

1 1226. This motion is fully supported by the attached memorandum of points and
2 authorities.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. Factual Background and Procedural History**

5 Ms. Gonzalez Rodriguez incorporates the facts and procedural history as
6 set forth in her Petition for Writ of Habeas Corpus. For reasons thoroughly
7 explained in Ms. Gonzalez Rodriguez's Petition for Writ of Habeas Corpus, she
8 respectfully submits that Respondents have continued to unlawfully detain her in
9 violation of her constitutional rights. As further explained in the writ, Ms.
10 Gonzalez Rodriguez has resided in the United States for roughly 30 years as a
11 law-abiding member of the community. She has been a devoted single mother,
12 raising her daughter who is now in college. See Exhibit D of Habeas Corpus.

13 **II. Law and Argument**

14 "A preliminary injunction is an extraordinary remedy never awarded as of
15 right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citing *Munaf*
16 *v. Geren*, 553 U.S. 674, 689–90 (2008)). "A plaintiff seeking a preliminary
17 injunction must establish that he is likely to succeed on the merits, that he is
18 likely to suffer irreparable harm in the absence of preliminary relief, that the
19 balance of equities tips in his favor, and that an injunction is in the public
20 interest." *Id.* at 20 (citing *Munaf*, 553 U.S. at 689–90; *Amoco Prod. Co. v. Vill. of*
21 *Gambell, AK*, 480 U.S. 531, 542 (1987); *Weinberger v. Romero-Barcelo*, 456
22 U.S. 305, 311–12 (1982)). "Likelihood of success on the merits is a threshold
23 inquiry and is the most important factor." *Simon v. City & Cnty. of San Francisco*,
24 135 F.4th 784, 797 (9th Cir. 2025) (quoting *Env't Prot. Info. Ctr. v. Carlson*, 968
25 F.3d 985, 989 (9th Cir. 2020)). "[I]f a plaintiff can only show that there are serious
26 questions going to the merits—a lesser showing than likelihood of success on the

1 merits—then a preliminary injunction may still issue if the balance of hardships
2 tips sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”
3 *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (internal
4 quotation marks and citations omitted).

5 **III. Ms. Gonzalez Rodriguez is likely to succeed on the merits.**

6 As stated in Ms. Gonzalez Rodriguez’s Petition for Writ of Habeas Corpus,
7 Respondents have deprived her of her statutory and due process rights and
8 acted arbitrarily, capriciously, and contrary to law by claiming that she is subject
9 to mandatory detention pursuant to 8 U.S.C. § 1225(b). In so doing, the
10 Respondents have relied on the Board of Immigration Appeals’ (“BIA”) recent
11 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). However,
12 nearly every district court that has considered the issue has found that
13 Respondents’ reading of the INA is incorrect. *See, e.g., Lopez Benitez v. Francis*,
14 No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*,
15 No. CV 25-11613-BEM, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025);
16 *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July
17 7, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025);
18 *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich.
19 Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug.
20 27, 2025); Doc. 11, *Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26,
21 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D.
22 Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D.
23 Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW,
24 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No.
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1 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*,
2 No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha*
3 *Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11,
4 2025), *report and recommendation adopted* 2025 WL 2349133 (D. Ariz. Aug. 13,
5 2025); Doc. 11, *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM,
6 *13 (C.D. Cal. July 28, 2025).

7 There are numerous problems with Respondents' reading of section §
8 1225, but the largest is that it would violate long-established canons of statutory
9 construction by rendering the text of the Immigration and Nationality Act ("INA")
10 as well as recent congressional action unnecessary and superfluous.
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12 First, Respondents' reading of INA § 1225 cannot be squared with the fact
13 that that under "one of the most basic interpretive canons . . . [a] statute should
14 be construed so that effect is given to all its provisions, so that no part will be
15 inoperative or superfluous, void or insignificant[.]" *Corley v. United States*, 556
16 U.S. 303, 314 (2009) (cleaned up); *Shulman v. Kaplan*, 58 F.4th 404, 410–11
17 (9th Cir. 2023) ("a court must interpret the statute as a whole, giving effect to
18 each word and making every effort not to interpret a provision in a manner that
19 renders other provisions of the same statute inconsistent, meaningless or
20 superfluous.") (cleaned up). "This principle . . . applies to interpreting any two
21 provisions in the U.S. Code, even when Congress enacted the provisions at
22 different times." *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010).
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24 Section 1225(b) requires an immigration officer to determine that an alien
25 "is an applicant for admission . . . seeking admission . . . and not clearly and
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1 beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Determining
2 the plain meaning of the statute requires consideration of the tense of the verb
3 “is” and the present participle “seeking.” Here, section 1225(b)(2) applies to
4 aliens who are presently applicants for admission and who are presently seeking
5 admission at the time of their detention. To be seeking admission means to be
6 seeking entry, which “by its own force implies a coming from outside.” *United*
7 *States ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929).

8 Seeking” means “asking for” or “trying to acquire or gain.” Merriam-
9 Webster Dictionary, <https://www.merriam-webster.com/dictionary/seeking>. And
10 the use of a present participle, “seeking,” “necessarily implies some sort of
11 present-tense action.” *Martinez*, 2025 WL 2084238, at *6. The term “admission”
12 is defined as “the lawful entry of the alien into the United States after inspection
13 and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). And
14 “entry” has long been understood to mean “a crossing into the territorial limits of
15 the United States.” *Hing Sum v. Holder*, 602 F.3d 1092, 1100–01 (9th Cir. 2010)
16 (quoting *Matter of Pierre*, 14 I & N Dec. 467, 468 (1973)). To piece this together,
17 the phrase “seeking admission” means that one must be actively “seeking”
18 “lawful entry.” See *Lopez Benitez*, 2025 WL 2371588, at *7.

19 Ms. Gonzalez Rodriguez has been in the United States for roughly 30 years.
20 She is not currently “seeking admission” within the plain meaning of that term as she
21 has resided in the United States for decades. The longstanding interpretation of the
22 INA has been that an alien in her position is detained under 8 U.S.C. § 1226 and
23 entitled to a bond hearing, as Respondents themselves have acknowledged. See
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1 *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 n. 6 (BIA 2025) (“We acknowledge that
2 for years Immigration Judges have conducted bond hearings for aliens who entered
3 the United States without inspection”). Consistent with Supreme Court precedent, this
4 was the basis of BIA decisions as recently as May 2025, finding that aliens detained
5 *shortly after an unlawful entry* were applicants for admission because they “cannot be
6 said to have ‘effected an entry.’” *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025)
7 (quoting *DHS vs. Thuraissigiam*, 591 U.S. 103, 140 (2020) (internal quotations
8 omitted)).

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10 Respondents’ interpretation of section 1225 is also inconsistent with other
11 parts of the INA as well. See *Niz-Chavez v. Garland*, 593 U.S. 155, 165-69
12 (2021) (using the structure of the INA and comparing different sections of the
13 statute to determine their meaning). If all inadmissible aliens present without
14 admission or inspection were subject to mandatory detention under section §
15 1225, there would be no reason for 8 U.S.C. § 1226(c)(1)(A) and (D) to subject
16 inadmissible aliens to mandatory detention for committing certain criminal
17 offenses. See 8 U.S.C. § 1226(c)(1)(A), (D). Since the Respondents’ reading of
18 section § 1225 would render large parts of section 1226 incoherent and
19 superfluous, Ms. Gonzalez Rodriguez is likely to succeed on the merits.

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21 Further, if Respondents were correct in their reading of section § 1225,
22 Congress would have had no need to pass the Laken Riley Act. See Laken Riley
23 Act, Pub. L. No. 119-1, 139 Stat. 3 (2005). “When Congress acts to amend a
24 statute, we presume it intends its amendment to have real and substantial effect.”
25 *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) (citations omitted) (giving effect to a
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1 congressional amendment of the INA). The new additions to 8 U.S.C. § 1226(c)
2 subject an additional class of inadmissible aliens to its mandatory detention
3 scheme if they find themselves so much as arrested for certain crimes. See 8
4 U.S.C. § 1226(c)(1)(E). The Laken Riley Act is even more specific than the older
5 provisions of section 1226(c), as it specifically refers to aliens like Respondent
6 “inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this
7 title.” 8 U.S.C. § 1226(c)(E)(i). The Supreme Court has recognized that when
8 Congress creates “specific exceptions” to a statute’s applicability, it proves that
9 the statute would generally apply absent those exceptions. See *Shady Grove*
10 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).
11 Congress clearly acted with the understanding that inadmissible aliens are
12 generally detained under section 1226 and eligible to request bond, because if
13 they were not, there would have been no reason to amend the INA to require
14 mandatory detention for inadmissible aliens accused of criminal activity.
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16 Whatever the original understanding of the relationship between sections
17 1225 and 1226 was before the passage of the Laken Riley Act, it is undisputable
18 that Congress “adopt[ed] a new law against the backdrop of a ‘longstanding
19 administrative construction’” to let aliens like Respondent out on bond. *Monsalvo*
20 *Velazquez v. Bondi*, 145 S.Ct. 1232, 1242 (2025) (quoting *Haig v. Agee*, 453
21 U.S. 280-297-98 (1981)). In such situations, courts “generally presume the new
22 provision to be understood to work in harmony with what has come before.” *Id.*
23 For example, in *Monsalvo Velazquez*, the Supreme Court interpreted the word
24 “day” in INA § 240B to refer to business rather than calendar days because
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1 Congress had acted against the background of the agency's longstanding
2 construction of the term. *Id.* at 1242-43. This case is no different. Congress has
3 acted with the understanding that the Respondents have for decades understood
4 aliens like Ms. Gonzalez Rodriguez to be eligible for bond, and in doing so
5 legislated in a way that would still allow her to request a bond but would exclude
6 aliens otherwise like her but accused of certain crimes. Since the Laken Riley Act
7 is clear in its understanding of what the law is and is latest in time, the Court
8 should find it best reflects the will of Congress and to the extent there is any
9 conflict between it and INA § 1225, adopt a construction of the INA most
10 consistent with the Laken Riley Act. *Cf. Whitney v. Robertson*, 124 U.S. 190, 194
11 (1888) (stating that when considering laws on equal footing such as federal
12 statutes and treaties, "if the two are inconsistent, the one last in date will control
13 the other").

15 Regardless, Congress's amendments to the INA demonstrate a consistent
16 understanding of section 1226 dating back to the legislative history of the Illegal
17 Immigration Reform and Immigration Responsibility Act ("IIRIRA"). Prior to
18 IIRIRA's passage, section 1226's predecessor governed the detention of all
19 aliens arrested and detained in the United States and allowed for release on
20 bond. See INA § 1252(a)(1) (1994). Congress stated that IIRIRA section 1226(a)
21 merely "restates the current provisions in [the predecessor statute] regarding the
22 authority of the Attorney General to arrest, detain, and release on bond a[]
23 [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt.
24 1, at 229; see also H.R. Rep. No. 104-828, at 210 (same). If Ms. Gonzalez
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1 Rodriguez would have been eligible to request a bond before the passage of
2 IIRIRA, and Congress did not alter the Attorney General's power to grant a bond
3 by passing IIRIRA, it follows that she is eligible to request a bond now.

4 **IV. Ms. Gonzalez Rodriguez is likely to suffer irreparable harm in the**
5 **absence of preliminary relief.**

6 "It is well established that the deprivation of constitutional rights
7 'unquestionably constitutes irreparable injury.'" *Hernandez v. Sessions*, 872 F.3d
8 976, 994-95 (9th Cir. 2017) (internal quotations omitted). Ms. Gonzalez
9 Rodriguez will be deprived of her constitutionally protected liberty interest without
10 due process if she is not released or at the very least afforded a bond hearing.

11 Additionally, the Ninth Circuit has recognized that there are other, more
12 concrete irreparable harms "imposed on anyone subject to immigration
13 detention," such as increased economic burdens on detainees and their families,
14 subpar medical and psychiatric care, and collateral harms to the children of
15 detainees. *Id.* at 995. Irreparable harm can include something as simple as
16 missing a family member's funeral. *See id.* Ms. Gonzalez Rodriguez faces
17 deportation far more quickly if she remains detained, and as a result may be cut
18 off from her loved ones for as long as 10 years. *See* 8 U.S.C. §
19 1182(a)(9)(B)(i)(II). Her U.S. citizen daughter Alondra, who has depended on her
20 and is just starting college, is already starting to suffer the negative mental health
21 effects of prolonged separation from her mother. *See* Exhibit E of Habeas
22 Corpus. The Court should therefore find that this factor also favors Ms. Gonzalez
23 Rodriguez.
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1 **V. The balance of equities tips in favor of Ms. Gonzalez Rodriguez**
2 **and an Injunction is in the public interest.**

3 When the government is the nonmoving party, “the last two *Winter* factors
4 merge.” *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (internal citations
5 omitted). In immigration court, custody hearings are routine and impose a
6 “minimal” cost. *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664,
7 at *6 (E.D. Cal. Mar. 3, 2025). Thus, faced with a choice “between [these
8 minimally costly procedures] and preventable human suffering,” the Court should
9 conclude “that the balance of hardships tips decidedly in [petitioner’s] favor.”
10 *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th
11 Cir. 1983)).

12 The public interest also weighs in petitioner’s favor. “The public has a
13 strong interest in upholding procedural protections . . . , and the Ninth Circuit has
14 recognized that the costs to the public of immigration detention are staggering.”
15 *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14,
16 2025) (citing *Jorge M.F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561,
17 at *3 (N.D. Cal. Mar. 1, 2021)).

18 **VI. Conclusion and Prayer for Relief**

19 For the reasons stated above, this Court should hold that Ms. Gonzalez
20 Rodriguez is likely to succeed on the merits of his pending Petition for Writ of
21 Habeas Corpus, that she is likely to suffer irreparable harm in the absence of
22 preliminary relief, that the balance of equities tips in her favor, and that the
23 requested injunction is in the public interest. Specifically, Petitioner requests this
24 Court to enter the following findings and orders:
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- 1 A) That Petitioner's continued detention is presumptively unreasonable.
- 2 B) That a temporary restraining order is necessary to ensure that
- 3 Respondents to not continue to violate Ms. Gonzalez Rodriguez's
- 4 constitutional, statutory, and regulatory rights by not allowing her to be at
- 5 liberty or to have a bond hearing;
- 6 C) That Respondents not remove Ms. Gonzalez Rodriguez until the Court
- 7 reaches a final decision on her Petition for a Writ of Habeas Corpus;
- 8 D) That, under the particular circumstances of this case, it is proper to waive
- 9 the requirement that Petitioner give an amount of security in connection
- 10 with the issuance of an injunctive order;
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- 12 E) That Petitioner is entitled to an award of attorney's fees under the Equal
- 13 Access to Justice Act (EAJA), 28 U.S.C. § 2412;
- 14 F) That this Court grant any other relief it deems necessary and proper.
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20 Dated: October 21, 2025

Respectfully submitted,

21 /s/Ray A. Ybarra Maldonado
22 Ray A. Ybarra Maldonado
23 Attorney for Petitioner
24 Silveria Gonzalez Rodriguez
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VERIFICATION

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I, Ray A. Ybarra Maldonado, hereby declare under penalty of perjury of the laws of the States of Arizona and the United States that the facts alleged in the foregoing Motion for Preliminary Injunction and/or Temporary Restraining Order are to the best of my knowledge true and correct.

Executed on this 21st day of October, 2025 in Phoenix, Arizona.

/s/Ray A. Ybarra Maldonado
Ray A. Ybarra Maldonado
Attorney for Petitioner
Silveria Gonzalez Rodriguez

Certificate of Service

I hereby certify that on this 21st day of October, 2025, I electronically submitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing. However, since no attorney from U.S. Attorney's Office has entered his or her appearance yet in this case, I caused a copy of the foregoing to be delivered via electronic mail to

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