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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Rufino Salazar Cardenas A# [redacted] Petitioner, v. Pamela Bondi, in her official capacity as Attorney General of the United States; Kristi Noem, in her official capacity as Secretary of the Department of Homeland Security; Daren K. Margolin, Acting Director, Executive Office for Immigration Review; Christopher McGregor, in his official capacity as Phoenix Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal Operations Respondents.	Case No.: **MOTION FOR PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER** **(Oral Argument Requested)**

Petitioner, Rufino Salazar Cardenas, by and through undersigned counsel, moves this Court to enjoin Respondents from (1) Removing Mr. Salazar Cardenas from the United States, (2) continuing to detain him, and either order

him at liberty or provide him with a bond hearing under 8 U.S.C. § 1226. This motion is fully supported by the attached memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual Background and Procedural History

Mr. Salazar Cardenas incorporates the facts and procedural history as set forth in his Petition for Writ of Habeas Corpus. For reasons thoroughly explained in Mr. Salazar Cardenas' Petition for Writ of Habeas Corpus, he respectfully submits that Respondents have continued to unlawfully detain him in violation of his constitutional rights. As further explained in the writ, Mr. Salazar Cardenas has resided in the United States for roughly 24 years as a law-abiding member of the community. He has been a devoted father, raising his three children, one of whom is a minor with serious medical issues. *See* Exhibit D of Habeas Corpus.

II. Law and Argument

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

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

III. Mr. Salazar Cardenas is likely to succeed on the merits.

As stated in Mr. Salazar Cardenas' Petition for Writ of Habeas Corpus, Respondents have deprived him of his statutory and due process rights and acted arbitrarily, capriciously, and contrary to law by claiming that he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). In so doing, the Respondents have relied on the Board of Immigration Appeals' ("BIA") recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). However, nearly every district court that has considered the issue has found that Respondents' reading of the INA is incorrect. *See, e.g., Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); Doc. 11, *Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No.

25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025). Indeed, this Court has ruled on at least two separate occasions in favor of petitioners similarly situated to Mr. Salazar Cardenas. *Echevarria v. Bondi et al.*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *see also Rodriguez v. Bondi et al.*, 2:25-cv-03917-JJT-DMF, (D. Ariz. Nov. 6, 2025).

There are numerous problems with Respondents' reading of section § 1225, but the largest is that it would violate long-established canons of statutory construction by rendering the text of the Immigration and Nationality Act ("INA") as well as recent congressional action unnecessary and superfluous.

First, Respondents' reading of INA § 1225 cannot be squared with the fact that that under "one of the most basic interpretive canons . . . [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]" *Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up); *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) ("a court must interpret the statute as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.") (cleaned up). "This principle . . . applies to interpreting any two

provisions in the U.S. Code, even when Congress enacted the provisions at different times." *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010).

Section 1225(b) requires an immigration officer to determine that an alien "is an applicant for admission . . . seeking admission . . . and not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Determining the plain meaning of the statute requires consideration of the tense of the verb "is" and the present participle "seeking." Here, section 1225(b)(2) applies to aliens who are presently applicants for admission and who are presently seeking admission at the time of their detention. To be seeking admission means to be seeking entry, which "by its own force implies a coming from outside." *United States ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929).

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

Mr. Salazar Cardenas has been in the United States for roughly 24 years. He is not currently "seeking admission" within the plain meaning of that term as he has resided in the United States for decades. The longstanding interpretation of the INA has been that an alien in his position is detained under 8 U.S.C. § 1226 and entitled to a bond hearing, as Respondents themselves have acknowledged. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 n. 6 (BIA 2025) ("We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection"). Consistent with Supreme Court precedent, this was the basis of BIA decisions as recently as May 2025, finding that aliens detained *shortly after an unlawful entry* were applicants for admission because they "cannot be said to have 'effected an entry.'" *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (quoting *DHS vs. Thuraissigiam*, 591 U.S. 103, 140 (2020) (internal quotations omitted)).

Respondents may argue against this plain reading by citing to a different part of section 1225. They may claim that because section 1225(a)(3) states that "[a]ll aliens who are applicants for admission *or otherwise seeking admission* or readmission to or transit through the United States shall be inspected by immigration officers," being an "applicant for admission" is just another species of "seeking admission." *See* 8 U.S.C. § 1225(a)(3)). Respondents may claim that this undercuts this Court's previous holdings in cases like *Echevarria v. Bondi et al.*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025) that a noncitizen who is already present in the United States, and considered an "applicant for admission" under 8 U.S.C. § 1225(a)(1), is no longer "seeking admission," as the word "seeking" implies a present and ongoing action. *Id.* (citing *Echevarria*, 2025 WL 2821282, at *6).

While Judge Lanza did not directly address this argument, other District Courts have found it unpersuasive. As Judge Murphy in the District of Massachusetts pointed out in *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025), the idea that an applicant for admission is *always* seeking admission does not follow from the text. *Romero*, 2025 WL 2403827 at *10. The Court in *Romero* compared section 1225(a)(3)'s phrase "all aliens...who are applicants for admission or otherwise seeking admission" with the more mundane example of "all craftsmen...who are carpenters or otherwise woodworking." *Id.* The *Romero* court pointed out that "Notwithstanding the obvious linguistic and logical connections between the concepts of a 'carpenter' and 'woodworking,'" just because someone is a carpenter does not mean they are always woodworking or should be expected to comply with woodworking-related rules when they are not currently woodworking. *Id.* By analogy, applicants for admission should not be subject to mandatory detention when not currently seeking admission. *Id.* Judge Lanza's point still stands. "Seeking" is a present, ongoing action and is not permanently tied to an alien's status as an "applicant." While Respondents point to other district court decisions that reached a different result, none of language cited by Respondents addresses the question of whether an applicant for admission is *always* seeking admission. Respondents' Response at 10-11 (internal citations omitted).

Respondents' interpretation of section 1225 is also inconsistent with other parts of the INA as well. *See Niz-Chavez v. Garland*, 593 U.S. 155, 165-69 (2021) (using the structure of the INA and comparing different sections of the

statute to determine their meaning). If all inadmissible aliens present without admission or inspection were subject to mandatory detention under section § 1225, there would be no reason for 8 U.S.C. § 1226(c)(1)(A) and (D) to subject inadmissible aliens to mandatory detention for committing certain criminal offenses. *See* 8 U.S.C. § 1226(c)(1)(A), (D). Since the Respondents' reading of section § 1225 would render large parts of section 1226 incoherent and superfluous, Mr. Salazar Cardenas is likely to succeed on the merits.

Further, if Respondents were correct in their reading of section § 1225, Congress would have had no need to pass the Laken Riley Act. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2005). "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) (citations omitted) (giving effect to a congressional amendment of the INA). The new additions to 8 U.S.C. § 1226(c) subject an additional class of inadmissible aliens to its mandatory detention scheme if they find themselves so much as arrested for certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E). The Laken Riley Act is even more specific than the older provisions of section 1226(c), as it specifically refers to aliens like Respondent "inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title." 8 U.S.C. § 1226(c)(E)(i).The Supreme Court has recognized that when Congress creates "specific exceptions" to a statute's applicability, it proves that the statute would generally apply absent those exceptions. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). Congress clearly acted with the understanding that inadmissible aliens are

generally detained under section 1226 and eligible to request bond, because if they were not, there would have been no reason to amend the INA to require mandatory detention for inadmissible aliens accused of criminal activity.

Whatever the original understanding of the relationship between sections 1225 and 1226 was before the passage of the Laken Riley Act, it is undisputable that Congress "adopt[ed] a new law against the backdrop of a 'longstanding administrative construction'" to let aliens like Respondent out on bond. *Monsalvo Velazquez v. Bondi*, 145 S.Ct. 1232, 1242 (2025) (quoting *Haig v. Agee*, 453 U.S. 280-297-98 (1981)). In such situations, courts "generally presume the new provision to be understood to work in harmony with what has come before." *Id.* For example, in *Monsalvo Velazquez*, the Supreme Court interpreted the word "day" in INA § 240B to refer to business rather than calendar days because Congress had acted against the background of the agency's longstanding construction of the term. *Id.* at 1242-43. This case is no different. Congress has acted with the understanding that the Respondents have for decades understood aliens like Mr. Salazar Cardenas to be eligible for bond, and in doing so legislated in a way that would still allow him to request a bond but would exclude aliens otherwise like him but accused of certain crimes. Since the Laken Riley Act is clear in its understanding of what the law is and is latest in time, the Court should find it best reflects the will of Congress and to the extent there is any conflict between it and INA § 1225, adopt a construction of the INA most consistent with the Laken Riley Act. *Cf. Whitney v. Robertson*, 124 U.S. 190, 194 (1888) (stating that when considering laws on equal footing such as federal

statutes and treaties, "if the two are inconsistent, the one last in date will control the other").

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

IV. Mr. Salazar Cardenas is likely to suffer irreparable harm in the absence of preliminary relief.

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

Additionally, the Ninth Circuit has recognized that there are other, more concrete irreparable harms "imposed on anyone subject to immigration

detention," such as increased economic burdens on detainees and their families, subpar medical and psychiatric care, and collateral harms to the children of detainees. *Id.* at 995. Irreparable harm can include something as simple as missing a family member's funeral. *See id.* Mr. Salazar Cardenas faces deportation far more quickly if he remains detained, and as a result may be cut off from his loved ones for as long as 10 years. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(II). His U.S. citizen son Alexander, who has depended on him his entire life, continues to suffer from a serious kidney condition. *See* Exhibit D of Habeas Corpus. The Court should therefore find that this factor also favors Mr. Salazar Cardenas.

V. The balance of equities tips in favor of Mr. Salazar Cardenas and an Injunction is in the public interest.

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

The public interest also weighs in petitioner's favor. "The public has a strong interest in upholding procedural protections . . ., and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering."

Diaz v. Kaiser, No. 3:25-CV-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025) (citing *Jorge M.F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021)).

VI. Conclusion and Prayer for Relief

For the reasons stated above, this Court should hold that Mr. Salazar Cardenas is likely to succeed on the merits of his pending Petition for Writ of Habeas Corpus, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that the requested injunction is in the public interest. Specifically, Petitioner requests this Court to enter the following findings and orders:

A) That Petitioner's continued detention is presumptively unreasonable.

B) That a temporary restraining order is necessary to ensure that Respondents to not continue to violate Mr. Salazar Cardenas' constitutional, statutory, and regulatory rights by not allowing him to be at liberty or to have a bond hearing;

C) That Respondents not remove Mr. Salazar Cardenas until the Court reaches a final decision on his Petition for a Writ of Habeas Corpus;

D) That, under the particular circumstances of this case, it is proper to waive the requirement that Petitioner give an amount of security in connection with the issuance of an injunctive order;

E) That Petitioner is entitled to an award of attorney's fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412;

F) That this Court grant any other relief it deems necessary and proper.

Dated: December 12, 2025

Respectfully submitted,

/s/Zachary William Rivera Weiss
Zachary William Rivera Weiss
Attorney for Petitioner
Rufino Salazar Cardenas

VERIFICATION

I, Zachary Weiss, 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 12th day of December, 2025 in Phoenix, Arizona.

/s/Zachary William Rivera Weiss
Zachary William Rivera Weiss
Attorney for Petitioner
Rufino Salazar Cardenas

Certificate of Service

I hereby certify that on this 12th day of December, 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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