UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Francisco Javier Tiburcio Garcia,

Petitioner,

v.

Pamela Bondi, Attorney General; Kristi Noem, Secretary, U.S. Department of Homeland Security; Department of Homeland Security; Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Immigration and Customs Enforcement; Sirce Owen, Acting Director for Executive Office for Immigration Review; Executive Office for Immigration Review; Peter Berg, Director, Ft. Snelling Field Office Immigration and Customs Enforcement; Joel L. Brott, Sheriff of Sherburne County,

Respondents.

No. 0:25-cv-03219-JMB-DTS

RESPONDENTS' OBJECTION TO THE REPORT AND RECOMMENDATION

The federal respondents object to the September 5, 2025, Report and Recommendation ("R. & R."), ECF No. 20, recommending the Court grant the habeas petition. Respondents object to the R. & R.'s legal analysis and recommendation in Part II, concluding the petitioner is subject to discretionary detention under 8 U.S.C. § 1226(a), and not the mandatory detention provision in § 1225(b)(2). Although Mr. Tiburcio Garcia's request for a bond hearing is moot, whether he was appropriately subjected to mandatory detention under § 1225(b)(2) remains a live controversy capable of affecting the parties' legal relationship. The Court should therefore sustain the objection and enter a final order dismissing the habeas petition.

I. Standard of Review

The Court reviews an objected-to R. & R. *de novo*. 28 U.S.C. § 636(b)(1).

II. The government's interpretation of § 1225 is the better reading of the text.

This case comes down to the correct interpretation of the phrase of "seeking admission." The petitioner and the R. & R. relied on the dictionary definition of the word "seeking" and the INA's general definition of the word "admission" in 8 U.S.C. § 1101(a)(13)(A) to conclude that "seeking admission" requires a noncitizen to be "attempting or intending to gain lawful entry into the United States," R. & R. at 12-13, or presently "attempt[ing] or request[ing] to enter the United States, *id.* at 19. *See also* Pet'r's Reply Br. at 3-4 (ECF No. 14). Respondents object to the R. & R.'s textual analysis for two reasons, both grounded in the text of § 1225.

First, as discussed in Part A, Congress has "deemed" noncitizens present in the country without admission to be within the definition of "applicant for admission"—instructing immigration officials to treat them as if they were applying for admission, even though they aren't literally at the border requesting entry. 8 U.S.C. § 1225(a)(1). Congress elsewhere in § 1225(a) used language showing an applicant for admission is "seeking admission"—indeed, the dictionary definition of "applying" includes "seek[ing]" benefit.

And *second*, as discussed in Part B, Petitioner's and the R. & R.'s interpretation leaves little room for § 1225(b) to accomplish its express textual purpose. Congress "deemed" those already present in the United States without admission to be "applicants for admission," including those who have been here for years or even decades. It adopted this approach for a reason: to erase the incentive for people to gain undocumented admission without inspection and to encourage those people instead to appear for orderly inspection at a port of entry. The R & R purports to override Congress by requiring a

noncitizen to be presently at the border requesting lawful admission before applying § 1225(b)(2)'s mandatory provision, removing the text from its proper context and incentivizing the very conduct Congress tried to discourage—i.e., evading inspection upon admission.

The Court should sustain the federal respondents' objection, hold the government's interpretation is the better reading of the statute's text in its proper context, and deny the habeas petition.

A. Paragraph (a)

1. "Deemed"

Consider first the word "deemed" in (a)(1). There are two groups Congress "deemed" to be "applicants for admission": (1) any noncitizen "present in the United States who has not been admitted" and (2) any noncitizen "who arrives in the United States (whether or not at a designated port of entry . . .)." 8 U.S.C. § 1225(a)(1). The word "deem" means "[t]o treat (something) as if (1) it were really something else, or (2) it has qualities that it does not have." *Deem*, Black's Law Dict. (12th ed. 2024); *see also Deem*, Am. Heritage Dict. (5th ed. 2022) ("To regard as; consider" and "To suppose or believe"). By using the word "deemed," Congress created a fiction, recognizing in law that, though a person may not literally be at the border requesting lawful entry, he should be treated as such.

This is not a mere legislative-purpose argument; Congress's intent is burned into the statute's text. By using the word "deemed," Congress expressed its intent to treat noncitizens present without admission the same as those inspected at the border upon

arrival. *See* Gov.'s Opp. Mem. at 14 (citing cases regarding Congress's intent); *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). By requiring a person to be literally at the border requesting entry, Petitioner's and the R. & R.'s interpretation ignores the plain meaning of the word "deemed" in the statute's text.

The R. & R. concedes the government makes a "fair point" but concludes Congress may have "retained some distinctions between persons inside and outside the United States." R. & R. at 25. We agree. Congress *did* retain distinctions between these groups, but the R. & R. locates those distinctions in the wrong place. Section 1225 treats them separately in (b)(1) and (b)(2) (with some blurring of the line between them for those present for less than two years). Congress provided for an expedited removal proceeding for those arriving and those who have more recently arrived. 8 U.S.C. § 1225(b)(1). And for those already present who evaded inspection and are found inadmissible long after arriving, it provided ordinary removal proceedings. *Id.* § 1225(b)(2)(A). But ***both groups*** are subject to mandatory detention.

In context, § 1225 deals with removal proceedings and detention upon inspection of all noncitizens who are applicants for admission. That means noncitizens presently arriving and noncitizens who gained entry without admission but are deemed to be applicants for admission. Both groups are treated the same throughout § 1225. Congress, in context, did not group these two classes of people—those arriving and those present without admission—together in paragraph (a) by "deem[ing]" them both "applicants for

admission" only to ungroup ambiguously them and apply paragraph (b) to just one of the two groups.

2. "Appl[ying]" and "Seeking"

Consider next the words "applicant" and its relationship with the similar word "seeking." The R. & R. appropriately points to The American Heritage Dictionary's definition of "seek." R. & R. at 12. But it shouldn't have stopped its lexicological inquiry there.

"Applicant" means "One that applies, as for a job." *Applicant*, Am. Heritage Dict. (5th ed. 2022). In ordinary usage, a person "appl[ying]" for a benefit is "seeking" that benefit. *Apply*, The Am. Heritage Dict. (5th ed. 2022) ("To request or *seek* assistance, employment, or *admission*." (emphasis added)). When Congress "deemed" people who have long been present in the United States without admission as "applicants for admission," it used the word "applicant" to convey that such person would be "appl[ying]" for admission, a term literally defined by the dictionary to mean "seek[ing] . . . admission." *Id.* The Court should recognize this plain-meaning interpretation of the words and decline to find Congress meant something other than that plain meaning.

3. "Applicant for admission or otherwise seeking admission"

In § 1225(a)(3), Congress required immigration officials to inspect those who are "applicants for admission *or otherwise* seeking admission." 8 U.S.C. § 1225(a)(3) (emphasis added). This text shows that Congress considered those "deemed" applicants for admission were equally considered "seeking" admission.

The phrase "or otherwise" is common in statutory text. For one example, the National Portrait Gallery is authorized to "purchase, accept, borrow, *or otherwise* acquire" works of art. 20 U.S.C. § 75e(1) (emphasis added). For a second example, a person commits the crime of trafficking in firearms if he "ships, transfers, causes to be transported, *or otherwise* disposes of any firearm to another person." 18 U.S.C. § 933 (emphasis added). In both these examples, "or otherwise" means to do the same act but "in another way; differently." *Otherwise*, Am. Heritage Dict. (5th ed. 2022). When the National Portrait Gallery "purchase[s]" portraiture, it also "acquire[s]" it; when a firearms trafficker "ships" a firearm, he "disposes of" it to another. In both examples, the broader catchall word at the end of the list encompasses the more specific word or words that come before.

So too, Congress required noncitizens who are "applicants for admission or otherwise seeking admission" to be inspected. 8 U.S.C. § 1225(a)(3). The latter term, "seeking admission," is broader—as the R. & R. points out, it could apply to someone applying for a visa at a consulate office abroad.[1] R. & R. at 17 (quoting *Romero v. Hyde*, No. 25-cv-11631, 2025 WL 2403827, at *9-10 (D. Mass. Aug. 19, 2025)). Someone could "seek[] admission" in some way other than becoming an "applicant for admission" within the meaning of that term in § 1225. So too could the National Portrait Gallery "otherwise acquire" portraiture without "purchas[ing] it." 20 U.S.C. § 75e(1). But "purchase" nonetheless fits within "acquire." So too when a person becomes an "applicant for admission," he "seek[s] admission."

[1] For the same reason, the government's interpretation doesn't violate the "meaningful variation" canon, as the R. & R. concluded. R. & R. at 17-18.

Whether the petitioner was "seeking admission," as the R. & R. says, is "the critical question." R. & R. at 12. The answer is yes. The Court should give ordinary meaning to the words Congress chose and conclude Congress deemed Petitioner an applicant for admission, meaning he is seeking admission.

B. Paragraph (b)

Turn next to paragraph (b). Section 1225(b)(1) applies to those applicants for admission who are "arriving in the United States," plus some others who are already present without admission but who cannot prove they have been continuously present for two years. 8 U.S.C. § 1225(b)(1)(A)(i), (iii). Section 1225(b)(2), entitled "Inspection of other" noncitizens, applies "in the case of [a noncitizen] who is an applicant for admission." *Id.* § 1225(b)(2)(A). It does "not apply to" any noncitizen "to whom paragraph (1) applies[.]" *Id.* § 1225(b)(2)(B)(ii). That is, it applies to "applicants for admission" *except* those who "arrive[] in the United States" and are found inadmissible for failing to have valid documentation. *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018).

Subparagraph (b)(2) goes on to use the phrase "seeking admission." The phrase "applicant for admission . . . seeking admission" in § 1225(b)(2) should not be equated with "arriving," a term Congress used elsewhere in the statute. If Congress meant to limit subparagraph (b)(2) to noncitizens "arriving" at or near the border, then it would have used that word, as it did in subparagraph (b)(1). By deliberately not using the word "arriving" in subparagraph (b)(2), and instead using words and phrases like "other" noncitizens and "applicants for admission . . . seeking admission," Congress plainly meant to extend

subparagraph (b)(2)'s scope beyond just those applicants for admission who are arriving or recently arrived.

The R. & R. justified reaching a different result on the grounds that it would avoid superfluidity. R. & R. at 16 (striking out "seeking admission" from § 1225(b)(2)). But the R. & R.'s interpretation creates the same superfluidity problem it seeks to avoid. Congress used words other than "arriving" in (b)(2) to distinguish that subparagraph's requirement from the arrival-focused provisions of (b)(1). Petitioner likewise points to redundancies based on the Laken Riley Act. But the Supreme Court has recognized that "redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton v. Barr*, 590 U.S. 222, 239 (2020). "Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.*

And yet, that is what Petitioner's interpretation does. When Congress meant to limit § 1225(b)'s detention provisions to those only applicants for admission who are arriving, it did so explicitly. 8 U.S.C. § 1225(b)(1)(A). Reading "other" noncitizens and "applicant for admission . . . seeking admission" under (b)(2) to also mean only those who are "arriving" would eliminate one of the two groups of people deemed to be "applicants for admission" in (a)(1) and tear down the approach Congress selected when it commanded those two groups be treated alike.

Petitioner's and the R. & R.'s interpretation also renders § 1225(b)(2) practically meaningless. Congress wrote (b)(1) to provide for mandatory detention and expedited

removal of applicants for admission who are arriving without valid documentation, plus some more recent arrivals. 8 U.S.C. § 1225(b)(1)(A). Congress then wrote (b)(2) to apply to "other" noncitizen "applicants for admission" without specifying that those people must also be "arriving," and in fact excluded those arrivals and recent arrivals subject to (b)(1) from the reach of (b)(2). *Id.* § 1225(b)(2)(B)(ii). The R. & R.'s interpretation leaves little, if any, work for (b)(2) to do.

The R. & R. responded to this argument by pointing out that § 1225(b)(1) doesn't apply to "all arriving noncitizens," but instead applies more narrowly to those found "inadmissible under section 1182(a)(6)(C) or 1182(a)(7)." R. & R. at 23 (citing 8 U.S.C. § 1182). This recognition, the R. & R. concludes, leaves a set of arriving applicants to whom (b)(2) could theoretically apply. *Id.* But between § 1182(a)(6)(C) and (a)(7), these two inadmissibility provisions apply to all noncitizens arriving without documentation (under § 1182(a)(7)) and those arriving with documentation they obtained by misrepresentation (under § 1182(a)(6)(C)). 8 U.S.C. § 1182(a). That is, subparagraph (b)(1) applies broadly to *undocumented* applicants for admission, leaving subparagraph (b)(2) to apply to those applicants for admission who (i) were found admissible when they received a valid visa, but (ii) were inspected upon arrival and found inadmissible, (iii) for some reason that didn't prevent them from getting the visa in the first place. This theoretical noncitizen is not before the Court and, in any event, is obviously not who Congress sought to keep in mandatory detention while going easy on those without valid documentation who flouted the immigration law, evaded inspection, and have remained in the country unlawfully for years.

Far from contradicting the government's interpretation, the documented/undocumented distinction sharpens the focus on what Congress meant to do in § 1225. Congress knew that requiring mandatory detention of undocumented noncitizens upon their arrival might encourage that group to avoid ports of entry and evade inspection. Section 1225 removed the adverse incentive to evade the immigration law by deeming all inadmissible noncitizens as "applicants for admission." *Torres*, 976 F.3d at 928 (quoting 8 U.S.C. § 1225(a)(1)). But the same rationale doesn't apply to a noncitizen with a valid entry document. He has every incentive to appear at a port of entry, present his entry document, and be inspected; he has no incentive to cross into the country unlawfully with his valid entry document.

There's a better reading than the one the R & R proposes, one that accounts for more of Congress's plain language and textually evident purpose. Instead of rendering § 1225(b)(2) a nullity, the Court should recognize Congress "deemed" all inadmissible noncitizens to be applicants for admission in § 1225, and that such a person, regardless of their physical presence within the United States, is "appl[ying] for admission" and thus "seeking admission."

III. The BIA recently adopted the government's interpretation, and the Court should consider that expert panel's reasoned conclusion.

The BIA issued a decision addressing this exact issue on Friday, September 5—the same day the R. & R. was issued. The decision, *In re Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), adopts the government's interpretation of § 1225(b)(2), along similar lines. Though agency decisions and practice are not binding on this Court, its reasoning is persuasive.

* * *

The federal respondents request the Court sustain their objection and deny the habeas petition, concluding Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

Dated: September 12, 2025

JOSEPH H. THOMPSON
Acting United States Attorney

/s/Lucas B. Draisey

BY: LUCAS B. DRAISEY
Assistant United States Attorney
Attorney ID Number 0401625
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600
lucas.draisey@usdoj.gov