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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

TARANJEET KAUR [redacted],	**Case No. 3:26-cv-02070-AGS-DDL**
Petitioner,	**PETITIONER'S MOTION TO ALTER OR AMEND JUDGMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 59(e)**
v.	
CHRISTOPHER J. LaROSE, Senior Warden, Otay Mesa Detention Center, et al.,	
	Hon. Andrew G. Schopler
	Hearing: To Be Scheduled
Respondents.	

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 59(e) and Civil Local Rule 7.1, Petitioner Taranjeet Kaur respectfully moves this Court to alter or amend its judgment of April 27, 2026, denying her petition for a writ of habeas corpus. The motion is grounded principally on an intervening change in controlling law: three federal courts of appeals — the Second, Eleventh, and Sixth Circuits — have, in the weeks since this Court's ruling, rejected the precise statutory and constitutional reading on which the ruling rests, deepening a circuit split in which only the Fifth Circuit (over a forceful dissent) and a divided Eighth Circuit panel (over a powerful Trump-appointee dissent) have adopted the Government's position. Petitioner respectfully asks the Court to engage the new appellate authority on reconsideration and to grant the petition.

Petitioner relies on Rule 59(e)'s recognized grounds for relief: (1) intervening change in controlling law; (2) manifest error of law; and (3) prevention of manifest injustice. Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011).

Petitioner asks the Court to grant the petition and order Respondent to provide her with an individualized bond hearing before an Immigration Judge within seven (7) days, at which the Government bears the burden of proving by clear and convincing evidence that her continued detention is justified. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, the pleadings and papers on file in this action, the transcript of the April 27, 2026, hearing, and any further evidence or argument the Court may consider.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In the weeks since this Court's ruling, three federal courts of appeals have rejected the precise statutory and constitutional reading on which the ruling rests. The decisions arrived in close succession: *Barbosa da Cunha v. Freden*, No. 25-3141-pr, 2026 U.S. App. LEXIS 12201 (2d Cir. Apr. 28, 2026), was decided one day after the Court's April 27 oral ruling; *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, Nos. 25-14065 & 25-14075, 2026 U.S. App. LEXIS 13180 (11th Cir. May 6, 2026), followed nine days later; and *Lopez-Campos v. Raycraft*, Nos. 25-1965 et al., 2026 U.S. App. LEXIS 13519 (6th Cir. May 11, 2026), followed five days after that. Each of the three decisions independently holds that 8 U.S.C. § 1225(b)(2)(A) does not subject to mandatory no-bond detention a noncitizen who, like Ms. Kaur, entered without inspection, was apprehended within the territory of the United States, received a positive credible-fear determination, and was placed in INA § 240 proceedings. Each rejects the proposition — central to the Court's ruling — that such a noncitizen remains, for constitutional purposes, in the legal posture of a person stopped at the border. The detention authority is § 1226(a). The Immigration Judge has bond-redetermination jurisdiction.

Together with the Eighth Circuit's divided 2-1 decision in *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026) (Erickson, J., dissenting), and the Fifth Circuit's panel decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (Douglas, J., dissenting), the three intervening decisions create a 3-to-2 circuit split, with the new majority overwhelmingly the better-reasoned side. Both circuits that have ruled for the Government did so over published dissents that the new majority opinions repeatedly cite with approval. The Second, Sixth, and Eleventh Circuits also join "the overwhelming majority of federal judges across the Nation" —

over 370 district judges, according to the Second Circuit — who have rejected the Government's reading. *Da Cunha*, 2026 U.S. App. LEXIS 12201, at *14.

This Court did not have the benefit of the three new decisions at the time of its ruling. Its ruling rested on three legal premises that each of the three new decisions has now rejected. First, the Court read 8 U.S.C. § 1225(b)(1)(B)(ii) — and *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) — to require detention "[u]ntil the consideration of the asylum petition is complete, including the pending appeal." Tr. 4:11–13. The Second, Sixth, and Eleventh Circuits have now held that the textual structure of § 1225(b) cannot bear that reading, and that *Jennings* did not decide the question. Second, the Court characterized Ms. Kaur as "caught at the border" and "stopped at the border" for entry-fiction purposes. Tr. 4:5; 6:6–7; 11:4–5. All three new circuits have now held that the entry fiction does not extend to noncitizens like Ms. Kaur who have crossed into the country and been placed in § 240 proceedings. Third, the Court concluded that "the Court's hands are tied" by the statutory text. Tr. 32:19. The three new circuits have shown that the hands the Court perceived as bound were free, and that the better reading of the statute commands the opposite result.

Rule 59(e) is the proper vehicle to engage this new authority. Three of its four recognized grounds are present: (1) an intervening change in controlling persuasive law from three federal circuits; (2) manifest error of law that the new authority now illuminates; and (3) prevention of manifest injustice — a Sikh asylum seeker, nine months into detention without an individualized bond hearing, on the wrong side of a 3-2 circuit split, with her § 240 appeal pending and a Petition for Review likely to follow. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011).

Beyond the new appellate authority, the Court did not engage three of Petitioner's central arguments at the original hearing — the regulatory bond-jurisdiction argument under 8 C.F.R. §

1003.19(h)(2)(i)(B); the *Russello*-driven textual asymmetry between § 1225(b)(1)(B)(iv) and (b)(1)(B)(ii); and the "seeking admission" argument under *Matter of V-X-*, 26 I&N Dec. 147, 151 (BIA 2013) (clarifying that a grant of asylum is not an "admission" under INA § 101(a)(13)(A)) — each of which is now reinforced by the new authority and each of which is, on its own, dispositive.

Petitioner respectfully requests that the Court grant this motion, alter its judgment, and order Respondent to provide her with an individualized bond hearing before an Immigration Judge under 8 U.S.C. § 1226(a) within seven days.

PROCEDURAL BACKGROUND

Petitioner is a Sikh asylum seeker from India who entered without inspection near San Diego on or about July 25, 2025. Pet. ¶ 12. DHS apprehended her shortly after entry — in the interior, not at the border — and initially placed her in expedited removal under INA § 235(b)(1). Id. ¶ 15. An asylum officer interviewed her, made a positive credible-fear determination, and — pursuant to 8 C.F.R. § 208.30(f) — USCIS issued a Form I-862 Notice to Appear charging her under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) and referring her case for full proceedings under INA § 240 before the Otay Mesa Immigration Court. The NTA itself states that the "Section 235(b)(1) order was vacated pursuant to 8 CFR 208.30." Return Ex. 2; ECF No. 7-2 at 2. See Tr. 16:18–21 (counsel describing same).

On October 24, 2025, the Immigration Judge denied Petitioner's request for a bond redetermination hearing on a single ground: "No jurisdiction. *Matter of Jonathan Javier YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025)." Pet. ¶ 23. DHS waived appeal; Petitioner reserved. Id. ¶ 24. The IJ subsequently held a merits hearing and entered an order of removal; Petitioner's BIA appeal is timely filed and pending. Id. ¶¶ 26–28.

On April 1, 2026, Petitioner filed her habeas petition in this Court under 28 U.S.C. § 2241 and a contemporaneous motion for a temporary restraining order. ECF Nos. 1, 2. Respondent filed a Return on April 8, 2026, ECF No. 7, and Petitioner filed a Traverse on April 16, 2026, ECF No. 8. The Court heard argument on April 27, 2026. At the hearing, the Court announced a tentative ruling denying the petition, heard argument, briefly recessed, and returned to confirm its tentative ruling. Tr. 30:18–32:25. The Court indicated that a one-page written order would follow and that no separate written analysis would be issued. Tr. 33:1–3. Judgment was entered shortly thereafter. This motion is timely filed within Rule 59(e)'s 28-day window.

Between Petitioner's hearing on April 27, 2026, and the filing of this motion, three federal courts of appeals issued decisions directly on point—each rejecting the Government's reading of § 1225(b)(2)(A) and holding that 8 U.S.C. § 1226(a) governs the detention of noncitizens in Ms. Kaur's posture. The decisions are *Barbosa da Cunha v. Freden*, 2026 U.S. App. LEXIS 12201 (2d Cir. Apr. 28, 2026); *Hernandez Alvarez v. Warden, FDC Miami*, 2026 U.S. App. LEXIS 13180 (11th Cir. May 6, 2026); and *Lopez-Campos v. Raycraft*, 2026 U.S. App. LEXIS 13519 (6th Cir. May 11, 2026). None of these appellate decisions was before this Court at the time of its ruling.

The recent decisions, considered together with the contrary panel decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), and the Eighth Circuit's divided panel in *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026), establish a 3-2 circuit split with the better-reasoned majority running squarely in Petitioner's favor.

RULE 59(e) STANDARD

Federal Rule of Civil Procedure 59(e) permits a district court to alter or amend its judgment within 28 days of entry. The Ninth Circuit recognizes four grounds: "(1) the motion is necessary to correct manifest errors of law or fact upon which the judgment is based; (2) the

moving party presents newly discovered or previously unavailable evidence; (3) the motion is necessary to prevent manifest injustice; or (4) there is an intervening change in controlling law." *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011); *School Dist. No. 1J, Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) ("Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law."). "Intervening change in controlling law" does not require a decision from the Supreme Court or this circuit; persuasive authority from sister circuits suffices where the district court's reasoning tracked the rejected approach and the new decisions undermine that reasoning. See, e.g., *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014) (en banc) (vacated on other grounds); *United Nat'l Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F.3d 772, 780 (9th Cir. 2009).

This motion presents the strongest form of the intervening-change-of-law ground: three federal circuits — the Second, the Eleventh, and the Sixth — each independently held, within days of each other and within two weeks of this Court's ruling, that the Government's reading of § 1225(b)(2)(A) cannot be reconciled with the plain statutory text or the constitutional baseline. Petitioner respectfully submits that the new authority both compels reconsideration on its own terms and illuminates the manifest errors of law in the prior ruling — grounds (1) and (3) under Allstate. Where a court's ruling rests on a factual premise unsupported by the record, Rule 59(e) is the proper vehicle for correction. *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999); School Dist. No. 1J, 5 F.3d at 1263.

Filing of this motion tolls the time for filing a notice of appeal under Federal Rule of Appellate Procedure 4(a)(4)(A)(iv).

ARGUMENT

I. THREE INTERVENING FEDERAL APPELLATE DECISIONS REJECT THE VERY READING ON WHICH THE COURT'S RULING RESTS.

In the days since the Court's April 27 ruling, three federal circuits have decided the precise question presented here: whether a noncitizen who entered without inspection, received a positive credible-fear determination, was issued an NTA under 8 C.F.R. § 208.30(f), and is in full INA § 240 proceedings remains subject to mandatory no-bond detention under 8 U.S.C. § 1225, or is instead detained under 8 U.S.C. § 1226(a) and entitled to an individualized bond hearing. Each of the three new circuits held—independently and with overlapping reasoning—that § 1226(a) controls. Each rejected the entry-fiction reading on which the Court's constitutional analysis rests. Together, they decisively shift the legal landscape.

A. *Hernandez Alvarez v. Warden, FDC Miami* (11th Cir., May 6, 2026).

In *Alvarez*, the Eleventh Circuit affirmed the Southern District of Florida's grant of habeas corpus on a pure textual analysis. The court's holding precisely tracks Petitioner's posture:

> That provision limits no-bond detention to applicants for admission who are 'seeking admission,' and on the facts of this case, neither Petitioner was seeking lawful entry into the United States after inspection by an immigration officer when he was arrested, nor was either Petitioner taking any cognizable step to obtain the rights and privileges of lawful entry.

2026 U.S. App. LEXIS 13180, at *5–6.

From the plain text of § 1225(b)(2)(A), the Eleventh Circuit derived a three-part test for assessing whether a noncitizen is subject to mandatory no-bond detention. An alien is so detained only if:

> (1) [she] is arriving in the United States or is present in the United States without having been granted lawful entry; (2) *is seeking lawful entry after inspection and authorization by an immigration officer;* and (3) is not clearly and beyond a doubt entitled to lawful entry, as determined by the examining immigration officer.

Id. at *24 (emphasis added).

In Ms. Kaur's case, step (1) is satisfied — she is present without having been granted lawful entry. However, step (2) is not — Ms. Kaur has never sought lawful entry after inspection and authorization. Ms. Kaur has never applied for admission at a port of entry, never been interdicted at sea, and never sought transit through the United States. She is in INA § 240 proceedings to pursue asylum and withholding of removal — not to seek "lawful entry after inspection and authorization." See *Matter of V-X-*, 26 I&N Dec. 147, 151 (BIA 2013) (clarifying that a grant of asylum is not an "admission" under INA § 101(a)(13)(A)). Under *Alvarez*, that is dispositive: "all three conditions must be satisfied for an alien to be detained for a section 1229a proceeding," *id.* at *25 n.3, and Petitioner satisfies only two.

Moreover, the Eleventh Circuit explicitly preserved the status/action distinction that Petitioner raised at the hearing — and which this Court's ruling did not engage:

> Just as one can be both a 'registered voter' and one who is 'seeking to vote,' an alien may well be an 'applicant for admission' who is also 'seeking admission.' But not necessarily. Not all voters need vote in every election, and analogously, not all aliens 'present in the United States' without having been admitted are 'seeking admission.' The phrases denote distinct conditions.

Id. at *21.

This is the *V-X-* point Petitioner urged at the hearing—translated into the Eleventh Circuit's own language. Cf. *Matter of V-X-*, *supra*; *Matter of Lemus*, 25 I&N Dec. 734, 743 & n.6 (BIA 2012).

B. *Lopez-Campos v. Raycraft* (6th Cir., May 11, 2026).

The Sixth Circuit decided *Lopez-Campos* five days after *Alvarez*. Writing for the panel, Judge Clay—joined by Judge Cole, with Judge Murphy dissenting—affirmed grants of habeas corpus by both the Eastern and Western Districts of Michigan. *Lopez-Campos* is the most thoroughgoing of the three new opinions and reinforces both the statutory and the constitutional sides of Petitioner's argument.

On the statutory point, the court rejected the Government's reading and held that an affirmative step toward lawful entry is required:

> Noncitizens like Petitioners, who did not attempt lawful entry into the United States and are actively avoiding being inspected for lawful entry, are not 'seeking admission' and are thus not subject to § 1225(b)(2)(A)'s mandatory detention scheme.

2026 U.S. App. LEXIS 13519, at *10.

The same reasoning controls Ms. Kaur's case. She did not attempt lawful entry; she entered without inspection. She has taken no "affirmative act or attempt towards 'admission.'" *Id.* at *14. Under *Lopez-Campos*, § 1225(b)(2)(A) does not authorize her detention.

On the constitutional point, *Lopez-Campos* directly rebuts the Court's reading of *Thuraissigiam*:

> [T]his holding is clearly limited to noncitizens at the border: Thuraissigiam involved the "due process rights of an alien seeking initial entry," and the Supreme Court expressly constrained Thuraissigiam's holding to noncitizens "in respondent's position.

Id. at *38 (quoting *DHS v. Thuraissigiam,* 591 U.S. 103, 139–40 (2020)).

The Sixth Circuit's reading of *Thuraissigiam* is the reading Petitioner urged at the hearing. The Court's contrary reading — that Ms. Kaur is, for constitutional purposes, an "alien in respondent's position," i.e., an alien who was detained upon entry, has not passed a credible fear interview, and remains in expedited removal proceedings Tr. 6:5–9 — cannot survive *Lopez-Campos*.

Lopez-Campos also vindicates the *Loper Bright* argument and the twenty-nine-year agency practice argument that Petitioner pressed at the hearing and that this Court did not address:

> [T]he government's previously unbroken 29-year streak of applying § 1226(a) as opposed to § 1225(b)(2)(A) to noncitizens like Petitioners is consequential. … As the government admits, the executive has never thought § 1225(b)(2)(A) to mean what the government now contends it means.

Id. at *21. That practice traces to the 1997 INS interim rule recognizing bond eligibility for entrants without inspection. 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), three decades of contemporaneous agency practice contrary to the Government's litigating position is powerful evidence that the litigating position is wrong.

C. *Barbosa da Cunha v. Freden* (2d Cir., Apr. 28, 2026).

The Second Circuit decided *Da Cunha* one day after the Court's ruling. Writing for the panel, Judge Bianco — joined in concurrence by Judge Cabranes — affirmed the Western District of New York's grant of habeas corpus. The Second Circuit's textual analysis tracked the *Russello* argument that Petitioner pressed at the April 27 hearing, which this Court did not address. The court held that "applicant for admission" (a status under § 1225(a)) and "seeking admission" (an action under § 1225(b)(2)(A)) are not synonyms:

> [Petitioner] is therefore deemed to be an 'applicant for admission' by Section 1225(a), but he is not 'seeking admission' because he is not requesting lawful entry into the United States after inspection and authorization.

Id. at *31; see also *Matter of V-X-*, *supra*;

The court further held that the Government's reading — the reading this Court adopted in substance — "defies" the plain statutory text:

> Today ... we join the overwhelming majority of federal judges across the Nation to consider it and conclude that the government's novel interpretation of the immigration statutes defies their plain text.

Id. at *5. In support of its conclusion, the court invoked the constitutional avoidance holding principle of statutory construction:

> [E]ven if the government's newfound interpretation of Section 1225(b)(2)(A) were plausible — and it is not — we would nonetheless reject it based on our obligation to construe these statutes in a manner that would avoid the serious constitutional questions attendant to what would be the broadest mass-detention-without-bond mandate in our Nation's history for millions of noncitizens.

Id. at *7. A contrary construction, such as that adopted in this case, would extend the entry fiction to many millions of people within the United States and violate the Supreme Court's instruction that its holding in *Thuraissigiam* is limited to aliens in the position of the respondent in that case, i.e., aliens who were detained upon entry, were subjected to expedited removal, failed to pass the credible fear screening process, and thus remained in expedited removal proceedings.

The *Da Cunha* court did not predicate its reading of *Thuraissigiam* on the petitioner's duration of residence. It predicated it on the fact that the petitioner had "passed through our gates" — exactly the principle Petitioner urged this Court to apply, citing *Shaughnessy v. United States ex rel. Mezei,* 345 U.S. 206, 212 (1953) ("aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law").

II. THE BETTER-REASONED MAJORITY OF CIRCUITS AND THE OVERWHELMING MAJORITY OF DISTRICT JUDGES SIDE WITH MS. KAUR's INTERPRETATION OF THE RELEVANT STATUTES.

Together with the contrary decisions of the Fifth Circuit in *Buenrostro-Mendez* and the divided Eighth Circuit panel in *Avila*, the three new appellate decisions create a 3-to-2 circuit split. The split is not closely balanced. Both Government-side decisions drew published dissents from judges across the ideological spectrum. In *Buenrostro-Mendez*, Judge Douglas's dissent identifies the surplusage problem, the action/status distinction, and the *Loper Bright* concerns that the new majority has now embraced:

> The Congress that passed IIRIRA would be surprised to learn it had also required the detention without bond of two million people. For almost thirty years there was no sign anyone thought it had done so. … Straining at a gnat, the majority swallows a camel. I dissent."

Buenrostro-Mendez, 166 F.4th at 509 (Douglas, J., dissenting).

In *Avila*, Judge Erickson—a Trump appointee—dissented on similar grounds: "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens." *Avila*, 170 F.4th at 1145–46 (Erickson, J., dissenting).

In the Seventh Circuit, Judge Lee — writing individually in *Castañon-Nava v. Garland*—adopted the same view as the Second, Sixth, and Eleventh Circuits. In *Da Cunha*, the Second Circuit observed that "over 370 different judges across the Nation" have rejected the Government's reading. 2026 U.S. App. LEXIS 12201, at *14. The new appellate authority does not reflect a marginal or contested view; it reflects the consensus of the federal judiciary.

This Court's April 27 ruling was decided without the benefit of any of this authority. It tracks the reasoning of the Fifth Circuit's now-isolated majority and of the Eighth Circuit majority over Judge Erickson's dissent. Reconsideration is warranted on the simple ground that the controlling persuasive law has changed, and changed substantially, since the Court's ruling.

III. THE NEW DECISIONS CONFIRM THAT THE COURT'S READING OF § 1225(B)(1)(B)(II) — AND ITS CORRESPONDING READING OF *JENNINGS V. RODRIGUEZ* — CANNOT BE RECONCILED WITH THE PLAIN TEXT OF THE INA.

The Court's ruling on the statutory question rested on a single proposition: that under § 1225(b)(1)(B)(ii), "[u]ntil the consideration of the asylum petition is complete, including the pending appeal, [Petitioner's] incarceration's mandatory." Tr. 4:11–13; see also Tr. 32:1–23 (citing *Jennings*, 583 U.S. at 297). The Court read § 1225(b)(1)(B)(ii) — "shall be detained for further consideration of the application for asylum" — to authorize detention all the way through the conclusion of full § 240 proceedings, including the BIA appeal.

That reading is flatly contradicted by the text Congress wrote, and the contradiction renders the *Russello* canon inescapable. Counsel laid the comparison out at oral argument, Tr. 16:6–17:15, but the Court did not engage it. The textual structure is straightforward:

> "On the one hand, you have Section 1225(b)(1)(B)(iv), which provides that, '[a]n alien subject to the procedures under this clause shall be detained pending a final determination of a credible fear of persecution and, if found not to have such a fear, until removed.' . . . 1225(b)(1)(B)(ii) says simply if an officer determines that the alien has a credible fear, the [alien] shall be detained for further consideration of the application for asylum. It doesn't say 'until removed.'"

Tr. 16:6–17:15.

"Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983). The Supreme Court has repeatedly reaffirmed this principle. *Loughrin v. United States*, 573 U.S. 351, 358 (2014); *Bates v. United States*, 522 U.S. 23, 29–30 (1997). The textual asymmetry between (b)(1)(B)(iv) ("until removed") and (b)(1)(B)(ii) ("for further consideration of the application for asylum") cannot be presumed accidental. Subsection (ii) must mean something narrower than subsection (iv), or it would not have been written differently.

The regulatory companion language confirms the narrower reading. 8 C.F.R. § 208.30(f) gives USCIS two options after a positive credible-fear finding: (1) issue a Form I-862 NTA "for full consideration of the asylum and withholding of removal claim in proceedings under section 240 of the Act"; or (2) "retain jurisdiction over the application for asylum ... for further consideration in a hearing pursuant to § 208.9." Option 2's "further consideration" language tracks (b)(1)(B)(ii)'s "further consideration of the application for asylum" almost word for word. Option 1's broader "full consideration" language does not. 8 U.S.C. 1225(b)(1)(B)(ii)(b)(1)(B)(ii) authorizes detention for the asylum-only USCIS-retention process under Option 2—not for the entire pendency of § 240 proceedings under Option 1. In Ms. Kaur's case, however, USCIS chose Option 1; § 1225(b)(1)(B)(ii) had nothing to detain her for once she crossed that bridge.

The Second, Sixth, and Eleventh Circuits have now embraced this exact textualist parsing. *Da Cunha* rejects the proposition that "applicant for admission" status under § 1225(a)

carries with it the no-bond detention scheme of § 1225(b)(2)(A); the two phrases describe different things. 2026 U.S. App. LEXIS 12201, at *31. *Alvarez* extracts a three-part textual test from § 1225(b)(2)(A) and holds that all three conditions must be satisfied. 2026 U.S. App. LEXIS 13180, at *24, *25 n.3. *Lopez-Campos* emphasizes that the Government's reading "would render § 1225(b)(2)(A)'s use of 'seeking admission' superfluous" — a textbook surplusage violation. 2026 U.S. App. LEXIS 13519, at *16. Each opinion enforces the same canon that Russello supplies and that controls the (iv) versus (ii) comparison Petitioner pressed.

The Court's reliance on *Jennings v. Rodriguez* is the converse error. The Court treated *Jennings* as resolving the question Petitioner raised. It did not. *Jennings* was a class-action case that addressed three statutory subclasses—including § 1226(c) and § 1226(a). The Supreme Court's analytical center of gravity was § 1226(c). *Jennings* did not parse (b)(1)(B)(iv) against (b)(1)(B)(ii); the quotation the Court relied on at Tr. 32:5–10 lumps (b)(1) and (b)(2) together without separating the two subsections of (b)(1)(B) and failed to address the *Russello* asymmetry Petitioner raises. "It is fundamental that we can give a holding only the breadth of its reasoning." *United States v. Castleman*, 572 U.S. 157, 178 (2014) (Scalia, J., concurring). *Da Cunha* makes the same point about Jennings explicitly, observing that "the Court's description of the statutory scheme in *Jennings*" was dicta on the catchall-category question that *Jennings* did not decide on the merits. 2026 U.S. App. LEXIS 12201, at *35.

On reconsideration, the Court should engage the (iv)-vs-(ii) *Russello* asymmetry it did not address. The textualist move that resolves the asymmetry is the same one that three federal circuits have just applied in interpreting the closely related § 1225(b)(2)(A). The result is the same: § 1225(b)(1)(B)(ii) does not authorize Ms. Kaur's detention through the entire pendency of § 240 proceedings, and Jennings does not foreclose the textualist analysis Russello requires.

IV. THE NEW CIRCUIT DECISIONS REINFORCE THE REGULATORY BOND-JURISDICTION ARGUMENT THAT 8 C.F.R. § 1003.19(H)(2)(I)(B),

READ WITH 8 C.F.R. § 1001.1(Q), AND THAT THIS ARGUMENT IS DISPOSITIVE.

Petitioner's lead argument at the April 27 hearing — and the argument that most directly answers the question presented—was the regulatory bond-jurisdiction argument under 8 C.F.R. § 1003.19(h)(2)(i)(B), read with the narrow regulatory definition of "arriving alien" at 8 C.F.R. § 1001.1(q). The argument does not depend on contested statutory interpretation. It depends on the closed text of two regulations. The Court's ruling does not engage either provision.

Counsel raised the argument squarely at oral argument:

> And the controlling regulation, Your Honor — again, it's 8 C.F.R. 1003.19(h)(2)(i)(B), which enumerates five categories of aliens for whom an Immigration Judge may not ... [re]determine conditions of custody imposed by the service. Now, importantly, the second of those five is arriving aliens in removal proceedings. So if she were an arriving alien, you're right ... [t]he... entry fiction would apply, and even under the regulations, she would have no right to a bond hearing. But she's not an arriving alien.

Tr. 18:18–19:1.

8 C.F.R. § 1003.19(h)(2)(i) provides that, "[n]otwithstanding any other provision of this section, an immigration judge may not redetermine conditions of custody imposed by the Service with respect to the following classes of aliens" — and then enumerates exactly five: (A) aliens in exclusion proceedings; (B) arriving aliens in removal proceedings, including parolees under § 212(d)(5); (C) aliens described in INA § 237(a)(4); (D) aliens subject to INA § 236(c)(1) mandatory criminal detention; and (E) pre-1997 § 242(a)(2) deportation cases. The list is closed. Petitioner is not on it.

The only category that could plausibly fit her is (B), "arriving aliens in removal proceedings." But "arriving alien" is a regulatorily defined term. 8 C.F.R. § 1001.1(q) limits it to three closed categories: "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the

United States by any means." Petitioner is in none of the three. She entered without inspection near San Diego — not at a port of entry, not in transit, not interdicted at sea. Counsel emphasized the distinction at the hearing. Tr. 15:6–12; 15:18–22; 19:2–4.

Because Petitioner is not on the (h)(2)(i) closed list, the general bond-jurisdiction provisions of § 1003.19 apply, and the Immigration Judge had—and has—bond-redetermination jurisdiction over her custody. The IJ's October 24, 2025, "no jurisdiction" order is contrary to the regulation.

The three new circuit decisions do not displace this regulatory argument; they reinforce it. *Alvarez* holds that the Government's reading of § 1225(b)(2)(A) "renders the phrase 'an alien seeking admission' surplusage," 2026 U.S. App. LEXIS 13180, at *18 — and the closed list at § 1003.19(h)(2)(i) reflects the same Congressional and regulatory choice to distinguish among categories. *Lopez-Campos* and *Da Cunha* both rely on the regulatory architecture distinguishing arriving aliens from interior detainees, the very architecture that § 1003.19(h)(2)(i)(B) and § 1001.1(q) implement. The regulatory argument is not displaced by the new circuit authority; the regulation supplies an independent textual ground for the same conclusion.

The argument also draws no support against itself from *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA in *Yajure Hurtado* cited § 1003.19(h)(2)(i)(B) only in a single background footnote, 29 I&N Dec. at 217 n.3, and never engaged § 1001.1(q). The BIA's holding rests on § 1225(b)(2)(A) and a different regulation, 8 C.F.R. § 235.3(b)(1)(ii) — not on the bond-jurisdiction provision of § 1003.19. Id. at 229. After *Loper Bright*, this Court owes the BIA no deference on the regulatory bond-jurisdiction question; after *Da Cunha*, *Alvarez*, and *Lopez-Campos*, the BIA's underlying statutory reading is itself in tatters.

The Court's failure to address the regulatory argument is an error of law sufficient to warrant Rule 59(e) reconsideration. See *389 Orange St. Partners*, 179 F.3d at 665.

V. THE COURT DID NOT ADDRESS PETITIONER'S ARGUMENT UNDER *MATTER OF V-X-* THAT AN ALIEN PURSUING ASYLUM AND WITHHOLDING IS NOT "SEEKING ADMISSION" — AND THE ELEVENTH CIRCUIT HAS NOW FORMALLY ADOPTED THE SAME DISTINCTION.

Petitioner's third principal argument was that § 1225(b)(2)(A) reaches only aliens "seeking admission," and that under *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013), and INA § 101(a)(13)(A), an alien pursuing asylum and withholding of removal in § 240 proceedings is not "seeking admission." Counsel raised the argument at the hearing:

> "1225(b)(2)(A) reaches only aliens who are seeking admission. But the Board of Immigration Appeals held, in a case called *Matter of V-X-*, 26 I&N Dec. 147, BIA 2013, that asylum is not an admission. And withholding of removal is certainly not an admission. It's a prohibition on being removed to a specific country. So it's difficult to see how 1225 would apply to somebody who's passed a credible fear interview and is now . . . simply seeking asylum and withholding of removal because . . . an admission requires a lawful entry."

Tr. 21:15–25.

The Court's ruling does not address this argument. *V-X-* is not cited; § 101(a)(13)(A) is not engaged; the distinction between "applicant for admission" (categorical status under § 235(a)(1)) and "seeking admission" (action under § 1225(b)(2)(A)) is not analyzed.

The Eleventh Circuit in *Alvarez* has now formally embraced the action-versus-status distinction that Petitioner urged. The court used the registered-voter analogy that captures the point precisely:

> "Just as one can be both a 'registered voter' and one who is 'seeking to vote,' an alien may well be an 'applicant for admission' who is also 'seeking admission.' But not necessarily. Not all voters need vote in every election, and analogously, not all aliens 'present in the United States' without having been admitted are 'seeking admission.' The phrases denote distinct conditions."

2026 U.S. App. LEXIS 13180, at *21.

The same distinction controls. "Admission" is a defined term: "*the lawful entry* of the alien into the United States after inspection and authorization by an immigration officer." INA § 101(a)(13)(A); 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In *Matter of V-X-*, the BIA held that

a grant of asylum is not an "admission" within § 101(a)(13)(A). 26 I&N Dec. at 151. Withholding of removal under INA § 241(b)(3) is even less an "admission" — it is a country-specific stay of removal, conferring no status. The Board itself has recognized the action/status distinction Petitioner draws: In *Matter of Lemus*, 25 I&N Dec. 734, 743 & n.6 (BIA 2012), the BIA described "applicant for admission" as "unconventional" and as reaching "many people who are not actually requesting permission to enter the United States in the ordinary sense."

Petitioner is in § 240 proceedings to pursue asylum, withholding of removal, and CAT protection. She is not seeking "admission"; she is seeking protection from persecution, which is a statutorily distinct form of relief under §§ 208 and 241(b)(3). The narrower verb in § 1225(b)(2)(A) — "seeking admission" — does not describe what she is doing in § 240. Under *Russello* and *Alvarez,* the Court must give effect to the distinction.

The BIA's contrary holding in *Matter of Yajure Hurtado* addressed only the duration-based version of the "seeking admission" argument—and rejected it on a "legal-conundrum" theory: "If he is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" 29 I&N Dec. at 221. The relief-category version Petitioner advances—that an alien pursuing asylum and withholding is not "seeking admission" because asylum and withholding are not "admission"—supplies the answer to that question. The third statutory category—protection from removal—is exactly what Congress wrote into the INA at §§ 208 and 241(b)(3). *Alvarez* confirms it: "applicant for admission" status does not entail that the alien is "seeking admission." 2026 U.S. App. LEXIS 13180, at *21.

Reconsideration is warranted to address the argument and grant the writ on this independent ground.

VI. THE COURT'S RELIANCE ON THE ENTRY-FICTION RESTS ON A ERROR OF LAW.

The Court applied the entry-fiction line of cases, like *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), to conclude that Petitioner has "only those rights regarding admission that Congress has provided by statute." Tr. 6:7–9 (quoting *Thuraissigiam*, 591 U.S. at 140). With one exception, however, the entry fiction applies only to "arriving aliens," and Ms. Kaur is not an "arriving alien." She entered the United States without inspection, was apprehended in the interior after entering, was found to have a credible fear of persecution, was issued an NTA under 8 C.F.R. § 208.30(f), and has been in full INA § 240 removal proceedings before an Immigration Judge for the better part of a year. She has had a merits hearing, an order of removal has been entered, and a BIA appeal is pending. She has been physically present in the United States — first at large, then in custody at Otay Mesa — for approximately nine months as of the date of the Court's ruling. Nor is she in the position of the respondent in *Thuraissigiam,* who failed to pass the credible fear screening process and remained in expedited removal proceedings when the Supreme Court decided her case. As counsel noted at oral argument:

> Counsel corrected the Court on this point at oral argument:
>
> THE COURT: But, Mr. Jobe — wasn't — wasn't your — wasn't your client apprehended immediately?
>
> MR. JOBE: No, after entry, Your Honor, and this is the important distinction. In *Thuraissigiam* — that had a similar situation — but in *Thuraissigiam*, the individual never passed a credible fear interview." Tr. 15:16–25.

All three new circuit decisions have now repudiated the legal premise that follows from that error. *Da Cunha* holds that *Thuraissigiam* — and the entry fiction more generally — does not extend to a noncitizen who has crossed into the country: "no one could seriously contend that it applies to a noncitizen like Petitioner who has been living in the United States for decades." 2026 U.S. App. LEXIS 12201, at *46 n.13. The principle does not depend on the petitioner's duration of residence; it depends on the fact that she has "once passed through our gates," and is

therefore protected by the *Mezei/Zadvydas* rule that she may be expelled "only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Id.* at *46 (quoting *Mezei*, 345 U.S. at 212).

Lopez-Campos is even more explicit:

> "[T]his holding is clearly limited to noncitizens at the border: Thuraissigiam involved the 'due process rights of an alien seeking initial entry,' and the Supreme Court expressly constrained Thuraissigiam's holding to noncitizens 'in respondent's position.'"

2026 U.S. App. LEXIS 13519, at *38. The Sixth Circuit's reading of *Thuraissigiam* is the reading Petitioner urged at the April 27 hearing. The Court's contrary reading — that Ms. Kaur is, for constitutional purposes, an alien "in respondent's position," Tr. 6:5–9 — cannot survive *Lopez-Campos*.

Thuraissigiam itself confirms the distinction. There, the petitioner was apprehended approximately 25 yards inside the United States, was placed in expedited removal under § 1225(b)(1), failed his credible-fear interview, and challenged the credible-fear procedures themselves under the Suspension Clause. 591 U.S. at 109–11. The Supreme Court held that an alien at the "threshold of initial entry" has only the procedural rights Congress has provided. Id. at 138. But the Court was at pains to emphasize that its holding addressed an alien still within the expedited-removal track — not an alien who had passed credible fear, been issued an NTA, and entered full § 240 proceedings.

The structural distinction is not a formality. Once an alien passes credible fear and is issued an NTA under § 208.30(f), she leaves the expedited-removal track entirely. § 235.3(b)(2)(ii) — captioned "No entitlement to hearings and appeals" — provides that an alien subject to expedited removal is "not entitled to a hearing before an immigration judge in proceedings conducted pursuant to section 240 of the Act," "except as otherwise provided in this section." The "except as otherwise provided" carveout includes (b)(4) — the credible-fear track

that routes a positive-credible-fear alien out of expedited removal and into § 240. Petitioner is in § 240 today precisely because of that carveout.

Once she crossed that bridge, the entry-fiction analysis no longer describes her. *Zadvydas* itself recognized the distinction as "critical" in the detention context: "*Mezei* was treated, for constitutional purposes, as if stopped at the border, and that made all the difference." 533 U.S. at 693. Petitioner is not in that posture. The Eighth Circuit dissent in *Avila* captures the point in language the new majority circuits have now joined: "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens." 170 F.4th at 1145–46 (Erickson, J., dissenting).

Reconsideration is warranted to apply the constitutional analysis to Petitioner's actual posture — as the Second, Sixth, and Eleventh Circuits have now done in materially identical cases.

VII. TO AVOID SERIOUS CONSTITUTIONAL CONCERNS, THE COURT MUST RECONSIDER ITS RULING.

In *Da Cunha,* the Second Circuit held that "even if the government's newfound interpretation of Section 1225(b)(2)(A) were plausible — and it is not — we would nonetheless reject it based on our obligation to construe these statutes in a manner that would avoid the serious constitutional questions attendant to what would be the broadest mass-detention-without-bond mandate in our Nation's history for millions of noncitizens." 2026 U.S. App. LEXIS 12201, at *7.

This Court's ruling implicates the very constitutional question that *Da Cunha* avoided. Nine months of detention without an individualized bond hearing — the duration of Ms. Kaur's confinement as of April 27, 2026 — sits at the upper boundary of what the Supreme Court and the Ninth Circuit have treated as constitutionally tolerable for civil detention under § 1226(c), much less under § 1225 mandatory detention with no bond hearing at all. See *Demore v. Kim*,

538 U.S. 510, 530–31 (2003) (criminal-alien mandatory detention permissible during "a limited period"); *Casas-Castrillon v. DHS*, 535 F.3d 942, 949–51 (9th Cir. 2008) (constitutionally protected interest in being free from prolonged civil detention); *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) (on remand from Jennings) (recognizing "grave doubts" about the constitutionality of prolonged detention without bond hearings).

Jennings itself "left open" the as-applied due-process claim, observing that the Court of Appeals "had no occasion to consider respondent's constitutional arguments on their merits." 583 U.S. at 312. The Second, Sixth, and Eleventh Circuits have now answered the open question — at least to the extent of refusing to construe the statute in a way that would create the constitutional problem. This Court should engage that avoidance reasoning on reconsideration.

VIII. THE COURT DID NOT ENGAGE THE STRUCTURAL POINT THAT INA § 235 GOVERNS IMMIGRATION OFFICERS, NOT IMMIGRATION JUDGES, AND THAT § 235.3 AND § 1003.19 COVER SEQUENTIAL, MUTUALLY EXCLUSIVE POPULATIONS.

Counsel developed at oral argument a structural point that the Court did not engage: INA § 235 governs inspection by immigration officers; the Immigration Judge's bond-redetermination authority is governed by INA § 240, INA § 236, and the implementing regulation at 8 C.F.R. § 1003.19. Tr. 19:12–20:11; 22:13–24.

INA § 235 is captioned "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." The work the section describes — credible-fear referrals, expedited-removal orders, supervisory review — is performed by immigration officers, asylum officers, and DHS supervisors. Immigration Judges appear in § 235 only in two narrow checks on the inspection process: review of an expedited-removal credible-fear negative under § 235(b)(1)(B)(iii)(III and review of certain claims of LPR/refugee/asylee/U.S. citizen status under § 235(b)(1)(C). Neither involves the IJ exercising general bond-redetermination authority.

The IJ's authority instead comes from INA § 240 and § 236, with implementing regulations at 8 C.F.R. § 1003.19 (IJ bond procedure) and § 1236.1(d) (delegating to immigration judges the authority to detain or release on bond "as provided in § 1003.19 of this chapter"). § 1225(b)(2)(A)'s language — "shall be detained for a proceeding under section 240" — is a delivery instruction, not an extension of § 235 detention authority into § 240 proceedings. The clause directs DHS to take the alien into custody and deliver her to a § 240 proceeding; once delivered, § 240 governs, and § 1226(a) supplies the operative detention authority.

The new circuit decisions reinforce this structural point. *Da Cunha* holds that "applicant for admission" status under § 1225(a) is not coextensive with "seeking admission" under § 1225(b)(2)(A); the two phrases occupy different functional positions in the statute. 2026 U.S. App. LEXIS 12201, at *31. *Lopez-Campos* relies on "the government's previously unbroken 29-year streak of applying § 1226(a) as opposed to § 1225(b)(2)(A)" — the regulatory architecture Petitioner urged. 2026 U.S. App. LEXIS 13519, at *21. The two regulations the Government invokes — § 235.3 and § 1003.19 — cover sequential, mutually exclusive populations. § 235.3(b)(2)(ii) describes aliens outside § 240; § 1003.19(h)(2)(i)(B) describes "arriving aliens in removal proceedings" inside § 240. They cannot both apply to the same alien at the same time.

Counsel made the point at oral argument:

> "[T]he regulatory architecture here — it — 235.3 and 1003.19 — they're — they cover mutually exclusive populations, and they're sequential. 235.3 covers individuals who are still undergoing the ex- — still in the expedited removal process. Once that process ends, the order is vacated, and the person is placed in removal proceedings. Then 1003.19 governs."

Tr. 22:14–21.

The Court's final ruling does not address this architectural point. Its statement that "which box ICE checks on the NTA" does not matter, Tr. 31:9–14, treats two statutorily distinct procedural postures as interchangeable. The regulatory architecture treats them as sequential.

Reconsideration is warranted to engage the structural point that the new circuit decisions now reinforce.

IX. THE CUMULATIVE EFFECT OF THE UNADDRESSED ARGUMENTS — NOW REINFORCED BY THREE INTERVENING CIRCUIT DECISIONS — IS MANIFEST INJUSTICE.

Even if any one of the arguments above were not, by itself, sufficient to warrant reconsideration, their cumulative effect is. The Court addressed two of Petitioner's eight arguments — the broad statutory reading of (b)(1)(B)(ii) and the constitutional entry-fiction point — and did so on a factual premise the record does not support and a legal premise three federal circuits have now rejected. The Court did not address Ms. Kaur's remaining six arguments — the regulatory bond-jurisdiction argument under § 1003.19(h)(2)(i)(B) and § 1001.1(q); the *Russello*-driven (iv)-vs-(ii) textual asymmetry; the *V-X-* "seeking admission" argument; the structural § 235 / § 240 separation; the regulatory-architecture point; and the *Loper Bright*/twenty-nine-year agency practice point.

Petitioner has been in detention for nearly nine months. The IJ has entered an order of removal; the BIA appeal is pending; a Petition for Review to the Ninth Circuit is likely if the BIA affirms. The trajectory is past the multi-year mark — the zone *Zadvydas*, *Demore*, and the Ninth Circuit's prolonged-detention cases (*Casas-Castrillon*, 535 F.3d at 949–51; *Rodriguez v. Marin*, 909 F.3d at 256) treat as constitutionally suspect. Continued detention without an individualized bond hearing — particularly now, when three federal circuits have decided the precise question against the Government and six independent legal arguments for that hearing have not been engaged on the merits — is a manifest injustice that Rule 59(e) is designed to remedy. *389 Orange St. Partners*, 179 F.3d at 665.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant this motion under Federal Rule of Civil Procedure 59(e), alter its judgment of April 27, 2026, and order Respondent to provide Petitioner with an individualized bond hearing before an Immigration Judge under INA § 236(a) within ten days, at which the Government bears the burden of proving by clear and convincing evidence that Petitioner is a flight risk or a danger to the community. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

Date: May 19, 2026

Respectfully submitted,

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PROOF OF SERVICE

I, *Susana Guerrero,* declare as follows:

1. I am over the age of eighteen (18) years and am not a party to the above-entitled action. I am employed at the Law Office of Robert B. Jobe at 100 Bush Street, Suite 1300, San Francisco, California 94104.

2. On May 19, 2026, I caused to be served a true and correct copy of the following document(s):

PETITIONER'S MOTION TO ALTER OR AMEND JUDGMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 59(e) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

on the interested parties in this action as follows:
Counsel for Respondent:

Office of the United States Attorney
Southern District of California
880 Front Street, Room 6293
San Diego, California 92101

BY CM/ECF ELECTRONIC SERVICE: I electronically filed the foregoing document(s) with the Clerk of the United States District Court for the Southern District of California using the Court's CM/ECF system. All counsel of record who have appeared in this action are registered CM/ECF users and will be served electronically upon the filing of the above-listed document(s). Service is complete upon transmission of the Notice of Electronic Filing (NEF).

4. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 19, 2026, in San Francisco, California

//s//Susana Guerrero

Susana Guerrero