IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

RUBELIO GILBERTO RAMIREZ-ROJAS, Petitioner, v. KRISTI NOEM, et al., Respondents.	)	CIV-25-1236-HE

RESPONDENTS' OBJECTION TO REPORT AND RECOMMENDATION

Respondents respectfully object to the Report and Recommendation (R&R) entered on December 3, 2025 (Doc. 10).

This objection expressly reasserts and does not waive the arguments set forth in the Response (Doc. 8), but focuses on two particular points: (1) the R&R misapplied the jurisdiction stripping provisions of the INA, including 8 U.S.C. § 1252(g); and (2) the R&R failed to properly apply the "deeming" provision of § 1225(a)(1) and instead engaged in a broader structural analysis that cannot be squared with the text, title, and purpose of the statute.

I. The INA's Channeling and Jurisdiction Stripping Provisions Bar Relief

Title 8, Section 1252(g) states that courts lack jurisdiction to consider "any cause or claim by or on behalf of any alien arising from the decision or action by [DHS] to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." In the Tenth Circuit, the test is whether a challenged decision or action

is one directly and immediately connected to one of the enumerated actions/decision. *See Tsering v. U.S. Immigr. & Customs Enf't*, 403 F. Appx 339, 343 (10th Cir. 2010) ("We agree with the Fifth Circuit that claims that clearly are included within the definition of arising from are those claims connected *directly and immediately* with a decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." (cleaned up)) *Mochama v. Zwetow*, 14-cv-2121-KHV, 2017 WL 36363, at *8 (D. Kan. Jan. 3, 2017) ("The Tenth Circuit reviews whether claims are connected directly and immediately with a decision or action by the Attorney General to commence proceedings."). The R&R does not address this test.

Here, the immigration officer's examination of Petitioner and subsequent determination under § 1225(b)(2)(A) directly and immediately effected the *commencement* of the proceedings against Petitioner. If Petitioner contends that the immigration officer's examination and determination under § 1225 is not the basis of DHS's discretionary decision to commence removal proceedings, it is not stated in the Petition. Nor is it addressed or explained in the R&R. The application of § 1225(b)(2)(A) is an integral part of DHS's discretionary choice to commence proceedings and seek the deportation.

Petitioner's assertion that DHS should have used § 1226 instead of § 1225 underscores this point. Specifically, in § 1226(e), Congress made clear that the decision whether to use any of § 1226's provisions is itself an unreviewable discretionary act. *See* 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review."). And critically, "§ 1252(g) was directed against … attempts to impose judicial constraints upon prosecutorial discretion."

Veloz-Luvevano v. Lynch, 799 F.3d 1308, 1315 (10th Cir. 2015) (quoting *Reno v. Am.–Arab Anti–Discrimination Comm.* [hereinafter AADC], 525 U.S. 471, 485 n. 9 (1999)). The R&R does not address this point.

The R&R cites to *Jennings* for the proposition that the Court's *AADC* decision "did not interpret [§ 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General." R&R at 7. However, that citation is to the three-judge plurality decision not adopted by other justices. *See Jennings v. Rodriguez*, 583 U.S. 281, 314 (2018) (concurrence by Thomas, J., joined by Gorsuch, J., contrasting the analysis of the plurality, concurrence, and dissent). Moreover, the assertion of § 1252(g) for the discretionary determinations of an immigration officer is not just "any claim." It is an act intimately tied to the commencement of proceedings. 8 U.S.C. § 1225(b)(2)(A) ("if the examining immigration officer determines … the alien shall be detained for a proceeding under section 1229a"); *AADC*, 525 U.S. at 483 (explaining that the enumerated actions/decisions "represent the initiation or prosecution of various stages in the deportation process.").

And it bears repeating that Petitioner's assertion that § 1226 should have been used instead *is expressly protected by that very provision as discretionary*—which is what § 1252(g) is intended to protect. 8 U.S.C. § 1226(e); *AADC*, 525 U.S. at 487 (characterizing § 1252(g) as a "discretion-protecting provision"). And protected discretion is the discretion to be both more forgiving or more exacting. Here, DHS has made the determination to more fully utilize § 1225(b)(2)(A). That is a form of protected discretion under § 1252(g). *See Aguilar-Alvarez v. Holder*, 528 F. App'x 862, 870–71 (10th Cir. 2013) (applying §

1252(g) to the re-assertion of removal proceedings). Moreover, such a statutory challenge is to be reviewed later, by the court of appeals pursuant to § 1252(b)(9).

The R&R also attempts to recast Count I as merely challenging the legal basis of Petitioner's detention. But that conflates the statutory challenge with the constitutional challenge. Petitioner's due process claim (Count II) challenges his detention as a due process violation. But the statutory argument of Count I is different. It challenges the statutory *means* DHS selected. Specifically, Petitioner contends DHS should have used § 1226 instead of § 1225. But critically, there is no detention element to that debate. For example, detention plays no role in deciding whether Petitioner is an "applicant for admission" or "seeking admission" under § 1225. The availability of a bond determination for Petitioner is a *collateral* consequence of that debate. Thus, the crux of the challenge in Count I is *not* detention.

The R&R also cites to a recent district court opinion from another district. R&R at 7-8. That case asserts that § 1252(g) does not bar the review of purely legal determinations that require no factual development. *Id.* (citing *Gutierrez v. Baltasar,* No. 25-CV-2720-RMR, 2025 WL 2962908, at *3 (D. Colo. Oct. 17, 2025), which asserted that "[t]hese 'purely legal' questions fit the exception to § 1252(g)'s jurisdiction-stripping provision, as they can be decided in the abstract on an undisputed factual record"). But the Tenth Circuit has not adopted a "purely legal" or "abstract" non-factual exception to § 1252(g). And, as noted above, the application of § 1225 *does* involve factual issues regarding whether Petitioner is seeking admission—which the R&R relies upon. As such, *Gutierrez* uses the wrong standard and presumes "abstract" facts that are different than this case.

In summary, Petitioner asks the court to construe DHS to have exercised its discretion in a manner it did not. That is barred by § 1252(g). *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars [courts] from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents [courts] from considering whether the agency should have used a different statutory procedure to initiate the removal process."); *Acxel S.Q.D.C. v. Bondi*, Civ. No. 25-3348 PAM/DLM, 2025 WL 2617973, at *3 (D. Minn. Sept. 9, 2025) ("Petitioner precisely challenges Respondents' decision to detain him. Although he contends that § 1252(b)(9) does not bar his claims because he is challenging his ongoing detention, not the initial decision to detain him, this difference does not alter the Court's conclusion.").

II. The R&R's Statutory Analysis is Inconsistent with the Statutory Title, Purpose, and Text

Boiled down to its essence, the R&R contends that an applicant for admission is not seeking admission. It is akin to saying the applicant for college admission does not seek admission, or the job applicant does not seek the job. It is a reading that defies common sense, to say nothing of clear congressional intent to end the "entrance doctrine" with the 1996 amendment to § 1225. The deeming provision of § 1225(a)(1) expressly states that "[a]n alien present in the United States who has not been admitted … **shall be deemed** … an applicant for admission." The R&R concedes that Petitioner *is* an applicant for admission, *see* R&R at 13-14, but then ignores the import of the deeming provision by inquiring whether Petitioner also subjectively seeks admission. That move ignores the

deeming provision and clear congressional intent that the R&R does not meaningfully address.

A. The Title of § 1225 Is Consistent with Respondent's Reading and Inconsistent with the R&R's Construction

The R&R "begins" by evaluating the title § 1225 and concludes that it suggests that the section is limited to "arriving aliens." R&R 12. That conclusion suffers several infirmities.

Before addressing those points, it is worth pausing to recognize that the resort to a statutory title is unnecessary unless there is ambiguity not found here and that a title should not limit the plain text. *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008) ("To be sure, a subchapter heading cannot substitute for the operative text of the statute."); *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) ("The title of a statute cannot limit the plain meaning of the text." (cleaned up)).

The title of § 1225 reads:

> Inspection by immigration officers, *expedited removal of in admissible arriving aliens*, **referral for hearing.**

The R&R focuses (and italicizes) only the reference to "*arriving aliens*." R&R at 14. But that ignores the rest of the title. The first underlined portion is a reference to subpart (a)'s inspection obligations. The second italicized portion refers to the expedited proceedings of (b)(1) for "arriving aliens." Importantly, however, the third **bolded** portion of the title is a reference to the full removal proceedings under (b)(2)(A) for noncitizens present in the country. That is because "arriving aliens" under (b)(1) are subject to *expedited* removals and do not get full removal hearings pursuant to § 1229a. In contrast,

noncitizens present in the country with arguably more established due process interests are provided *full* removal hearings. *See* § 1225(b)(2)(A) ("detained for a proceeding under section 1229a"); *Sandoval*, 2025 WL 3048926, at *4 ("However, aliens subject to removal under § 1225(b)(2) are not subject to expedited removal but, rather, removal proceedings in the ordinary course pursuant to § 1229a.").

That same conclusion is also apparent from the subtitles within § 1225 that the R&R does not address. The title of (b)(1) is "Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled." In contrast, (b)(2) has *no* reference to arriving aliens. It reads "Inspection of other aliens." Critically, the use of "arriving" in (b)(1) but not (b)(2) must be given effect. The R&R's interpretation renders the "arriving" in (b)(1) superfluous if all of § 1225 only applies to "arriving aliens."

B. The R&R's Conclusion that § 1225 Is Limited to "Arriving" Noncitizens Is Inconsistent with the Purpose of the IIRIRA

The R&R's interpretation effectively repeals a statutory fix Congress enacted with IIRIRA. Specifically, prior to the 1996 passage of IIRIRA, an "anomaly" existed "whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). The addition of § 1225(a)(1) "ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission.'" *Id.*; *see also* H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("This subsection is intended to replace certain aspects of the current 'entry doctrine'").

The R&R's interpretive insertion of an "arriving" limitation into *all* of § 1225 undoes that fix and incentivizes noncompliance with immigration laws. *See Chavez*, 2025 WL 2730228, at *4 (rejecting Petitioner's reading because it would repeal the IIRIRA statutory fix); *Sandoval*, 2025 WL 3048926, at *6 n.7 ("For this Court to conclude that an alien who has unlawfully entered the United States and managed to remain in the country for a sufficient period of time is entitled to a bond hearing, while those who seek lawful entry and submit themselves for inspection are not, not only conflicts with the unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA."); *Oliveira*, 2025 WL 3095972, at *6 (holding that application of § 1225(b)(2)(A) to those residing in the "country comports with the legislative history of [IIRIRA]").[1]

Like Petitioner, the R&R does *not* address this point and cannot account for the deeming provision within its structural analysis of § 1225.

C. The R&R's Structural Reading Renders Specific References to "Arriving" Superfluous and Fundamentally *Cannot Account* for the Ommission of that Limitation in §§ (a)(1) and (b)(2)(A)

The R&R (and Petitioner) advances a reading of § 1225 that limits its application to arriving noncitizens. But that approach contravenes cannons of construction by rendering specific references to "arriving" in § 1225 superfluous. Indeed, Congress used the phrase "arriving alien" throughout Section 1225. *See, e.g.* 8 U.S.C. §§ 1225(a)(2), (b)(1), (c)(1),

[1] The R&R also states that "the Laken Riely Act also supports the Court's interpretation." R&R at 17. But the R&R *does not* grapple with or address any of the lengthy points asserted on that point in the Response. *See* Response at 19-22. Accordingly, they are expressly reasserted again here.

(d)(2). But Congress *did not* use the word "arriving" to limit the scope of § 1225(b)(2)(A)'s mandatory-detention provision. Had Congress intended to limit § 1225(b)(2)(A)'s scope to "arriving" noncitizens, it would have used that phrase like it did in § 1225(b)(1), a mere one subsection prior. Or it could have included a general provision that the section only applies to arriving noncitizens. But Congress did not and that election to selectively use "arriving" must be given effect. *Russello v. United States*, 464 U.S. 16, 23 (1983) ("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." (cleaned up)); *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004) (concluding that "[t]he Government's request that we read [a specific] phrase into [a statutory] exception, when it is clear that Congress knew how to specify [those words] when it wanted to, runs afoul of the usual rule that when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.").

Again, the R&R and Petitioner cannot account for the intentional inclusion of noncitizens "present in the United States" as "applicants for admission" *without* an "arriving" limitation in § 1225(a)(1), and the corresponding application of detention to such noncitizens in § 1225(b)(2)(A) also without an "arriving" limitation. The omission is striking and unexplained by the R&R's reading of the statute given the "arriving" limitation in numerous other parts of the *same* section.[2]

[2] For instance, DHS has exercised its unreviewable authority to designate for expedited removal those noncitizens that have entered illegally and *been present in the country for*

D. The R&R Disregards Common Understandings of Language, the INA's Deeming Provision, and Petitioner's Actions When Confronted

The R&R seems to accept that Petitioner is "technically" an applicant for admission, but contends that § 1225(b)(2)(A) does not apply because Petitioner is nonetheless not "seeking" admission. R&R at 18. That conclusion contravenes ordinary language, the deeming provision of the INA.

As an initial matter, crafting a distinction between an "applicant" and one who is "seeking" defies common understandings of language. It is akin to saying an "applicant for college admission" is not "seeking admission to college"; or that an "applicant for a job" is not "seeking the job." In each instance, the individuals are "seeking" by virtue of being an applicant. If it were otherwise, they would not be an "applicant" in the first instance.

Resort to the same dictionary relied upon by the R&R underscores this point. R&R at 15 (citing dictionary for "seeking"). Specifically, Merriam-Webster defines "applicant" as "one who applies." Applicant, Merriam-Webster, https://www.merriam-webster.com/dictionary/applicant (last visited December 17, 2025). Thus, an "applicant for admission" is one who *applies* for admission. Again, that accords with common understandings of plain language. The college applicant and the job applicant are seeking admission to college and a job, respectively. Here, Petitioner is *deemed* to be an applicant for admission.

---

up to two years. *See* 8 U.S.C. § 1225(b)(1)(A)(iii); Designating Aliens for Expedited Removal, 90 FR 8139 (Jan. 24, 2025). The contention that § 1225 is limited to "arriving" noncitizens cannot be squared with that statutory provision.

The R&R resists this straight-forward application by suggesting that this *particular* petitioner is somehow not "seeking admission" despite being an applicant for admission. But the INA's deeming provision conclusively resolves that question. Section 1225(a)(1) provides that noncitizens residing in the country are "deemed" an applicant for admission; meaning there is no need to inquire as to subjective intent or whether a noncitizens actions are sufficient to suggest an intent to apply. To the contrary, Congress included the deeming provision to obviate any such inquiry. As a matter of law, by being "present in the country" without being "admitted," Petitioner *is* deemed an "applicant for admission." *Olalde,*2025 WL 3131942, at *3 ("[T]he statute *defines* [petitioner] as seeking admission … Because [petitioner] is an alien, present in the United States, who has not been admitted, the law defines him to be an applicant for admission. He is thus seeking admission."); *Sandoval*, 2025 WL 3048926, at *5 n.5 ("The fact that Petitioner may have lacked the subjective intent to ever apply for admission does not prevent her from being categorized as an "applicant for admission" under § 1225. For this Court to hold otherwise would clearly contravene the plain statutory language and Congress's intent."); *Oliveira*, 2025 WL 3095972, at *5 n.4 (same); *Vargas Lopez,* 2025 WL 2780351, at *9 ("just because [petitioner] illegally remained in this country for years does not mean that he is suddenly not an 'applicant for admission' under § 1225(b)(2)"). The Court need not—and should not—look further.[3]

[3] The R&R also points to the broad scope of inspection authority in § 1225(a)(3) to suggest "seeking" must mean something more. R&R at 17. But that observation fundamentally misreads the section. By its plain terms, § 1225(a)(3) expansively applies to "all aliens" seeking admission, not just applicants for admission. *See* § 1225(a)(3) ("All aliens … who

CONCLUSION

Respondents respectfully request that the Court overrule the R&R, deny the petition, and enter judgment for Respondents.

Dated: December 17, 2025

Respectfully submitted,
ROBERT J. TROESTER
United States Attorney

/s/ Emily B. Fagan
Emily B. Fagam (OBA 22427)
Assistant U.S. Attorney
United States Attorney's Office
Western District of Oklahoma
210 Park Avenue, Suite 400
Oklahoma City, OK 73102
(405) 553-8700
emily.fagan@usdoj.gov

---

are applicants for admission *or otherwise seeking admission* … shall be inspected." (emphasis added)). Thus, the section actually underscores that applicants for admission (a subset of aliens) are deemed to be "seeking admission"—and thus the catchall "or otherwise seeking admission" is intended to sweep *even further* beyond those deemed. A reading that "applicants for admission" are not seeking admission makes no sense in the context of the provision and the clear intent of the 1996 amendment that created it.