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**UNITED STATES DISTRICT COURT**

**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**ALEJANDRO OREGON MERCADO**

Plaintiff,

vs.

**Patrick DIVVER**, San Diego Field Office  
Director, Immigration and Customs  
Enforcement and Removal Operations  
("ICE/ERO");  
**TODD LYONS**, Acting Director of  
Immigration Customs Enforcement ("ICE");  
**KRISTI NOEM**, Secretary of the  
Department of Homeland Security ("DHS");  
**PAMELA BONDI**, Attorney General of the  
United States; **U.S. DEPARTMENT OF  
HOMELAND SECURITY ("DHS");  
U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT; and EXECUTIVE  
OFFICE FOR IMMIGRATION  
REVIEW,**

Defendants

Case No.: '26CV1634 TWR SBC

**APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION**

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

## TABLE OF CONTENTS

|                                                                                  | Page |
|----------------------------------------------------------------------------------|------|
| I. INTRODUCTION.....                                                             | 1-2  |
| II. LEGAL AND FACTUAL BACKGROUND.....                                            | 2    |
| III. ARGUMENT .....                                                              | 2-6  |
| a. Likelihood of Success.....                                                    | 3-4  |
| b. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief .....        | 5    |
| c. The Balance of Hardships and Public Interest Weigh in Petitioner's favor..... | 5-6  |
| IV. CONCLUSION.....                                                              | 6    |
| CERTIFICATION.....                                                               | 7    |
| CERTIFICATE OF SERVICE.....                                                      | 8    |

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## I. INTRODUCTION

Petitioner Alejandro Oregon Mercado, is a 23-year-old native and citizen of Mexico, who Respondents have detained since March 1, 2026 at the Otay Mesa Detention Center [OMDC], located at 7488 Calzada De La Fuente, San Diego, California 92154. He is held without bond pursuant to a Notice to Appear charging him with removability under 8 U.S.C. § 1182(a)(6)(A)(i)[present without admission or parole] [and/or 8 U.S.C. § 1182(a)(7)(i)(I)]. On available information, he has no criminal record which would subject him to mandatory detention, or preclude the reliefs he will seek in Immigration Court.

Petitioner contends he is being unlawfully detained because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) of the Department of Justice (DOJ) have erroneously concluded he is subject to mandatory detention, and not eligible for bond.

On July 8, 2025, DHS issued a directive instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. §1182(a)(6)(A)(i)—i.e., those, like Petitioner, who entered the United States without inspection— to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

The Executive Office for Immigration Review (EOIR) of the Department of Justice (DOJ) has recently affirmed that view. In a published decision, dated September 5, 2025, the Board of Immigration Appeals held that “Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission.” *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 229 (BIA 2025). On January 13, 2026, Respondents of the Executive Office for Immigration Review [EOIR] issued guidance to its Immigration Judges that the recent Class certification in *Maldonado Bautisa*, is not a nationwide injunction and did not vacate, stay, or enjoin the Board of Immigration Appeals’ holding in *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 229 (BIA 2025), *infra*. See

1 *Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, No. 5:25-CV-01873-SSS-  
2 BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025).

3 Petitioner received a bond hearing on March 13, 2026, but was denied on  
4 grounds that the 9<sup>th</sup> Circuit issued a stay on March 6, 2026 in *Maldonado Bautista*.  
5 For these reasons, Petitioner asks this court to provide immediate relief, 1) enjoining  
6 Respondents from removing him, and 2) ordering that Petitioner be immediately  
7 released pending consideration of his Writ of Habeas Corpus, or that he be afforded  
8 the opportunity to present his application for bond on the merits.

## 9 **II. LEGAL AND FACTUAL BACKGROUND**

10 Petitioner Alejandro Oregon Mercado is a 23-year-old native and citizen of  
11 Mexico who entered the United States in the company of his parents a toddler [on  
12 or about March 15, 2006]. He has had all his primary schooling in the United  
13 States, is an English speaker, and graduated high school. He has habitually resided  
14 in California for over 20 years, and currently resides in Fallbrook, California in the  
15 company of his sister, Dania Oregon Mercado, a lawful permanent resident. He  
16 has been detained by Respondents since March 1, 2026. He has no criminal record  
17 that would subject him to mandatory detention, or that would disqualify him from  
18 relief from removal in the form of DACA [Deferred Action for Childhood Arrivals]  
19 or asylum, withholding of removal, or protection under the Torture Convention. He  
20 is held detained without bond pursuant to a Notice to Appear asserting his  
21 removability under 8 U.S.C. § 1182(a)(6)(A)(i)(present without admission or parole)  
22 and/or 8 U.S.C. § 1182(a)(7)(A)(i)(I)(not in possession of valid entry documents).  
23 Based on the charge(s), he has been denied bond.

## 24 **III. ARGUMENT**

25 A temporary restraining order is an "extraordinary remedy," and a motion  
26 requesting one is assessed under the same rubric as a motion for a preliminary  
27 injunction. *Winter v. Natural Res. Def Council, Inc.*, 555 U.S. 7, 22 (2008).

28 To obtain temporary and preliminary injunctive relief, Petitioner, must show

1 that 1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm  
2 in the absence of preliminary relief, (3) the balance of equities tips in his favor, and  
3 (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555  
4 U.S. 7, 20 (2008).

5 When the government is a party, the balance of equities and public interest  
6 merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Under the circumstances  
7 presented herein, no security bond is required under F.R.C.P. Rule 65(c).

8 **A. Petitioner has a High Likelihood of Success on the Merits**

9 The Board of Immigration Appeals has held that individuals, like  
10 Petitioner, found to be removable under 8 U.S.C. §1182(a)(6)(A)(i) [present in the  
11 United States *without being admitted or paroled...*] are subject to mandatory  
12 detention. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

13 However, there is a mixed range of District Court decisions, some favoring  
14 Respondent's position [agreeing with *Yajure Hurtado*], and others siding with  
15 Petitioner's view that, although he might be removable under 8 U.S.C.  
16 §1182(a)(6)(A)(i) (*present without being admitted or paroled*), this is not the same  
17 as someone "seeking admission" within the meaning of the mandatory detention  
18 provision at 8 U.S.C. § 1225(b)(2), because "seeking" is a term that cannot  
19 reasonably apply to someone who has been placed into removal proceedings well  
20 after their entry to the United States. *See* Petitioner's Writ for Habeas.

21 However, Petitioner's arguments for bond eligibility find support in the fact  
22 that in 2025, Congress passed the Laken Riley Act, which added additional  
23 categories of Section 1226(a) carve outs that are now subject to mandatory detention  
24 under Section 1226(c). Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8  
25 U.S.C. § 1226(c)(1)(E). It mandates the detention of noncitizens who are  
26 inadmissible under §§ 1182(a)(6)(A) (noncitizens "present in the United States  
27 without being admitted or paroled"), 1182(a)(6)(C) (misrepresentation), or  
28 1182(a)(7) (lacking valid documentation) and who have been arrested for, charged

1 with, or convicted of certain crimes. *Id.* If Section 1225(b)(2) were already meant  
2 to subject these groups of inadmissible noncitizens to mandatory detention, it would  
3 render this portion of the Laken Riley Act redundant. *See Beltran Barrera v. Tindall*,  
4 *No. 3:25-CV-541-RGJ*, 2025 WL 2690565, at \*4 (W.D. Ky. Sept. 19, 2025); *Lopez-*  
5 *Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at \*8 (E.D. Mich. Aug.  
6 29, 2025).

7 Further, it is notable here to state that Central District of California certified  
8 a class of aliens who, like Petitioner, are deemed applicants for admission, detained  
9 by Respondents under 8 U.S.C. § 1225(b)(2), and providing that such class members  
10 be afforded a bond hearing. *See Maldonado Bautista et al. v. Ernesto Santacruz Jr.*  
11 *et al.*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025).

12 Petitioner is not aware of any policy directed by the Respondents to afford  
13 anyone in the *Maldonado Bautisa* class a bond hearing. Indeed, the *Maldonado*  
14 *Bautisa* decision was stayed by the 9<sup>th</sup> Circuit on March 6, 2026. As noted above,  
15 Respondents EOIR have on January 13, 2026 issued a directive that *Maldonado*  
16 *Bautisa*, is not a nationwide injunction and did not vacate, stay, or enjoin the Board  
17 of Immigration Appeals' holding in *Matter of Yajure Hurtado*, 29 I&N Dec. 216,  
18 229 (BIA 2025).

19 Respondent's actions in detaining the Petitioner are causing irreparable harm  
20 in the form of deprivation of his liberty pending resolution of his removal  
21 proceedings. He is further disadvantaged by his detention because he has been  
22 unable to work. Absent injunctive relief, Respondents will continue to hold  
23 Petitioner in indefinite custody.

24 For these reasons, where there are, minimally, genuine issues as to whether  
25 Petitioner is reasonably considered "seeking an admission" and subject to  
26 Mandatory Detention, and where there has a been a class action certified that favors  
27 his view, Petitioner has demonstrated irreparable harm.

1                   **B. Petitioner Will Suffer Irreparable Harm Absent Emergency**

2                   **Injunctive Relief**

3                   Parties seeking preliminary injunctive relief must also show they are “likely  
4 to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at  
5 20. Irreparable harm is harm for which there is “no adequate legal remedy, such as  
6 an award of damages.” *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053,  
7 1068 (9th Cir. 2014).

8                   Respondent’s actions in detaining the Petitioner are causing irreparable harm  
9 in the form of deprivation of his liberty. Furthermore, his detention away from his  
10 family has impeded his ability to earn a living, and to assist in the preparation of  
11 applications for relief from removal. Petitioner has resided in the southern  
12 California area since his arrival as a toddler in 2006, has been gainfully employed,  
13 and has many social ties to the community, and he has established a genuine issue  
14 as to whether he can continue to be held subject to Mandatory Detention – without  
15 any opportunity to have his motion for bond considered on the merits.

16                  Absent injunctive relief, Respondents will continue to hold Petitioner in  
17 indefinite custody.

18                  For these reasons, Petitioner has demonstrated irreparable harm.

19                   **C. The Balance of Hardships and Public Interest Weigh Heavily in**  
20                   **Petitioner’s Favor and Injunction is in the public interest**

21                  The final two factors for injunctive relief—the balance of hardships and  
22 public interest—“merge when the government is the opposing party. *Nken v. Holder*,  
23 556 U.S. 418, 435 (2009).

24                  Here, Petitioner faces weighty hardships in that he is detained pending his  
25 removal proceedings away from his family, upon whom he relies for moral support.  
26 By contrast, Respondents face no hardship. In fact, Petitioner is detained at  
27 government expense. Therefore, the balance of hardships tips decidedly in  
28 Petitioner’s favor when “[f]aced with such a conflict between financial concerns  
and

1 preventable human suffering.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir.  
2 2017) quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).

3 Moreover, Respondents “cannot suffer harm from an injunction that merely  
4 ends an unlawful practice . . . .” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir.  
5 2013). The public interest is served by the faithful execution of the immigration laws,  
6 and that interest includes respect for protections Congress has enacted and to which  
7 the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d  
8 169, 178 (5th Cir. 2005) (recognizing “the public interest in having the immigration  
9 laws applied correctly and evenhandedly”); *Leiva-Perez v. Holder*, 640 F.3d 962,  
10 971 (9th Cir. 2011) (noting “the public’s interest in ensuring that we do not deliver  
11 [noncitizens] into the hands of their persecutors”); *Lujan v. Defs. of Wildlife*, 504  
12 U.S. 555, 576 (1992) (discussing “the public interest in Government observance of  
13 the Constitution and laws”).

#### 14 IV. CONCLUSION

15 For the foregoing reasons, Petitioner requests that the court grant preliminary  
16 injunctive relief, enjoining Respondents from removing him, and enjoining  
17 Respondents from continuing to hold Petitioner detained, and ordering Respondents  
18 to afford him a bond hearing on the merits [to determine flight risk or danger to the  
19 community], pending further proceedings respecting whether he may be removed.

20 March 16, 2026

Respectfully submitted,

/s/ Vital D’Carpio

22 \_\_\_\_\_  
Vital D’Carpio

23 Counsel for Petitioner  
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March 16, 2026

Vital D'Carpio  
Counsel for Petitioner

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