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7 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
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10 TARANJEET KAUR )
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Petitioner,

v.

CHRISTOPHER J. LaROSE, Senior Warden,
Otay Mesa Detention Center, in his official capacity,
Respondents.

Case No. **1:26-cv-01070-JLT-FJS**

**TRAVERSE IN SUPPORT OF
PETITION FOR WRIT OF
HABEAS CORPUS**

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2 INTRODUCTION

3 Petitioner Taranjeet Kaur has been detained at Otay Mesa Detention Center since July 25,
4 2025 — nearly nine months — without a single individualized hearing to determine whether her
5 continued confinement is justified. The government's Return rests on three propositions: that §
6 1225(b)(1)(B)(ii) mandates her detention without limit; that *Jennings v. Rodriguez*, 583 U.S. 281
7 (2018), forecloses any challenge; and that *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), strips
8 Petitioner of all constitutional protection. None of these propositions is correct.

9 The government's own filing acknowledges the critical fact that breaks its argument: the
10 Notice and Order of Expedited Removal was vacated pursuant to 8 C.F.R. § 208.30 when
11 Petitioner was found to have a credible fear of persecution. At that moment, Petitioner ceased to
12 be a subject of § 235(b)(1) expedited removal and became a respondent in full § 240 removal
13 proceedings governed, for detention purposes, by § 226(a), 8 U.S.C. § 1226(a). Section 1226(a)
14 provides that the Attorney General *may* — not must — detain an alien pending a decision on
15 removal, and entitles the alien to an individualized bond hearing. The government has no
16 statutory authority to continue mandatory detention once the expedited removal track is closed.
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18 Even if this Court were to accept the government's statutory framework, the
19 constitutional case for relief grows stronger with each passing month. Petitioner's BIA appeal
20 remains pending. If the Board affirms, a Petition for Review to the Ninth Circuit will extend the
21 period of confinement further still. The government's own case law confirms that detention "past
22 a year" raises serious due process concerns, and the prospective duration of Petitioner's
23 confinement — measured against the delays inherent in appellate review — already places this
24 case within the constitutionally problematic zone. The Court should grant the writ.
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ARGUMENT

I. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER § 1225(B)(1) BECAUSE THE GOVERNMENT VACATED THE EXPEDITED REMOVAL ORDER AND PLACED HER IN FULL § 240 PROCEEDINGS.

A. The Statutory and Regulatory Framework Shifts Detention Authority from § 1225(b) to § 1226(a) Upon Vacatur of the Expedited Removal Order.

Section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1), establishes an expedited removal track for aliens who arrive at ports of entry or are apprehended shortly after crossing without valid entry documents. Under that track, an alien who “indicates an intention to apply for asylum ... or a fear of persecution” is referred to an asylum officer for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). If the officer determines that the alien “has a credible fear of persecution ..., the alien shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).

But § 1225(b)(1)(B)(ii) does not operate in isolation. The implementing regulations make clear that upon a positive credible fear determination, the expedited removal order is vacated and the alien is transferred entirely out of the § 235 track. 8 C.F.R. § 208.30(f) provides that when an asylum officer determines that an alien has a credible fear of persecution, “the asylum officer shall so inform the alien and issue a Form I-862, Notice to Appear, for full consideration of the asylum claim” under INA § 240, 8 U.S.C. § 1229a. The asylum officer simultaneously vacates the § 235(b)(1) removal order.

That is precisely what happened here. The government's own exhibit — the Notice to Appear filed as Exhibit 2 to the Return — expressly states: “Section 235(b)(1) order was vacated pursuant to 8 CFR 208.30.” ECF No. 7-2 at 2. Petitioner was then charged under INA § 212(a)(6)(A)(i) and § 212(a)(7)(A)(i)(I) and placed in § 240 removal proceedings before the Otay Mesa Immigration Court. She was not an arriving alien in expedited removal; she was a respondent in full § 240 proceedings.

1 Once an alien is in full § 240 proceedings, the detention authority is supplied not by §
2 1225(b)(1) but by § 226(a), 8 U.S.C. § 1226(a). Section 1226(a) provides that the Attorney
3 General "may issue a warrant for the arrest and detention of an alien pending a decision on
4 whether the alien is to be removed from the United States." The operative word is "may" —
5 Congress used discretionary language in § 1226(a), not the mandatory "shall" that appears in §
6 1225(b)(1)(B)(ii) and § 1226(c). Under § 1226(a), the alien is entitled to a bond hearing before
7 an immigration judge, and DHS bears the burden of demonstrating that detention is necessary.
8 See 8 C.F.R. § 236.1(d)(1).
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10 **A. The Regulatory Definition of "Arriving Alien" Confirms That §**
11 **1225(b)(2)(A) Does Not Reach Interior Detainees in Full § 240 Proceedings.**

12 The government's argument rests on its erroneous conflation of two distinct terms, i.e.,
13 "applicant for admission" and "arriving alien." By regulation, "arriving aliens have no right to a
14 custody redetermination hearing. The same is not true of other applicants for admission. 8 C.F.R.
15 § 1001.1(q) defines "arriving alien" as "an applicant for admission coming or attempting to come
16 into the United States at a port-of-entry, or an alien seeking transit through the United States at a
17 port-of-entry, or an alien interdicted in international or United States waters and brought into the
18 United States by any means." Petitioner does not meet this definition: she entered without
19 inspection near San Diego and was not apprehended at a port of entry, in transit, or in
20 international waters. Whether arriving aliens have a right to a custody redetermination hearing is,
21 therefore, irrelevant.
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23 Where Congress includes particular language in one section of a statute but omits it in
24 another section of the same Act, it is generally presumed that Congress acts intentionally and
25 purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23
26 (1983). Hence, the Court must presume that Congress intended "applicant for admission" and
27 "seeking admission" to mean different things. And, as numerous courts have pointed out, only
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1 those “applicants for admission who are actively “seeking admission” are ineligible for such
2 hearings. *See, e.g., Maldonado Bautista v. Santaacruz*, No. 5:25-cv-01873 (C.D. Cal. Nov. 20 &
3 25, 2025) (granting class-wide summary judgment, holding § 236(a) governs detention of
4 interior noncitizens, and declaring *Yajure Hurtado*'s classification unlawful).¹

5 Indeed, any other interpretation would render the amendments made by the Laken Riley
6 Act entirely superfluous. The Laken Riley Act, enacted in January 2025, amended § 1226(c) to
7 add new categories of mandatory detention for certain criminal aliens. If § 1225(b)(2)(A)
8 already mandated detention for all unadmitted aliens, there would have been no need to expand §
9 1226(c): the class of aliens Congress sought to detain mandatorily under the Laken Riley Act
10 would already have been covered. Congress's amendment to § 1226(c) — rather than to §
11 1225(b) — demonstrates that § 1225(b) and § 1226 operate as distinct, non-overlapping tracks,
12 and that the mandatory detention authority for aliens in § 240 interior proceedings flows from §
13 1226, not § 1225(b).
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16 **II. *JENNINGS V. RODRIGUEZ* DOES NOT RESOLVE THE STATUTORY
QUESTION PRESENTED.**

17 The government reads *Jennings v. Rodriguez*, 583 U.S. 281 (2018), as foreclosing
18 Petitioner's statutory claim. *Jennings* held that neither § 1225(b)(1) nor § 1225(b)(2) imposes any
19 time limit on detention and that neither provision says “anything whatsoever about bond
20 hearings.” 583 U.S. at 297. But *Jennings* did not address the statutory question before this
21 Court: whether § 1225(b)(1)(B)(ii) continues to supply detention authority *after* the § 235(b)(1)
22 removal order has been vacated and the alien has been transferred to full § 240 proceedings.
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24 *Jennings* was decided before the enactment of the Laken Riley Act, and it assumed that
25 the aliens at issue remained within the § 1225(b) track. The Court's analysis proceeded on the
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27 ¹ Post-*Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), this Court owes no deference
28 to the BIA's interpretation. It must independently determine what the statute means—and the
statute's plain text, structure, and context all confirm that § 1225(b)(2)(A) does not reach interior
detainees who are in full § 240 proceedings.

1 premise that these aliens were applicants for admission whose proceedings remained under §
2 235. The Court said nothing about what happens when the expedited removal order is formally
3 vacated, and the alien is referred to § 240 proceedings. That is the precise issue here — and it is
4 one *Jennings* left open.

5 Indeed, *Jennings* itself recognized that § 1225(b)(1) and § 1225(b)(2) govern distinct
6 categories: § 1225(b)(1) applies to aliens initially subject to expedited removal who express a
7 fear of persecution; § 1225(b)(2) applies to other arriving aliens not covered by § 1225(b)(1).
8 583 U.S. at 287. Neither provision, on its face, says anything about the detention of aliens who
9 have been formally removed from the § 235(b)(1) track and placed in § 240 proceedings. The
10 Court's holding that § 1225(b) is silent on bond hearings does not answer whether § 1226(a) fills
11 that silence once the § 235(b)(1) track has ended. To conclude that *Jennings* forecloses
12 petitioner's claims, however, the Court would have to ignore (1) the Laken Riley Act and (2) the
13 differing language between 8 U.S.C. 1225(b)(1)((b)(IV) ("Any alien subject to the procedures
14 under this clause shall be detained *pending a final determination of credible fear of persecution*
15 *and, if found not to have such a fear, until removed.*) (emphasis added) and 8 U.S.C.
16 1225(b)(1)(B)(ii) ("If the officer determines at the time of the interview that an alien has a
17 credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for
18 further consideration of the application for asylum."). Under *Russello*, however, the Court cannot
19 do so.

22 **III. THURAISSIGIAM DOES NOT STRIP PETITIONER OF CONSTITUTIONAL**
23 **PROTECTION.**

24 The government invokes *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), for the proposition
25 that inadmissible aliens have "only those rights regarding admission that Congress has provided
26 by statute." 591 U.S. at 140. *Thuraissigiam*, however, addressed a far narrower question: whether
27 the Suspension Clause requires federal courts to provide expanded habeas review of credible *fear*
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1 *determinations* made in the context of expedited removal. The Court held that the traditional
2 scope of habeas does not extend to such review, because an alien seeking initial admission at the
3 border has no constitutional right to remain in the country and no due process right to a particular
4 procedure for evaluating that claim.

5 *Thuraissigiam* did not hold that an alien who is no longer in expedited removal — whose
6 § 235(b)(1) order has been vacated and who has been in full § 240 proceedings for over eight
7 months — retains no constitutional right to an individualized determination of whether her
8 continued detention is justified. The Court's analysis was premised on the alien's position at “the
9 threshold of initial entry.” 591 U.S. at 138. Petitioner stands in a fundamentally different
10 posture: she has had a full merits hearing before an immigration judge, filed a timely BIA appeal,
11 and been in interior confinement for the better part of a year. She is not seeking initial admission;
12 she is contesting ongoing detention in the interior of the United States.

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14 Moreover, even if we accept the government's position that Petitioner's due process rights
15 are limited to those afforded by statute, the statute provides more than the government concedes.
16 If § 1226(a) — rather than § 1225(b)(1)(B)(ii) — governs Petitioner's detention, she is entitled to
17 the individualized bond hearing that § 1226(a) implies. And the Fifth Amendment's prohibition
18 on arbitrary deprivation of liberty imposes an independent check that becomes more potent as
19 detention lengthens.
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21 **IV. THE GOVERNMENT'S CITATION TO COURT DECISIONS DOES NOT**
22 **SUPPORT DENIAL OF HABEAS RELIEF.**

23 The government cites a string of district court decisions in this circuit denying habeas
24 relief to § 1225(b) detainees. Those decisions are distinguishable on two grounds.

25 First, each of the cases the government cites involved review of detention at a particular
26 point in time — typically between 9 and 12 months. Not one of them assessed whether
27 continued detention would remain lawful if the BIA appeal is denied and a Petition for Review is
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1 filed in the Ninth Circuit, extending confinement to 24 months or beyond. That is the likely
2 trajectory here, and it places this case in a different category from the snapshot decisions the
3 government relies upon.

4 Second, several of the most recent decisions the government cites were decided before
5 *Loper Bright* fully worked its way through the district courts in this circuit. Post-*Loper Bright*,
6 courts must interpret the INA's detention provisions independently, without deference to the
7 BIA's interpretation in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (holding that all aliens who
8 receive positive credible fear determinations are ineligible for bond), or in *Matter of Yajure*
9 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). When this Court applies its independent judgment to
10 the text and structure of the INA, as *Loper Bright* requires, it should conclude that Petitioner is
11 entitled to a bond hearing under § 1226(a).
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CONCLUSION

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2 For the foregoing reasons, Petitioner Taranjeet Kaur respectfully requests that the Court
3 (1) hold that she is entitled to an individualized bond hearing before an immigration judge
4 because her detention is governed by INA § 1226(a), not § 1225(b)(1)(B)(ii); and (2) order
5 Respondent to provide Petitioner with a bond hearing before an immigration judge within ten
6 days.
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9 Date: April 15, 2026

Respectfully submitted,

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