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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF NEVADA**

8 Oscar GANDARA SIMENTAL,  
9 *Petitioner,*

10 v.

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

13 John MATTOS, Warden, Nevada Southern  
14 Detention Center;

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

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

*Respondents.*

Case No.

**PETITIONER'S NOTICE OF  
MOTION FOR A TEMPORARY  
RESTRAINING ORDER**

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

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

4           2.           Upon information and belief, Petitioner has been detained since on January 13,  
5 2026, even though no neutral decisionmaker—whether a Federal Judge or an Immigration Judge  
6 (“IJ”)—has conducted a hearing to determine whether this incarceration is warranted based on  
7 danger to the community or a flight risk.

8           3.           Petitioner’s detention without a hearing regarding any purported danger to the  
9 community 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  
11 across the country. *See Maldonado Vazquez v. Feely*, Case No. 2:25-cv-01542-RFB-EJY, *Sanchez*  
12 *Roman v. Noem*, Case No. 2:25-cv-01551-GMN-EJY, *Rodriguez Cabrera v. Mattos*, Case No.  
13 2:25-cv-01684-GMN-EJY.

14          5.           Petitioner is seeking to challenge the policy recently adapted by the Board of  
15 Immigration 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  
17 continued detention is warranted, as has been the practice of similarly situated noncitizens who  
18 have been detained under 8 U.S.C. § 1226(a) since the enactment of the Illegal Immigration  
19 Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996. Pub. L. No. 104-208, Div. C 110  
20 Stat. 3009-546 (1996).

21          7.           Petitioner is a 50-year-old Mexican national who has resided in the United States  
22 for nearly 20 years. In that time, he worked hard to support himself, his community, has never  
23 committed a crime, and has a U.S. Citizen Daughter.

1 8. On January 13, 2026, Immigration and Customs Enforcement (“ICE”) undertook  
2 an enforcement operation and Mr. Gandara Simental was arrested and detained.

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

5 10. Because the BIA’s decision in *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is  
6 binding on the Immigration Court, Mr. Gandara Simental is unable to even seek an impartial  
7 hearing on bond without this Court’s entry of an order of Writ of Habeas Corpus.

## 8 II. ARGUMENT

### 9 a. Requirements for a Temporary Restraining Order

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

### 20 b. Mr. Gandara Simental Will Suffer Irreparable Harm

21 16. First, his allegations of constitutional violations permit a per se finding of  
22 irreparable harm. *See e.g., Conn. Dep’t of Env’tl. Prot. V. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir.  
23 2004) (“[W]e have held that the alleged violation of a constitutional right triggers a finding of

1 irreparable injury.”) (internal citations and quotation marks omitted); *Jolly v. Coughlin*, 76 F.3d  
2 468, 482 (2d Cir. 1996) (“[An] alleged violation of a constitutional right . . . triggers a finding of  
3 irreparable harm.”) (emphasis in original).

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

8 18. Third, Mr. Gandara Simental is likely to win on the merits of his claim that the  
9 government’s detention of him without independent review is unlawful. See *Rodriguez v. Robbins*,  
10 715 F.3d 1127, 1145 (9th Cir. 2013) (finding irreparable harm in continued detention of  
11 noncitizens who would likely be granted conditional release if afforded a bond hearing). Only  
12 individuals who are flight risks or dangers may be detained. *Zadvydas v. Davis*, 533 U.S. 678, 693  
13 (2001). Mr. Gandara Simental is neither.

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

18 19. The Fifth Amendment of the Constitution guarantees that people in civil detention  
19 may not be subject to conditions of confinement or denial of medical care that “amount to  
20 punishment.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The federal government violates a  
21 detained individual’s substantive due process rights if it “takes [that] person into custody, severely  
22 limiting his ability to care for himself, and then is deliberately indifferent to his medical needs[.]”  
23 *Charles v. Orange Cnty.*, 925 F.3d 73, 85 (2d Cir. 2019); see also *Helling v. McKinney*, 509 U.S.

1 25, 32 (1993) (“[W]hen the State by the affirmative exercise of its power so restrains an  
2 individual’s liberty that it renders him unable to care for himself, and at the same time fails to  
3 provide for his basic human needs—e.g., . . . medical care and reasonable safety—it transgresses  
4 the substantive limits on state action set by the Eighth Amendment.”).

5 20. Substantive due process precludes a state actor from affirmatively acting to create  
6 or enhance a danger that will ultimately harm an individual. *See Butera v. D.C.*, 235 F.3d 637,  
7 649–51 (D.C. Cir. 2001) (citing cases). The State “owes a duty of protection when its agents create  
8 or increase the danger to an individual.” *Id.*; *see also Paine v. Cason*, 678 F.3d 500, 510 (7th Cir.  
9 2012) (due process was violated where police officers left detainee in a more dangerous  
10 neighborhood, away from public transportation, and without a cell phone); *Wang v. Reno*, 81 F.3d  
11 808, 817 (9th Cir. 1996) (noncitizen could not be removed to China after the U.S. government  
12 convinced him to testify about a topic that would lead the Chinese government to torture and  
13 possibly execute him). Due process is implicated when the state actor’s conduct in such a case is  
14 “so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.”  
15 *Butera*, 235 F.3d at 651 (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998)).

16 21. The Fifth Amendment of the Constitution guarantees that noncitizens receive  
17 adequate procedural protections in the course of any executions of the government’s detention and  
18 removal authorities. *See, e.g., Zadvydas*, 533 U.S. at 690. Such protections are flexible and guided  
19 by considerations for the “private interest that will be affected[,]” “the risk of an erroneous  
20 deprivation of such interest through the procedures used[,]” and “the Government’s interest,  
21 including the function involved and the fiscal and administrative burdens that the additional or  
22 substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).  
23 The government’s actions toward effectuating Mr. Gandara Simental’s removal, without any

1 individualized review or oversight or due process deprive him of his vital right to liberty, especially  
2 when he poses no danger to his community and no danger has been alleged.

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

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

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17 <sup>1</sup> *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 226 (1954), originated in the context  
18 of an immigration case and held that agencies are bound to follow their own rules that affect the  
19 fundamental rights of individuals, including self-imposed policies and processes that limit  
20 otherwise discretionary decisions. In *Accardi*, the court held that the Board of Immigration Appeals  
21 (BIA) must follow its own regulations in its exercise of discretion. *Id.* at 268. In *Morton v. Ruiz*,  
22 415 U.S. 199, 235 (1974), the court struck down a Bureau of Indian Affairs benefits determination  
23 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.”)

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

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

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

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

11           27.       Mr. Gandara Simental merits a TRO because a TRO would not significantly impede  
12 the government or public interest. In *Maldonado Vazquez*, this court explained, at length, the  
13 requirements for determining whether detention violates due process under *Matthews v. Eldridge*,  
14 424 U.S. 319 (1976). *See Maldonado Vazquez v. Feely*, Case No. 2:25-cv-01542-RFB-EJY, at 30-  
15 41.

16           28.       This case, as in *Maldonado Vazquez*, presents a similar situation where it is squarely  
17 within both Mr. Gandara Simental and the public’s interest that a hearing be held to determine  
18 whether he is a danger to the community, a risk of flight, and what safeguards could be created to  
19 determine, on balance, if his continued detention is necessary in his case.

20                           **III. BOND**

21           29.       Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a  
22 preliminary injunction or a temporary restraining order only if the movant gives security in an  
23 amount that the court considers proper to pay the costs and damages sustained by any party found

1 to have been wrongfully enjoined or restrained.” However, “Rule 65(c) invests the district court  
2 with discretion as to the amount of security required, if any.” *Jorgensen v. Cassidy*, 320 F.3d 906,  
3 919 (9th Cir. 2003) (internal quotation marks and citation omitted). District courts routinely  
4 exercise this discretion to require no security in cases brought by indigent and/or incarcerated  
5 people. *See, e.g., Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners);  
6 *Orantes–Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants).  
7 This Court should do the same here.

8 **IV. CONCLUSION**

9 30. For the foregoing reasons, Mr. Gandara Simental respectfully requests the Court  
10 grant his motion for a temporary restraining order and order his immediate release, or alternatively,  
11 order that a bond redetermination hearing be held by the Immigration Court within 7 days.

12  
13 DATED this 28th day of January, 2026.

14 /s/Spencer Judd Jr., Esq.  
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23

1 **UNITED STATES DISTRICT COURT**  
2 **DISTRICT OF NEVADA**

3 Oscar GANDARA SIMENTAL,  
4 *Petitioner,*

Case No.

5 v.

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

8 John MATTOS, Warden, Nevada Southern  
9 Detention Center;

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

11 Pamela BONDI, Attorney General of the  
12 United States,

*Respondents.*

13  
14 **[PROPOSED] ORDER**

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

18 **IT IS HEREBY ORDERED** that:

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

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

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

3 4. Respondents are ORDERED to file a return as to why the Petition should not be  
4 granted by \_\_\_\_\_;

5 5. Petitioner shall have an opportunity to reply by \_\_\_\_\_;

6 6. The merits of the Petition shall be heard by the Court on \_\_\_\_\_;

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

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

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

12 IT IS SO ORDERED.

13  
14 DATED this \_\_\_\_\_ day of January 2026,

15 \_\_\_\_\_  
16 Hon.

17 United States District Judge  
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