

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 RESPONSE IN OPPOSITION TO DEFENDANT'S
MOTION TO CONTINUE EXPEDITED HEARING**

Plaintiff Joseph Herrera, through his counsel the Law Office of Matthew J. Bouillon Mascareñas LLC (Matthew J. Bouillon Mascareñas, Esq.), hereby submits his response in opposition to Defendant Regulation and Licensing Department's *Motion to Continue Expedited Hearing*, filed today. Mr. Herrera asks that the Court deny Defendant's motion and maintain the current setting for September 29, 2025 at 9:30 a.m. In support of his position, he states as follows:

FACTUAL BACKGROUND

1. The facts are set forth in detail in the Complaint and incorporated herein by reference.

2. In addition to the incorporated facts, Plaintiff states the following supplementary facts.

a. Service of the Summons and Complaint

3. On Thursday, September 18, 2025, Plaintiff filed a Request for Expedited Hearing on his *Emergency Motion for Temporary Restraining Order, Application for Preliminary Injunction, Request for Expedited Hearing, and Memorandum in Support*.

4. On Friday, September 19, 2025, the Court issued a notice that the expedited hearing would be held on September 29, 2025 at 9:30 a.m., denying Plaintiff's request for emergency *ex parte* relief.

5. Also on Friday, September 19, Plaintiff submitted a summons to the Clerk of Court for issuance. Exhibit 1—Automated Email from File&Serve System Showing Dates of Summons Submission & Issuance (Sept. 23, 2025).

6. On Tuesday, September 23, 2025 at 1:52 p.m., the Clerk returned the issued summons to Plaintiff, enabling proper service. *See* Exhibit 1.

7. Plaintiff then immediately printed a copy of every pleading on file in this case and sent them via FedEx Priority Overnight to Defendant and the New Mexico Department of Justice (NMDOJ) at 3:34 p.m., less than two hours after receiving the issued summons. Exhibit 2—FedEx Receipt with Tracking Data (RLD); Exhibit 3—FedEx Receipt with Tracking Data (NMDOJ).

8. Priority Overnight service guarantees delivery on or before 10:30 a.m. the following day.

9. Tracking information for both envelopes demonstrate that they did, in fact, arrive at their intended destinations on or before 10:30 a.m. on Wednesday, September 24, 2025, not on Thursday, September 25, 2025 as Defendant alleges in paragraph five of its motion. *See* Exhibit 2 (showing delivery to RLD on 9/24/2025 at 10:14 a.m.); Exhibit 3 (showing delivery to NMDOJ at 9/24/2025 at 10:30 a.m.).

b. Plaintiff's imminent irreparable harm

10. Plaintiff was denied an opportunity to contest his code violation determinations (CVDs) because the form apprising him of the alleged violations did not contain an advisement of his appeal rights under section 14.5.9.9(B) NMAC.

11. The six-month time limitation to correct code violations in section 14.5.9.10(E) NMAC lapsed *arguendo* on July 17, 2025, nearly two months *after* Defendant had already presented Plaintiff's case to the Construction Industries Commission for enforcement.

12. Defendant's premature referral of Plaintiff to the NMDOJ was nonetheless approved by the Construction Industries Commission on May 21, 2025.

13. On June 13, 2025, CID Investigations Manager Carla Roybal submitted a "Disciplinary Referral & Request for Prosecution" form to the NMDOJ. Exhibit 4--Form Completed by Ms. Roybal (June 13, 2025).

14. At the time of Ms. Roybal's submission to the NMDOJ, Plaintiff still had a month left in which to correct code violations. *See* § 14.5.9.10(E) NMAC.

15. The form Ms. Roybal submitted includes the additional "failure to cooperate" charge against Plaintiff. Exhibit 4.

16. The inclusion of the "failure to cooperate" charge in a handwritten addition "per Commissioner" suggests that Ms. Roybal's selective retelling of Defendant's investigation caused the Commission to seek additional sanctions against Plaintiff. *See, e.g.*, Exhibit 5 to Verified Complaint.

17. The form was accompanied by the same Construction Industries Commission Memorandum, likely also prepared by Ms. Roybal, containing the false statement that Plaintiff had been sent a Notice of Violation on December 18, 2024 with a remediation deadline of January 25, 2025.

18. As Ms. Roybal herself noted in internal logs some five months prior to the creation of the Construction Industries Commission Memorandum, no Notice of Violation was ever sent to Plaintiff on December 18, 2024.

19. Plaintiff has never refused to remediate any alleged code violation, nor has he been afforded a real opportunity to correct any code violations of which he has been accused, contrary to section 14.5.9.10(A) NMAC.

20. Defendant's acts and omissions have compromised the integrity of its own processes.

21. Publication of a Notice of Contemplated Action (NCA) against Plaintiff poses a serious risk of irreparable harm due to its foreseeable impact on his reputation and livelihood. This harm is all the more acute given Defendant's deceptive and unethical conduct in securing the referral in the first instance.

22. As Ms. Roybal recorded internally on August 27, 2025 at 2:47 p.m., the homeowner/complainant had "been working on bond request estimates" to remediate Plaintiff's work. Thus, the uncorrected code violation certification process is well underway, and a certificate of uncorrected violation (CUV) could be issued at any time.

23. The required language in a CUV provides in relevant part as follows: "This notice serves to inform the surety company, the indemnitee and the licensee that the specified licensee(s) has refused or failed to correct a code violation(s) and therefore the construction industries division, under Section 60-13-49 NMSA 1978, is informing the surety company that the code bond must be released for the sole purpose of correcting the code violation(s) identified herein." § 14.5.9.10(B)(9) NMAC.

24. Issuance of a CUV to Plaintiff's surety also poses a serious risk of irreparable harm since it would be materially false, signal financial instability and non-compliance with regulations, and would be likely to result in termination of Plaintiff's bond relationship through no fault of his own. Since a code bond is a regulatory requirement, it could also deprive Plaintiff of his ability to earn a living if he is subsequently unable to find a new surety.

25. A continuance leaves Plaintiff exposed to these harms with no remedy.

LAW AND ARGUMENT

I. Plaintiff's defense of his liberty and property interests from irreparable harm takes priority over Defendant's scheduling difficulties.

It is true, as Defendant states in its motion, that it cannot legally take adverse action against Plaintiff's license without complying with the Uniform Licensing Act. Just as it is true that "no contested case hearing can be scheduled" unless and until a NCA issues. This, however, misses the point. It is not the conclusion of these processes that threatens irreparable harm to Mr. Herrera's livelihood and reputation, it is their commencement based on a fraudulent premise. This is also true of CUV issuance. Once an NCA or a CUV is issued, Mr. Herrera will experience immediate, irreparable harm that no sum of money can fix.

Defendant notes that "the CVD process affords a correction window and appeal, and any discipline proceeds separately under 14.5.8 NMAC following notice." While this might be true in some instances, it is not the case here. Not only does the "CVD process" appear to basically not exist at all in practice, Defendant referred Plaintiff to the NMDOJ due to his alleged non-compliance in failing to correct a code violation *ahead of schedule* (which he did not fully understand and which Defendant took precisely zero effort to explain). For its part, Defendant took six months merely to re-inspect the Subject Property (Mar. 29, 2024 to Oct. 11, 2024) and another

three months to transmit the alleged code violations to Plaintiff (Oct. 11, 2024 to Jan. 16, 2025). In short, not only do the rules only seem to apply in one direction—whereby Plaintiff is held to an impossible standard while Defendant persists in a lawless campaign of covert favoritism—but these processes are not on separate tracks. They are each integral to the other.

Accordingly, since Defendant’s procedure as applied to Plaintiff has been fully compromised and cannot meet constitutional standards in its current form, this Court should enjoin the status quo as soon as possible so that no further harm comes to Plaintiff’s due process rights until final adjudication on the merits of his claims. While Plaintiff regrets any scheduling inconvenience to defense counsel, he simply cannot relent in view of the urgent danger Defendant’s actions pose to his ability to live and work in his home state.

II. The balance of equities favors denying Defendant’s motion.

As stated in his original application, Plaintiff has a far stronger interest in enjoining an improvident process than Defendant has in enforcing it. His interest, after all, is significant: protection of his right to due process. Defendant has no similar interest, let alone one in jeopardy of deprivation. Its motion should be denied.

PRAYER FOR RELIEF

Wherefore, Plaintiff Joseph Herrera respectfully requests that this Court:

1. Deny Defendant Regulation & Licensing Department’s motion;
2. Maintain the current setting for September 29, 2025 at 9:30 a.m.; and
3. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

LAW OFFICE OF MATTHEW J. BOUILLON MASCAREÑAS LLC

Filing Received for Case: D-101-CV-2025-02352; Joseph Herrera v. Regulation & Licensing Department; Envelope Number: 13198727

From no-reply@efilingmail.tylertech.cloud <no-reply@efilingmail.tylertech.cloud>

Date Tue 9/23/2025 1:52 PM

To matt@mjbm.law <matt@mjbm.law>



Receipted Filing

Envelope Number: 13198727

Filing Code: ISSUANCE OF SUMMONS

Filing Type: EFile

This is a receipted filing notification for Case/Envelope: D-101-CV-2025-02352 (\$\$casestyle).

Filing Details	
Court	1st District
Case Number	D-101-CV-2025-02352
Case Style	Joseph Herrera v. Regulation & Licensing Departmentr
Date Submitted	9/19/2025 5:44 PM MST
Date Received	9/23/2025 1:51 PM MST
Filing Type	EFile
Filing Description	Issuance of Summons
Activity Requested	EFile
Filed By	Matthew Bouillon Mascarenas

Document Details	
Lead Document	Summons 4-206 RLD.pdf
Lead Document Page Count	3
File Stamped Copy	Download Document
This link is active for 90 days. To access this document, you will be required to enter your email address. Click here for more information.	

If the link above is not accessible, copy this URL into your browser's address bar to view the document:

<https://newmexico.tylertech.cloud/ViewDocuments.aspx?FID=1ac85a06-a670-483b-b787-6c93a7c1d0ae>

For technical assistance, contact your service provider

Odyssey File & Serve

(800) 297-5377

Please do not reply to this email. It was automatically generated.

Showing 1 of 2

DELIVERED

Wednesday


9/24/25 at 10:14 AM

Signed for by: E.Cassidy

↓ Obtain proof of delivery

DELIVERY STATUS

Delivered 



 Report missing package

ADD YOUR EMAIL TO STAY UPDATED ON THIS SHIPMENT

GET UPDATES

MORE OPTIONS

TRACKING ID

884615925995  

FROM

ALBUQUERQUE, NM US

Label Created

9/23/25 4:34 PM

WE HAVE YOUR PACKAGE

ALBUQUERQUE, NM

9/23/25 5:14 PM

ON THE WAY

SANTA FE, NM

9/24/25 8:55 AM

OUT FOR DELIVERY

SANTA FE, NM
9/24/25 8:58 AM

DELIVERED

SANTA FE, NM US
Delivered
9/24/25 at 10:14 AM

↓ [View travel history](#)


Shipment facts

Shipment overview

TRACKING NUMBER 884615925995

DELIVERED TO Shipping/Receiving

SHIP DATE  9/23/25

STANDARD TRANSIT  9/24/25 before 10:30 AM

DELIVERED 9/24/25 at 10:14 AM

Services

SERVICE FedEx Priority Overnight

SPECIAL HANDLING SECTION Deliver Weekday, Adult Signature Required

SIGNATURE SERVICES  Adult Signature Required

Package details

WEIGHT 0.5 lbs / 0.23 kgs

TOTAL PIECES 1


TOTAL SHIPMENT WEIGHT 0.5 lbs / 0.23 kgs

PACKAGING FedEx Envelope


[↑ Back to top](#)

Travel history

SORT BY DATE/TIME

Ascending 

Time zone

Local Scan Time 

Tuesday, 9/23/25

- 3:34 PM
Shipment arriving On-Time
ALBUQUERQUE, NM
- 3:34 PM
Picked up
ALBUQUERQUE, NM
- 4:34 PM
Shipment information sent to FedEx
- 5:14 PM
Picked up
ALBUQUERQUE, NM
- 6:53 PM
Left FedEx origin facility
ALBUQUERQUE, NM
- 7:13 PM
At destination sort facility
ALBUQUERQUE, NM

Wednesday, 9/24/25

- 12:10 AM
At local FedEx facility
ALBUQUERQUE, NM

- 12:15 AM
Delivery updated
Delivery updated
ALBUQUERQUE, NM

- 8:55 AM
Shipment arriving On-Time
SANTA FE, NM

- 8:55 AM
At local FedEx facility
SANTA FE, NM

- 8:58 AM
On FedEx vehicle for delivery
SANTA FE, NM

- ✔ 10:14 AM
Delivered
SANTA FE, NM

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FedEx® Tracking

Exhibit 3 to Plaintiff's Response in Opposition to Defendant's Motion for Continuance

DELIVERED

Wednesday

9/24/25 at 10:30 AM

Signed for by: R.Riveria

Obtain proof of delivery

DELIVERY STATUS

Delivered

Report missing package

ADD YOUR EMAIL TO STAY UPDATED ON THIS SHIPMENT

Empty text input field for email subscription.

GET UPDATES

MORE OPTIONS

TRACKING ID

884615975853

FROM

ALBUQUERQUE, NM US

Label Created

9/23/25 4:34 PM

WE HAVE YOUR PACKAGE

ALBUQUERQUE, NM

9/23/25 5:14 PM

ON THE WAY

SANTA FE, NM

9/24/25 8:56 AM

OUT FOR DELIVERY

SANTA FE, NM

9/24/25 9:08 AM

DELIVERED

SANTA FE, NM US

Delivered

9/24/25 at 10:30 AM

[View travel history](#)



Shipment facts

Shipment overview

TRACKING NUMBER 884615975853

DELIVERED TO Shipping/Receiving

SHIP DATE ⓘ 9/23/25

STANDARD TRANSIT ⓘ 9/24/25 before 10:30 AM

DELIVERED 9/24/25 at 10:30 AM

Services

SERVICE FedEx Priority Overnight

SPECIAL HANDLING SECTION Deliver Weekday, Adult Signature Required

SIGNATURE SERVICES ⓘ Adult Signature Required

Package details

WEIGHT 0.5 lbs / 0.23 kgs

TOTAL PIECES 1

TOTAL SHIPMENT WEIGHT 0.5 lbs / 0.23 kgs

PACKAGING FedEx Envelope

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Travel history

SORT BY DATE/TIME

Ascending

Time zone

Local Scan Time



- 3:31 PM
Picked up
ALBUQUERQUE, NM
- 4:34 PM
Shipment information sent to FedEx
- 3:35 PM
Shipment arriving On-Time
ALBUQUERQUE, NM
- 5:14 PM
Picked up
ALBUQUERQUE, NM
- 6:53 PM
Left FedEx origin facility
ALBUQUERQUE, NM
- 7:13 PM
At destination sort facility
ALBUQUERQUE, NM

Wednesday, 9/24/25

- 12:10 AM
At local FedEx facility
ALBUQUERQUE, NM
- 12:15 AM
Delivery updated
Delivery updated
ALBUQUERQUE, NM
- 8:55 AM
At local FedEx facility
SANTA FE, NM
- 8:56 AM
Shipment arriving On-Time
SANTA FE, NM
- 9:08 AM
On FedEx vehicle for delivery
SANTA FE, NM
- 10:30 AM
Delivered
SANTA FE, NM

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STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL
DISCIPLINARY REFERRAL & REQUEST FOR PROSECUTION
CID/MHD REFERRAL FORM (rev. 100521)

Exhibit 4

Agency Name: Regulation and Licensing Dept. Case No.: 105-24-03 Date of Referral: 06-13-2025

Date Complaint Received by Agency: 03-29-2024 Statute of Limitations Expiration Date: 03-29-2026

CONTACTS:

Form Completed By: Carla Roybal Tel: 505-231-1438 Email: carla.roybal@rld.nm.gov
Investigation/Settlement Questions: same Tel: Email:
Administrative Prosecutor: Tel: Email:
Hearing Clerk: Tel: Email:

Respondent Name/Lic. No: Santa Fe Sustainable Living By J #361886 Complainant Name: Julie Garcia
Qualifying Party/Cert. No: Joseph Herrera # 2 52882
Tel: 505-660-8137 Email: JSANTAFESUSTAINABLE@GMAIL.COM Tel: 505-470-0684 Email: juliegarcia1970@gmail.com

Expediting Circumstances (if any, and explain): Yes

- Threat to public safety: _____
- Unlicensed practice: _____
- Imminent statute of limitations: _____
- Application denial: _____

ALLEGED VIOLATIONS (cite rule/statute):

(EXPLANATION):

- | | | |
|-------------------------|---|--|
| 1. 703.1.1 / 2015 | → | Water Resistance- Entire House |
| 2. 703.4 / 2015 | → | Flashing- Windows |
| 3. 703.4.1 | → | Flashing 1.1 windows |
| 4. 703.4.1 | → | Flashing #3 Exterior wall to slab transition |
| 5. NMAC 14.5.8.8. A (2) | → | Failure to cooperate |
| 6. _____ | → | _____ |

CID and Other External Witnesses Able to Testify (include telephone number or email address):

- | | |
|-------------------------------|----------|
| 1. Cedric Chavez 505-379-6846 | 2. _____ |
| 3. _____ | 4. _____ |

Summary of the Evidence, Notable History, Special Considerations:

This case was taken to the CIC meeting in May of 2025. The commission voted on the issuance of an NCA based on the investigation. Notice of Violation (NOV) was sent out and was not completed. An extension was given on the NOV and was still not met. Contractor's attorney submitted letters on behalf of his client. Contractor's license has been canceled but the QP certificate is still valid and under a different company.

- Potential for Settlement: Yes (recommended resolution, if any) _____
 No---Hearing Required
- Has a Pre-Referral Settlement been offered? Yes No
- Other Current Complaints? Yes
- Prior discipline, e.g., settlements or D&Os, against Respondent(s)? Yes [include copies] No
- Known Litigation: Yes Case No. _____ No

List Attachments Included in Referral Package

- | | |
|----------------------|------------------|
| 1. Case file pt 1- 5 | 2. Referral form |
| 3. _____ | 4. _____ |
| 5. _____ | 6. _____ |
| 7. _____ | 8. _____ |

PLEASE ATTACH ADDITIONAL PAGES AS NECESSARY AND MAY INCLUDE MORE DETAILED NARRATIVE