

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

JOSEPH HERRERA

Plaintiff,

v.

Case No.: D-101-CV-2025-02352

REGULATION & LICENSING DEPARTMENT

Defendant.

**PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER,
APPLICATION FOR PRELIMINARY INJUNCTION, REQUEST FOR EXPEDITED
HEARING, AND MEMORANDUM IN SUPPORT**

Plaintiff Joseph Herrera, through his counsel the Law Office of Matthew J. Bouillon Mascareñas LLC (Matthew J. Bouillon Mascareñas, Esq.), hereby moves this Court pursuant to NMSA 1978, § 41-4A-3(B) of the New Mexico Civil Rights Act (CRA), Rule 1-066 NMRA, and the Court's inherent authority, for entry of an *ex parte* temporary restraining order, a preliminary injunction, and an expedited hearing thereon. This motion is based on the accompanying *Verified Complaint for Damages and for Declaratory and Injunctive Relief* (the "Complaint"), the Memorandum in Support below, all exhibits thereto, and any evidence presented at a hearing. In support thereof, Plaintiff respectfully shows the Court as follows:

INTRODUCTION

1. This emergency motion arises from Defendant Regulation and Licensing Department's (RLD) ongoing deliberate and willful violations of Plaintiff's procedural due process rights under Article II, Section 18 of the New Mexico Constitution, as enforced through the CRA, NMSA 1978, §§ 41-4A-1 to -13. Specifically, RLD's Construction Industries Division (CID)

issued Plaintiff a deficient Code Violation Determination (CVD) and Notice of Violation (NOV) on January 16, 2025, omitting his right to appeal under section 14.5.9.9(B) NMAC, thereby depriving him of a hearing; failed to respond to his repeated good-faith inquiries into the factual and legal bases of the alleged violations; intentionally withheld critical information about the referral of his case to the New Mexico Department of Justice (NMDOJ) for an enforcement action against his GB98 contractor license; misrepresented his compliance efforts to the complainant (the “Homeowner”) through false statements that he “failed to respond” to the NOV and CVD despite records of his submissions; and submitted a materially misleading memorandum to the Construction Industries Commission falsely portraying him as uncooperative. These actions have placed Plaintiff’s 20-year-old license and livelihood in imminent jeopardy.

2. Under section 41-4A-3(B) of the CRA, this Court is expressly authorized to grant injunctive relief to prevent ongoing deprivations of constitutional rights. Accordingly, Plaintiff seeks a temporary restraining order without notice under Rule 1-066(B) NMRA, enjoining CID from taking any adverse action against his license (*e.g.*, suspension, revocation, bond claim, or otherwise) pending a hearing. Plaintiff further applies for a preliminary injunction under Rule 1-066(A) NMRA to maintain the status quo until trial on the merits of his Complaint. Finally, Plaintiff requests an expedited hearing as soon as possible from the date of filing, as the threatened harm is immediate and ongoing.

3. Absent immediate relief, Plaintiff will suffer irreparable injury, including the loss of his constitutional right to procedural due process, professional reputation, client base, and ability to earn a living in New Mexico’s competitive construction industry. Plaintiff has a strong likelihood of success on his claims, the balance of equities and public interest favor relief, no bond

is required under the CRA, and to the extent it would otherwise be necessary for Plaintiff to furnish a security, he respectfully asks such requirement be waived.

FACTUAL BACKGROUND

4. The facts are set forth in detail in the Complaint and incorporated herein by reference. In summary:

- a. On March 20-21, 2024, CID Inspector Julian Gonzales approved the final inspection and issued a Certificate of Occupancy (No. 32476) for Plaintiff's work on the residential property located at 277 Tano Road, Santa Fe, NM (the "Subject Property"), certifying full code compliance under section 14.5.3.13 NMAC.
- b. Eight days later, on March 29, 2024, the Homeowner filed a complaint alleging cosmetic issues, and CID immediately opened Investigation No. 105-24-03 despite the recent certification. Internal records (obtained via IPRA) reveal CID Investigations Manager Carla Roybal's rapid triage and referral to other CID bureaus even as RLD failed to produce at least one key email specifically mentioned by Ms. Roybal, to wit, her March 29, 2024 internal message directing the case's opening, which was referenced but withheld in violation of IPRA.
- c. On April 2, 2024, CID issued a Notice of Investigation to Plaintiff. (Exhibit 3 to the Complaint). He responded on April 18, 2024, explaining the issues were cosmetic and resolved, and requesting closure based on the certificate of occupancy. CID provided no response.
- d. Plaintiff later learned through IPRA productions that CID had shared his April 18, 2024 response with the Homeowner without his knowledge, while providing no acknowledgment or response to him, evidencing early bias in favor of the complainant.

- e. On October 11, 2024, Inspector Cedric Chavez reinspected the Subject Property and issued a CVD alleging four code violations related to a “water resistance barrier” and flashings.
- f. On January 16, 2025, Ms. Roybal emailed the CVD and NOV (collectively attached as Exhibit 4 to the Complaint) to Plaintiff, mandating corrections by February 16, 2025 under threat of discipline. Plaintiff immediately sought guidance from Mr. Chavez who vaguely advised “working it out with the Homeowner” without prescriptive details, contrary to section 14.5.3.8 NMAC. Plaintiff also sent a former letter that same day through counsel requesting supporting documents, to which CID provided no response.
- g. Both the CVD and the NOV omitted any mention of Mr. Herrera’s appeal rights under section 14.5.9.9(B) NMAC, which provides for a written appeal to the CID Director within 10 days of receiving the CVD and a 30-day period for the director’s decision. If denied, the rule further permits a written appeal to the Construction Industries Commission within 20 days of receipt of the director’s denial. *Id.*
- h. By not including the appeal rights in the CVD, Mr. Herrera was deprived of constitutional notice and an opportunity to be heard since the deadline to request director review was January 27, 2025.
- i. Unsure about the legal or factual basis of the CVD and NOV, Plaintiff submitted a first IPRA request on January 29, 2025 for relevant records, including internal communications likely to reveal details about the agency’s decision-making. RLD’s production referenced but withheld key emails (*e.g.*, Ms. Roybal’s March 29, 2024 email to CID Investigator Mary Page) violating IPRA. In late August 2025, concerned by ongoing discrepancies, Plaintiff submitted a second IPRA request seeking all

- additional communications related to the NOV and CVD; RLD's response to the second request confirmed no NOV had been mailed to Plaintiff on December 18, 2024, further underscoring CID's inconsistencies.
- j. Plaintiff requested and received an extension of time to address the CVD and NOV to March 20, 2025, but the records provided no guidance, though Ms. Roybal consulted the Homeowner for approval before granting it, an unauthorized step evidencing bias. Plaintiff responded substantively on April 2, 2025, contesting the CVD's vagueness and citing prior approvals. CID again provided no response.
 - k. Unbeknownst to Plaintiff, on May 21, 2025, the Construction Industries Commission referred the matter to NMDOJ for a Notice of Contemplated Action (NCA) against his license based on a materially misleading memorandum (the "CIC Memo," attached as Exhibit 5 to the Complaint) that falsely claimed an NOV was mailed on December 18, 2024 (when internal records show it was deferred and emailed on January 16, 2025), misrepresented Plaintiff's non-responsiveness despite his documented submissions, and dismissed his April 2, 2025 letter as "unsubstantiated," prompting an unfounded "failure to cooperate" charge. CID withheld this information from Plaintiff while engaging in open communication with the Homeowner, falsely telling the Homeowner Plaintiff "failed to respond" to the NOV and CVD, and coaching the Homeowner on obtaining bids to trigger a bond claim up to \$10,000.00 in the Homeowner's favor.
 - l. On August 26-28, 2025, the Homeowner confronted Plaintiff, citing Ms. Roybal's misrepresentations, and demanded a full restucco at his expense. Plaintiff's counsel contacted Ms. Roybal on August 27 and 28, 2025, protesting the bias and withholding, but again received no response.

m. On September 3, 2025, CID General Counsel Lori Chavez confirmed the NMDOJ referral and told Plaintiff the commencement of an administrative process against his license was essentially imminent.

5. CID's intentional misconduct, including its false statements to the Homeowner and the Commission, has left Plaintiff in limbo, unable to appeal or conduct remedial work effectively, while RLD advances enforcement based not on any refusal by Plaintiff, but its own bias and procedural failures. The nature of public databases for the construction industry means even a pending NCA or Certificate of Uncorrected Violation (CUV) could deter clients or future sureties, causing immediate, irreparable harm.

LAW AND ARGUMENT

I. Standard of Review

Under Rule 1-066(B)(1) NMRA, a district court may issue a temporary restraining order if “it clearly appears from the specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard in opposition.” Rule 1-066(B)(2) NMRA requires a justification why notice should not be required (which Mr. Herrera provides in section 3 below).

Here, Mr. Herrera only learned that his case had been referred to the NMDOJ on September 3, 2025, *i.e.*, after the passage of 105 days. The commencement of a licensing case against him via NCA is, therefore, imminent. The relief he seeks cannot wait for litigation in the regular course as his harm is ongoing. Additionally, since CID may have already decided to assist the Homeowner by prematurely certifying Mr. Herrera's so-called failures in a CUV, this Court should presume that process is underway and possibly taking place without the required notice to Mr. Herrera. *See* § 14.5.9.10(A) NMAC (“the division shall issue a CUV to the surety as well as the indemnitee *and*

the appropriate licensee(s)”) (emphasis added). Given the CIC Memo’s misrepresentations that tainted the May 21, 2025 referral, further escalation without intervention risks compounding the due process deprivations.

To obtain a preliminary injunction, Mr. Herrera must show that: “(1) [he] will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the defendant; (3) issuance of the injunction will not be adverse to the public’s interest; and (4) there is a substantial likelihood [he] will prevail on the merits.” *LaBalbo v. Hymes*, 1993-NMCA-010, ¶ 11, 115 N.M. 314, 318 (citing *Tri-State v. Shoshone River Power, Inc.* 805 F.2d 351 (10th Cir. 1986)) (acknowledging similar elements under state and federal law). “When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Awad v. Ziriak*, 670 F.3d 1111, 1131 (10th Cir. 2012) (quoting *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (overruled on other grounds)). As set forth below, Mr. Herrera satisfies all four factors for granting a preliminary injunction in this case.

1. Mr. Herrera will suffer irreparable harm unless the injunction is granted.

CID’s imminent NCA and potential discipline based on a defective record threaten permanent damage to Mr. Herrera. In New Mexico’s construction sector—which employs nearly 50,000 people and contributes billions to the state’s economy every year—even a notice of an enforcement action or a bond claim in a public database erodes reputation and client trust, causing lost income not fully compensable by damages. Moreover, CID’s withholding of information and bias have already prejudiced Mr. Herrera: he missed the 10-day appeal window due to the CVD’s omission and was consequently deprived of an opportunity to be heard; he has incurred unrecoverable costs; and he faces a coerced bond claim unduly favoring the Homeowner. Without a restraining order, NMDOJ will issue the NCA, triggering an adjudicatory process where his

defenses (*e.g.*, prior certification, CVD vagueness, bias, arbitrariness, *etc.*) are fatally undermined by CID's deliberate obfuscation. This harm is irreparable, as monetary damages cannot restore lost business or reputation.

2. Mr. Herrera demonstrates a substantial likelihood of success on the merits.

Mr. Herrera is likely to succeed on the merits of his CRA claims (Counts I and II of the Complaint) because the violations of his right to due process are well recognized, the existing procedures are constitutionally insufficient, and new, adequate procedures would require minimal changes to implement.

“No person shall be deprived of life, liberty or property without due process of law.” N.M. Const. art. II, § 18. Accordingly, “[a]dministrative hearings that affect a property or liberty interest must comply with due process.” *Archuleta v. Santa Fe Police Dep’t ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 31, 108 P.3d 1019. The test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976), “is the appropriate analytical framework for a due process issue.” *Archuleta*, ¶ 31 (citation omitted). The *Mathews* test evaluates the following factors: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *N.M. Dep’t of Workforce Solutions v. Garduño*, 2016-NMSC-002, ¶ 11, 363 P.3d 1176 (internal citation and quotation marks omitted).

a. Mr. Herrera has various constitutionally protected property interests that would be affected by RLD and CID’s adverse actions.

Mr. Herrera’s private interest is substantial. His GB98 license is a protected property interest essential to his livelihood. He also faces the imminent potential for lost income, including

the value of any coerced repairs. His reputation is a protected liberty interest. Depriving Mr. Herrera of any of these interests, let alone all of them, would be significant, requiring robust procedural protections. *See Mathews*, 424 U.S. at 334-35.

b. The risk of erroneous deprivation of these interests is high with the procedures CID used.

For this prong, courts examine the procedures used by the agency holistically. *See Garduño*, ¶ 21. “To prevent erroneous deprivation in the administrative context, due process requires reasonable notice and [an] opportunity to be heard and present any claim or defense.” *Id.* (internal citation omitted). To pass constitutional muster, notices must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.* at ¶ 24 (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313-14 (1950)). “[T]he distinguishing factor used to determine whether there was or was not a violation of due process rights depends on whether the defective notice deprived the claimant of the ability to participate in the proceeding.” *Id.* at ¶ 27.

CID’s procedural flaws as articulated in Count I of the Complaint are many: agency silence as to Mr. Herrera’s critical April 18, 2024; January 16, 2025; April 2, 2025; August 27, 2025; and August 28, 2025 letters; unexplained re-inspection of the Subject Property despite a valid certificate of occupancy; vague guidance from the very inspector who should have been able to articulate an acceptable fix; willfully withholding the May 21, 2025 NMDOJ referral from Mr. Herrera while coaching the Homeowner on a bond claim; making a false statement to the Homeowner to discredit Mr. Herrera and in the CIC Memo to prejudice the Commission, *etc.* These acts and omissions created a situation that greatly increased the risk of CID error; namely, in their mischaracterization of what was required for compliance, CID arbitrarily failed to address Mr. Herrera’s actual defenses or his good-faith factual inquiries. Additional safeguards—such as

mandatory responses to licensee inquiries, clear prescriptive guidance for code violation remediation, and notice of referrals to enforcement—would have high value in reducing such errors and enabling timely remediation or appeals.¹ Without these commonsense protections, CID’s process as applied to Mr. Herrera was illusory and doomed to fail.

With regard to Count II, the flaw in CID’s procedure is objective and clinical. By failing to include any mention of appeal rights in either its Code Violation Determination or Notice of Violation, the 10-day period for appealing to the CID director expired *arguendo* before Mr. Herrera had even fashioned his IPRA request. Fortunately, fixing a form is a triviality, both in terms of cost and effort required. The value of such a fix would be undoubtedly high, allowing challenges before CUV issuance and, more importantly, avoiding erroneous and wasteful escalations which no small New Mexican contractor could afford.

c. Considering RLD/CID’s mutual interest in code enforcement, the fiscal and administrative burdens that the additional or substitute procedural requirements would entail are minimal.

This prong aims to consider the state’s goals in light of the costs of enhanced procedures as discussed above in the context of Counts I and II. RLD and CID’s main interest lies in enforcing regulatory rules for public safety. Accommodating this interest is not burdensome. CID already conducts investigations; accordingly, requiring responses, explanations, and neutral communication imposes minimal fiscal and administrative costs. Likewise, the inclusion of appeal rights on a form imposes essentially no new fiscal or administrative burdens. Applying these proposed changes uniformly would better align the agency’s conduct with its own rulemaking. Bias towards any one party undermines neutrality and public trust. Enhanced procedures and more

¹ At minimum, a notice of CVD should contain the same information a notice of CUV is required to contain by rule. See § 14.5.9.10(B)(1)-(9) NMRA

neutrality would thus promote efficiency by resolving disputes early and reducing litigation, as Mr. Herrera intended to do. This prong weighs against the agency. By any metric, the burden of making these changes pales in comparison to the risks of inaction.

3. The balance of harms and the public interest favor granting immediate relief.

The balance of equities strongly favors Mr. Herrera, as does the public interest. Mr. Herrera has a stronger interest in enjoining an improvident, unfair process than RLD has in enforcing it. His interest, after all, is significant: protection of his right to due process. RLD has no similar interest. Any good work that CID was doing previously will continue to be done irrespective of this motion. However, the benefits of constitutionally adequate safeguards inure not just to Mr. Herrera, but to the contractor community and the public at large. The Court should enjoin CID's impending action until this litigation is concluded for this reason as well, since compliance with constitutional imperatives is always in the public interest.

Finally, Mr. Herrera submits pursuant to Rule 1-066(B)(2) NMRA that notice to CID prior to issuance of an *ex parte* temporary restraining order should not be required due to the imminent and irreparable harm posed by the CID's pending licensing action and proceedings against his surety bond. An action to suspend or revoke Mr. Herrera's license, or make a claim to his bond, threaten loss of livelihood and depletion of his bond, causing severe financial and reputational damage that cannot be undone through subsequent proceedings. Judging by its conduct to date, CID's unwise certification of the alleged code violations as "uncorrected" is imminent. Mr. Herrera's affidavit demonstrates specific facts of impending injury, and the brief delay caused by an *ex parte* temporary restraining order imposes minimal burden on CID. Thus, these pressing circumstances justify dispensing with notice to prevent irreparable prejudice to Mr. Herrera's constitutionally protected interests.

PRAYER FOR RELIEF

Wherefore, Plaintiff Joseph Herrera respectfully requests that this Court:

1. Set an expedited hearing in this matter as soon as possible;
2. Find good cause that notice to Defendant is not required under the circumstances presented herein;
3. Find good cause to grant Plaintiff's motion as to Counts I and II (CRA violations), waiving the requirement that Plaintiff furnish any security;
4. Grant an *ex parte* temporary restraining order enjoining Defendant from taking any adverse action against Plaintiff's protected interests;
5. After hearing on the temporary restraining order, preliminarily enjoin Defendant from taking any adverse action against Plaintiff's protected interests during the pendency of his Complaint; and
6. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

LAW OFFICE OF MATTHEW J. BOUILLON MASCAREÑAS LLC

Dated: September 16, 2025

By: /s/ MJB M

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September, 2025, the foregoing was electronically filed via the Odyssey File and Serve system.

/s/ *MJBM*

Matthew J. Bouillon Mascareñas