

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

**JOSEPH HERRERA,**

Plaintiff,

v.

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

**NEW MEXICO REGULATION AND  
LICENSING DEPARTMENT,**

Defendant.

**RESPONSE TO PLAINTIFF’S APPLICATION FOR PRELIMINARY INJUNCTION**

COMES NOW Defendant New Mexico Regulation and Licensing Department (“RLD”), by and through its counsel of record, Park & Associates, LLC (Alfred A. Park and James J. Grubel), and hereby responds to Plaintiff’s Application for Preliminary Injunction as follows:

**I. BACKGROUND**

Plaintiff Joseph Herrera is a GB-98 licensee who was issued a Code Violation Determination (“CVD”) and Notice of Violation (“NOV”) on January 16, 2025. Plaintiff alleges that the form did not contain an explicit reference to appeal rights under 14.5.9.9(B) NMAC. The notice provided Plaintiff with a correction deadline of February 16, 2025, later extended to March 20, 2025.

Plaintiff filed a correspondence disputing the alleged violations. The Construction Industries Commission (“CIC”) considered the matter on May 21, 2025. The matter has since been referred for review by the New Mexico Department of Justice, which may issue a Notice of Contemplated Action (“NCA”).

Plaintiff filed his Verified Complaint and Application for Temporary Restraining Order and Preliminary Injunction on September 16, 2025, seeking to enjoin RLD from pursuing license

enforcement, to declare the CVD form unconstitutional, and to compel production of internal emails under IPRA.

Pursuant to 14.5.9 NMAC, a CVD identifies alleged violations, affords a correction period, and provides a two-step appeal to the Director and then the Commission at its next regular meeting. 14.5.9.9(A)(2), (B). Only if violations are not corrected may the Division issue a Certificate of Uncorrected Violations (“CUV”), which then triggers a separate, multi-step bond process with estimates, inspections, and limited bond payout. 14.5.9.10(A)–(F). Requests for release of the code bond are processed before discipline when possible. If discipline is pursued, the Division files an administrative disciplinary complaint under 14.5.8 NMAC and issues a Notice of Investigation within 180 days. 14.5.9.11.

## **II. LEGAL STANDARD FOR PRELIMINARY INJUNCTION**

Injunctive relief is a drastic remedy that should only be issued in extreme cases of pressing necessity and only where there is no adequate remedy at law. *Insure New Mexico, LLC v. McGonigle*, 2000-NMCA-018, ¶ 7, 128 N.M. 611.

An applicant must prove four elements: (1) that irreparable injury will result unless the injunction issues, (2) that the threatened injury outweighs any harm to the defendant, (3) that the injunction will not harm the public interest, and (4) that the plaintiff has a substantial likelihood of success on the merits. *Grisham v. Romero*, 2021-NMSC-009, ¶ 21, 483 P.3d 545 (citing *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 282 F.3d 973, 975 (10th Cir. 2004)).

Courts require a strong showing on the likelihood of success element when an injunction mandates action by the defendant or provides the relief the plaintiff seeks at trial. *Grisham*, ¶ 21.

### III. ARGUMENT

#### A. Plaintiff cannot demonstrate irreparable harm

Plaintiff alleges reputational injury and loss of business. These alleged harms are monetary and compensable at law, which precludes the extraordinary remedy of injunction. “[I]n an action for money damages, the district court does not have the power to issue a preliminary injunction.” *United States ex rel. Rahman v. Oncology Assocs.*, 198 F.3d 489, 495–96 (4th Cir. 1999) (citing *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 324–25 (1999)); see also *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 418–20 (8th Cir. 1987).

Plaintiff’s Verified Complaint makes clear he seeks damages that are purely economic and reputational in nature. He pleads “actual damages, including but not limited to legal fees, mental anguish, lost opportunities, and reputational harm” (Compl. ¶ 99, ¶ 108). He alleges that the challenged form infringes on his “protected liberty interest in his professional reputation” (Compl. ¶ 104) and that it caused “harm to his reputation” along with threatened license consequences (Compl. ¶ 112). In his Prayer for Relief, he seeks compensation for “lost business opportunities, the cost of repairs he has been coerced to perform, harm to his reputation, and mental anguish” (Prayer ¶ 5). He further asserts that even the suggestion of a licensing issue “can deter clients” (Compl. ¶ 85).

These allegations describe lost revenue, lost clients, repair costs, legal fees, and reputational harm—all of which are monetary in nature and remediable at law. Moreover, Plaintiff concedes that the matter has only been referred for possible issuance of a Notice of Contemplated Action, which would afford him full notice and a contested case hearing before a neutral officer. His alleged injuries therefore do not rise to the level of irreparable harm that would justify extraordinary equitable relief. The rule structure further undercuts any claim of imminence. CID

must afford a correction window before any CUV can be requested. See 14.5.9.9(A)(2) NMAC. Even a CUV initiates a multi-step process that includes three estimates, Division verification of licensure, inspections, and a six-month completion window before any bond payout occurs. 14.5.9.10(C)–(F) NMAC. Legal fees and related costs are not recoverable from bond disbursements. 14.5.9.12(B) NMAC. Plaintiff’s claimed losses are monetary and reputational and do not constitute irreparable harm.

**B. The balance of harms and public interest weigh against an injunction**

The Division and Commission are charged with enforcing the Construction Industries Licensing Act for public safety. Enjoining the rule-mandated sequence that prioritizes correction and inspection before discipline would impair code compliance and delay homeowner remedies that the rule expressly protects. 14.5.9.11 NMAC. Courts confer heightened deference to agency expertise and fundamental policy determinations within the scope of statutory authority, and administrative constructions are overturned only if clearly incorrect. *Rio Grande Chapter of Sierra Club v. N.M. Mining Comm’n*, 2003-NMSC-005, ¶ 25, 133 N.M. 97, 61 P.3d 806; *Bokum Res. Corp. v. N.M. Water Quality Control Comm’n*, 1979-NMSC-090, ¶ 58, 93 N.M. 546, 603 P.2d 285. Halting the regulatory process would place homeowners and the public at risk. Plaintiff’s claimed private losses are outweighed by the strong public interest in continued enforcement.

**C. Plaintiff cannot show a likelihood of success on the merits**

Pursuant to *Grisham v. Romero*, Plaintiff must make a substantial showing that he will prevail on the merits to obtain preliminary injunctive relief, particularly where the injunction would mandate agency action or effectively give him the relief he seeks at final judgment. 2021-NMSC-009, ¶ 21. He has not done so.

**1) There is no present deprivation of process, and the record shows ongoing administrative remedies**

The rule provides immediate intra-agency review. A licensee may appeal any violation determination to the Director within ten days and then to the Commission within twenty days, to be heard at the next regular meeting. 14.5.9.9(B) NMAC. Separately, any license discipline proceeds by complaint under 14.5.8 NMAC, with notice and adjudication after the bond-correction track. 14.5.9.11 NMAC. Plaintiff also concedes the matter was referred to NMDOJ for a possible NCA on September 3, 2025, which would initiate a contested case with notice and an evidentiary hearing before a neutral adjudicator, not a summary deprivation of his license (Aff. ¶ 31). He further alleges that on January 16, 2025, CID emailed a CVD and NOV to him, after which his counsel engaged CID and requested documents (Aff. ¶¶ 11–13). His own exhibit reflects CID re-issuing the NOV, granting extensions through March 20, 2025, and reviewing his April 2 submission at the Bureau-Chief level before deferring to the Commission (Ex. 5, CIC Memo). On these allegations, he is within the ordinary administrative track, which defeats any claim of current denial of due process.

**2) The omission of appeal text on one form does not render the overall process unconstitutional or likely to succeed on a facial claim**

Plaintiff’s core theory is that the CVD and NOV “omitted” explicit reference to the 10-day director appeal (Aff. ¶ 13) . But his own exhibits show he received the CVD and NOV, obtained extensions, sent a detailed written response, and had that response reviewed by CID leadership before the matter was referred for possible NCA with full hearing rights (Ex. 5, CIC Memo; Aff. ¶ 31) . On these allegations, he cannot show that the absence of appeal language on a single form likely deprived him of constitutionally adequate notice or an opportunity to be heard where the administrative scheme is continuing to afford process, and where further adjudicatory protections attach at the NCA stage. Under *Grisham*, a mandatory injunction that would rewrite agency forms

or halt enforcement demands a strong merits showing, which is not met on this record. 2021-NMSC-009, ¶ 21.

**3) The “bias” and “selective communication” allegations are disputed and not a basis for preliminary merits relief**

Plaintiff pleads that a CID manager told the homeowner he “failed to respond,” that CID “coached” the homeowner regarding bids and a potential bond claim, and that a Commission memo mischaracterized dates and cooperation (Aff. ¶¶ 26–33; Ex. 5). Even if accepted as his version of events, these are disputed investigation communications that do not show the eventual adjudicator will be biased or that the contested-case framework cannot afford a fair hearing. *Rio Grande Chapter*, ¶ 25; *Bokum*, ¶ 58 Courts defer to agency expertise and policy implementation and do not substitute their judgment in the middle of an unfinished process absent a clear showing, see *Rio Grande Chapter*, 2003-NMSC-005, ¶ 25, and *Bokum*, 1979-NMSC-090, ¶ 58. Plaintiff’s allegations do not satisfy *Grisham*’s substantial likelihood requirement.

**4) Assertions about a forthcoming CUV or bond action are speculative and do not support a likely success showing**

Plaintiff states he is “concerned” CID is about to issue, or has issued, a CUV, and that even the presence of an enforcement entry in a public database could deter clients (Aff. ¶ 36; “concerned” CUV; alleged database effects) . Speculation about future steps is not proof that the governing procedures are constitutionally inadequate or that he is likely to prevail on a claim of current deprivation. Under *Grisham*, a plaintiff must show more than hypothetical future harm to obtain forward-looking merits relief. 2021-NMSC-009, ¶ 21.

**5) The IPRA-based narrative does not advance a due process merits showing suitable for a preliminary injunction**

Plaintiff integrates public-records grievances into his due process theory, asserting that CID “withheld” internal emails and did not respond to document requests tied to his January 16, 2025

letter (Aff. ¶¶ 11–13; Exs. 2–3) . Even on his telling, those disputes concern record production and investigative correspondence, not the adequacy of notice or the absence of a hearing forum. They do not establish a present denial of a neutral adjudication. They therefore do not satisfy the “substantial likelihood” factor under *Grisham*.

**6) Plaintiff’s own pleadings show the relief he seeks would mandate agency changes and halt enforcement, which triggers a heightened showing he cannot meet**

Plaintiff asks the Court to declare the CVD form unconstitutional, to enjoin any adverse action against his license or bond during the lawsuit, and to compel records and procedural changes across CID’s workflow (Prayer for Relief) . Under *Grisham*, courts require a strong showing on the merits when an injunction mandates action by the defendant or affords the relief otherwise recoverable after trial. 2021-NMSC-009, ¶ 21. Given the live administrative channel to an NCA and hearing, and the disputed nature of his factual assertions, Plaintiff has not made that showing.

Plaintiff’s allegations, taken from his own filings, describe an ongoing administrative process with notice, extensions, written submissions, leadership review, and a pending referral to an adjudicatory forum. On that record, he cannot demonstrate a substantial likelihood of success on a due process claim at the preliminary stage under *Grisham*. Judicial deference to agency expertise and statutory functions further weighs against substituting the Court’s judgment mid-process, see *Rio Grande Chapter*, 2003-NMSC-005, ¶ 25, and *Bokum*, 1979-NMSC-090, ¶ 58.

**D. Plaintiff’s claims operate as a collateral attack and he has not exhausted remedies**

To the extent Plaintiff challenges the validity of agency steps based on alleged technical defects, that challenge belongs in the rule-provided review channels and, if applicable, a direct appeal, not a collateral injunction. Clerical or technical defects in administrative decisions are correctable and do not void jurisdiction of an administrative agency. *Rayellen Res., Inc. v. N.M. Cultural Properties Rev. Comm.*, 2014-NMSC-006, ¶ 58. Collateral attacks are impermissible

where direct review is available. *State Human Rights Comm'n v. Accurate Mach. & Tool Co.*, 2010-NMCA-107, ¶¶ 12–14. *Lopez v. N.M. Bd. of Medical Examiners*, 1988-NMSC-039, is limited to the statutory ninety-day decision deadline in that case and does not convert other alleged errors into jurisdictional nullities. Plaintiff cannot bypass the CVD appeal path in 14.5.9.9(B) NMAC or the contested disciplinary route under 14.5.8 NMAC with an injunction in district court.

#### IV. CONCLUSION

Plaintiff cannot demonstrate irreparable harm, cannot show that the balance of equities or public interest favors him, and cannot establish a likelihood of success. The extraordinary remedy of injunction is not warranted.

WHEREFORE, Defendant respectfully requests that the Court deny Plaintiff's Application for Temporary Restraining Order and Preliminary Injunction in its entirety. Alternatively, if the Court is inclined to preserve the *status quo*, any order should be narrowly tailored to confirm that the Construction Industries Division will follow 14.5.9.9(A)(2) and 14.5.9.9(B) NMAC, and that any discipline shall proceed under 14.5.9.11 and 14.5.8 NMAC, without restraining review, issuance of any Notice of Contemplated Action, or the contested-case process. If any injunctive relief is granted, Plaintiff should be required to post adequate security in an amount set by the Court.

Respectfully Submitted,

PARK & ASSOCIATES, LLC

/s/ James J. Grubel

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I hereby certify a true and correct copy  
of the above pleading was filed and served by the  
Courts e-filing system on this 26<sup>th</sup>  
day of September 2025 to all counsel of record.

*/s/ James J. Grubel*

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James J. Grubel