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MARIO EDGAR VALVERDE-REAL

**UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF CALIFORNIA**

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| MARIO EDGAR VALVERDE-REAL,<br>*Petitioner,*<br>v.<br>GERALD MOSS, Warden of Central Valley Annex; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; TODD BLANCHE, U.S. Attorney General,<br>*Respondents.* | Case No.<br>**MOTION FOR TEMPORARY RESTRAING ORDER AND INJUNCTION**<br>**Agency No.:** [redacted] |

Petitioner MARIO EDGAR VALVERDE-REAL respectfully moves this Court, pursuant to Federal Rule of Civil Procedure 65(b), for a Temporary Restraining Order barring Respondents from: (1) removing Petitioner from the Eastern District of California; (2) transferring Petitioner to any other detention facility; and (3) communicating with Petitioner concerning his rights, responsibilities, or the possible outcome of any removal or immigration proceeding, absent the presence of counsel; and ordering Respondents to provide Petitioner with medical attention for the ongoing injuries from the May 3, 2026 assault.

This motion is supported by the accompanying Memorandum of Points and Authorities, the Declaration of Francisco Aldana, and the Petition for Writ of Habeas Corpus filed concurrently herewith.

Dated: July 11, 2026

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Attorney for Petitioner
MARIO EDGAR VALVERDE-REAL

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| MARIO EDGAR VALVERDE-REAL,<br><br>*Petitioner,*<br><br>v.<br><br>GERALD MOSS, Warden of Central Valley Annex; MARLWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; TODD BLANCHE, U.S. Attorney General,<br><br>*Respondents.*<br><br>*Respondents.* | Case No.<br><br>**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER**<br><br>**Agency No.:** [redacted] |

## I. INTRODUCTION

`Petitioner MARIO EDGAR VALVERDE-REAL seeks a temporary restraining order to preserve the status quo while this Court considers his habeas corpus petition challenging his detention by Immigration and Customs Enforcement (ICE). Petitioner entered the United States at age 14 in 2000 and has resided here continuously for over 25 years. He has a United States Citizen mother, a United States Citizen fiancee, and two United States Citizen children. He was previously released on an immigration bond while his case proceeded before the Board of Immigration Appeals. On March 30, 2026, he was re-apprehended by ICE following a hearing

on a traffic violation in Shasta County, and is now detained at the Central Valley Annex in McFarland, California, in the custody of Warden Gerald Moss.

Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Multiple federal courts — including courts within this District — have agreed with the reasoning of Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.), that individuals like Petitioner, who were not apprehended immediately upon entry and who were previously released on bond, are governed by 8 U.S.C. § 1226(a), which entitles them to seek release on bond. The Second Circuit has reached the same conclusion. Cunha v. Freden, No. 25-3141-PR (2d Cir.), rejecting mandatory detention without bond in circumstances like those presented here.

Petitioner has now been detained for approximately four months — his second period of immigration detention in these removal proceedings — without any bond hearing. While detained at Mesa Verde Detention Facility earlier in this same period, on May 3, 2026, he was assaulted by another detainee, struck in the face twice, and suffered a swollen jaw; he has not yet been permitted to press charges. He was thereafter transferred to facilities in Texas and back before being returned to the Central Valley Annex, and Petitioner fears any further transfer would again disrupt his access to counsel and to the investigation of that assault.

Petitioner satisfies all factors required for a TRO: he is likely to succeed on the merits of his claim that he is detained under the wrong statutory provision; he will suffer irreparable harm absent injunctive relief; the balance of hardships tips sharply in his favor; and the public interest supports his release. The Court should grant the requested relief.

## II. STATEMENT OF FACTS

Petitioner MARIO EDGAR VALVERDE-REAL is a native and citizen of Mexico who entered the United States in 2000, at age 14, accompanied by his parents. He has resided

continuously in the United States since then and is now 39 years old. He lived with his family at [redacted]. His brother was murdered in Mexico, and Petitioner fears returning there.

Petitioner filed a cancellation of removal application and was released on bond while his case proceeded. He missed a subsequent hearing — notice of which he did not receive — and was removed in absentia. His appeal to the Board of Immigration Appeals was dismissed on April 23, 2026, and Petitioner is filing a Petition for Review with the Ninth Circuit.

On March 30, 2026, Petitioner was apprehended by ICE following a hearing on a traffic violation in Shasta County and has been continuously detained since. DHS has charged him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as a person present in the United States who has not been admitted or paroled, placed him in removal proceedings, and refused to provide a bond hearing, asserting that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

Petitioner was initially held at Mesa Verde Detention Facility in Bakersfield, California. While there, on May 3, 2026, he was assaulted by another detainee, struck in the face twice, and suffered a swollen jaw. He sought to press charges and was told he would first be taken to the hospital. His ear continues to hurt, and he has not received medical attention for his injuries. He was thereafter transferred to El Paso, Texas; to Dallas, Texas; and back to El Paso, before being returned to California, where he is now detained at the Central Valley Annex in McFarland under the custody of Warden Gerald Moss. Petitioner believes the repeated transfers hindered proper investigation of the assault and has been unable to file a criminal complaint regarding the incident. Petitioner would be eligible to pursue U-Visa relief if the assault is investigated and prosecuted.

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## III. ARGUMENT

To obtain a temporary restraining order, Petitioner must show that: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm absent preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Alternatively, where Petitioner raises serious questions going to the merits, the Court may grant relief if the balance of hardships tips sharply in his favor and the remaining factors are satisfied. *Wild Rockies v. Cottrell,* 632 F.3d 1127, 1135 (9th Cir. 2011). Petitioner satisfies all of these requirements.

### A. Petitioner Is Likely to Succeed on the Merits

Petitioner is likely to succeed on his claim that he is detained under 8 U.S.C. § 1226(a), not § 1225(b)(2).

#### 1. The Plain Text of § 1226 Applies to Petitioner

Section 1226(a) applies by its own terms to anyone detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). While § 1226(a) governs the general right to seek release, § 1226(c) carves out specific categories of noncitizens subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (C). The existence of that carve-out confirms that § 1226(a) is the default detention provision for inadmissible noncitizens, including persons like Petitioner who entered without inspection and were not apprehended upon arrival.

The Laken Riley Act further confirms this structure: it added § 1226€(1)€, subjecting certain noncitizens charged under § 1182(a)(6) or (a)(7) who have been arrested or convicted of specified crimes to mandatory detention. Pub. L. No. 119-1, 139 Stat. 3 (2025). By enacting a

narrow, crime-specific mandatory-detention provision, Congress confirmed that § 1226(a) remains the default for individuals in Petitioner's category.

**2. The BIA's Interpretation Violates the Canon Against Superfluities**

In *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals held that § 1225(b)(2) governs all noncitizens who entered without inspection, regardless of how long they have lived in the United States. That interpretation violates the canon against superfluities, which requires courts to give effect to every statutory provision. *Corley v. United States*, 556 U.S. 303, 314 (2009). If § 1225(b)(2) already covered all such noncitizens, § 1226(c)(1)(E) would be entirely unnecessary. The BIA's interpretation cannot be reconciled with the statute's text.

**3. Section 1225 Does Not Apply to Petitioner**

Section 1225 governs the inspection of noncitizens "seeking entry," i.e., those at the nation's borders and ports of entry. *Jennings v. Rodriguez,* 583 U.S. 281, 287, 297 (2018). Petitioner is not seeking admission; he entered the United States over 25 years ago and has resided here continuously since. Section 1225(b)(2) does not apply to him.

***4.* The Second Circuit Has Rejected Mandatory Detention in These Circumstances**

The Second Circuit in *Cunha v. Freden*, No. 25-3141-PR (2d Cir.), rejected the government's practice of mandatory detention without bond for individuals who, like Petitioner, were not immediately apprehended upon entry and were later re-detained. That reasoning further supports Petitioner's entitlement to a bond hearing under § 1226(a).

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**5. Numerous District Courts Have Rejected the Government's Interpretation**

The Central District of California in *Maldonado Bautista v. Santacruz,* __ F. Supp. 3d __, 2025 WL 3713982 (C.D. Cal. Dec. 18, 2025), held that noncitizens who were not apprehended immediately upon entry, or who were released on bond and re-apprehended, are not subject to mandatory detention under § 1225(b)(2) but are instead entitled to discretionary bond under § 1226(a). Although the Ninth Circuit has stayed application of the class-wide relief to the Central District, *Maldonado Bautista v. U.S. Dep't of Homeland Sec.*, No. 26-01044 (9th Cir. Mar. 6, 2026), multiple courts in this Eastern District and elsewhere have independently applied the same reasoning in cases with facts materially identical to Petitioner's. This Court should do the same.

**B. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief**

Petitioner faces multiple forms of irreparable harm absent a TRO. First, he is suffering an ongoing deprivation of liberty without any bond hearing, in violation of § 1226(a) and of due process. "Civil detention violates due process outside of certain special and narrow nonpunitive circumstances." *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018).

Second, Petitioner was assaulted at Mesa Verde on May 3, 2026, was struck in the face twice, and has not yet been permitted to press criminal charges. His ear continues to hurt, and he has received no medical attention for his injuries. Any further transfer risks continuing to obstruct investigation of that assault and access to needed medical care, and would constitute additional irreparable harm.

Third, if Petitioner is relocated out of this district, he will lose ready access to his attorneys and to the support of his family — including his U.S. Citizen mother, U.S. Citizen fiancee, and two U.S. Citizen children — who are located in the Redding area. Access to counsel

materially affects case outcomes, and it becomes substantially harder to secure and maintain representation when a person is detained far from counsel. See Ingrid Eagly & Steven Shafer, A National Study of Access to Counsel in Immigration Court, 164 U. Penn. L. Rev. (2015).

Finally, Petitioner has demonstrated a strong likelihood of success on his statutory and constitutional claims, and "in cases involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable harm." Baird v. Bonta, 81 F.4th 1036, 1048 (9th Cir. 2023).

**C. The Balance of Hardships and Public Interest Weigh Heavily in Petitioner's Favor**

"The balance of hardships and public interest merge when the Government is the opposing party." *Nken v. Holder,* 556 U.S. 418, 435 (2009). Petitioner faces serious, ongoing hardships: loss of liberty without a bond hearing, separation from his U.S. Citizen family, an unresolved assault, and the risk of a further disruptive transfer.

The government, by contrast, faces no legitimate hardship in preserving the status quo pending resolution of the habeas petition; there is no burden in maintaining Petitioner's current detention location or refraining from communicating with him outside the presence of counsel. "The balance of hardships tips decidedly in plaintiff's favor when [f]aced with such a conflict between financial concerns and preventable human suffering." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). The public, in turn, has a strong interest in ensuring that detained noncitizens receive the process to which they are entitled, and that assaults in federal detention facilities are properly reported and investigated.

**D. Prudential Exhaustion Is Not Required**

Exhaustion is not required where it would be futile. *McCarthy v. Madigan*, 503 U.S. 140, 147–48 (1992). The Board of Immigration Appeals has held in Matter of Yajure-Hurtado, 29

I&N Dec. 216 (BIA 2025), that noncitizens who entered without inspection are categorically subject to mandatory detention under § 1225(b)(2), and any immigration court would be bound by that precedent. Requiring Petitioner to exhaust administrative remedies would therefore be futile. Petitioner has in any event requested a bond hearing, and none has been provided.

## IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his Motion for a Temporary Restraining Order and issue an order: (1) barring Respondents from removing Petitioner from the Eastern District of California; (2) prohibiting Respondents from transferring Petitioner to any other detention facility; (3) prohibiting Respondents from communicating with Petitioner concerning his rights, responsibilities, or the possible outcome of any removal or immigration proceeding, absent the presence of counsel; (4) ordering Respondents to provide Petitioner with medical attention for his ongoing ear pain and other injuries from the May 3, 2026 assault, and ordering that the assault be reported to Bakersfield federal and state law enforcement authorities and that Petitioner be afforded the opportunity to press criminal charges; and (5) ordering Petitioner's immediate release from custody or, in the alternative, requiring Respondents to provide him a bond hearing under 8 U.S.C. § 1226(a) within five days.



Dated: July 11, 2026

Francisco J. Aldana, Esq.
Attorney for Petitioner

**DECLARATION OF FRANCISCO ALDANA**

I, FRANCISCO ALDANA, declare as follows:

1. I am an attorney licensed to practice in this district and in the State Courts of the State of California.
2. I declare the following based on personal knowledge and on those items stated on information and belief, I declare them to be true.
3. Petitioner MARIO EDGAR VALVERDE-REAL is currently detained at the Central Valley Annex in McFarland, California.
4. He is detained in this jurisdiction.
5. He was the victim of childhood sexual abuse in Redding, California by two adult men.
6. Petitioner was previously at Mesa Verde Detention Facility in Bakersfield, but after he was assaulted at Mesa Verde Detention Facility by another detainee, he was moved out of state to Texas.
7. The officials at Mesa Verde did not report the assault to the local Sheriffs or Police Department in Bakersfield.
8. He was punched in the face twice and his jaw was swollen, and his ear was bleeding. His ear still hurts to this day.
9. Petitioner was free on bond when he was rearrested by ICE when he went to pay a fine.
10. Petitioner's family, including his U.S. Citizen mother, U.S. Citizen fiancée, and two U.S. Citizen children, reside in the Redding, California area. Petitioner fears that a threatened transfer to another facility will sever his access to counsel and his family.

11. The Warden of the Central Valley Annex, in McFarland, California, Gerald Moss is Petitioner's immediate custodian.

12. Petitioner's Board of Immigration Appeals case was dismissed on April 23, 2026, and a Petition for Review is being filed, with the Ninth Circuit Court of Appeals, who has a stay of removal in place. He had been removed in absentia and should not be detained any longer.

I declare, under penalty of perjury under the laws of the United States that the above is true and correct.

Date: July 12, 2026



Francisco Aldana, Esq.