintiff’s] favor.” *All. for the Wild Rockies v.*
16 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified). To succeed under the “serious
17 question” test, Mr. Peña Trejo must also show that he is likely to suffer irreparable injury and that
18 an injunction is in the public’s interest. *Id.* at 1132.

19 b. Petitioner is Likely to Succeed Because This Court Has Already Found His 20 Continued and Unreviewable Detention Under § 1225(b)(2)(A) to be Unlawful

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

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

27 15. Additionally, Petitioner is a member of a Certified Class as defined in *Maldonado*
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1 *Bautista* and is entitled to a bond hearing through the declaratory judgment issued on November
2 20, 2025.

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4 **c. Petitioner Will Suffer Irreparable Harm**

5 16. First, Petitioner’s unlawful detention permits a per se finding of irreparable harm.
6 Petitioner is likely to win on the merits of his claim that the government’s detention of him
7 without independent review is unlawful. See *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir.
8 2013) (finding irreparable harm in continued detention of noncitizens who would likely be
9 granted conditional release if afforded a bond hearing). Only individuals who are flight risks or
10 dangers may be detained. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Petitioner is neither.

11 17. Second, Petitioner’s “separation from family members” is an important irreparable harm
12 factor. *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam) (citation
13 omitted); see also, e.g., *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam)
14 (finding “separated families” to be a “substantial injur[y] and even irreparable harm[.]”); cf.
15 *Hernandez v. Sessions*, 872 F.3d 976 at 996 (9th Cir. 2017) (recognizing that “government-
16 compelled [family] separation” causes family members “trauma” and “other burdens”). Relatedly,
17 Mr. Peña Trejo’s inability to provide for his family constitutes the type of “potential economic
18 hardship” that supports a finding of irreparable harm. *Leiva-Perez*, 640 F.3d at 969–70.

19 18. Here, Petitioner’s detention, separation from his family and inability to provide for them
20 show he is suffering numerous and irreparable harms, all of which are factors warranting a TRO.

21 **a. The Balance of Hardships and Public Interest Weigh Heavily in Mr. Peña
22 Trejo’s favor**

23 19. Petitioner faces weighty hardships: loss of liberty and separation from family. The
24 government, by contrast, faces no hardship, as all it must do is release a person after a
25 determination of flight risk and danger to community. Avoiding such “preventable human
26 suffering” strongly tips the balance in favor of Mr. Peña Trejo. *Lopez v. Heckler*, 713 F.2d 1432,
27 1437 (9th Cir. 1983).

28 20. “[T]he public interest benefits from an injunction that ensures that individuals are not

1 deprived of their liberty and held in immigration detention because of . . . a likely [illegal]
2 process.” *Hernandez*, 872 F.3d at 996. “[I]n cases involving a constitutional claim, a likelihood of
3 success on the merits . . . strongly tips the balance of equities and public interest in favor of
4 granting a preliminary injunction.” *Baird v. Banta*, 81 F.4th 1036 at 1048 (9th Cir. 2023).

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6 21. Petitioner merits a TRO because a TRO would not significantly impede the government or
7 public interest. In *Maldonado Vazquez*, this court explained, at length, the requirements for
8 determining whether detention violates due process under *Matthews v. Eldridge*, 424 U.S. 319
9 (1976). See *Maldonado Vazquez v. Feely*, Case No. 2:25-cv-01542-RFB-EJY, at 30-41.

10 22. This case, as in *Maldonado Vazquez*, presents a similar situation where it is squarely
11 within Mr. Peña Trejo’s and the public’s interest that a hearing be held to determine whether he is
12 a danger to the community, a risk of flight, and what safeguards could be created to determine, on
13 balance, if his continued detention is necessary in his case.

14 III. BOND

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16 23. Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary
17 injunction or a temporary restraining order only if the movant gives security in an amount that the
18 court considers proper to pay the costs and damages sustained by any party found to have been
19 wrongfully enjoined or restrained.” However, “Rule 65(c) invests the district court with discretion
20 as to the amount of security required, if any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir.
21 2003) (internal quotation marks and citation omitted). District courts routinely exercise this
22 discretion to require no security in cases brought by indigent and/or incarcerated people. See, e.g.,
23 *Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes–*
24 *Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants). This
25 Court should do the same here.

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IV. CONCLUSION

24. For the foregoing reasons, Petitioner respectfully requests the Court grant his motion for a temporary restraining order and order his immediate release, or alternatively, order that a bond redetermination hearing be held by the Immigration Court within 7 days.

Dated: January 27, 2026

Respectfully Submitted,

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1 UNITED STATES DISTRICT COURT
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4 Rafael PEÑA TREJO,
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7 Jason KNIGHT, Field Office Director, Salt
8 Lake City Field Office, U.S. Immigration
9 and Custom Enforcement, Enforcement
10 and Removal Operations Division;

11 Reggie RADER, Chief of Police for the
12 City of Henderson, Henderson Detention
13 Center;

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

16 Pamela BONDI, Attorney General of the
17 United States,
18 *Respondents.*

Case No.

19 [PROPOSED] ORDER

20 Upon consideration of Petitioner’s Motion for a Temporary Restraining Order, the
21 Memorandum of Law in Support of the Motion, and his Petition for a Writ of Habeas Corpus, and
22 together with the exhibits annexed thereto,

23 **IT IS HEREBY ORDERED** that:

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

26 2. Pending consideration, Respondents ARE HEREBY RESTRAINED from moving Mr.
27 Peña Trejo unless seventy-two (72) hours written notice of any movement is provided to
28 Petitioner’s counsel;

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

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- 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 January 2026,

Hon.
United States District Judge