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

JOSE ELEAZAR LEON-MARTINEZ, Petitioner,	)	
v.	)	CIV-25-1269-D
STEVE KELLEY, et al., Respondents.	)	

RESPONDENTS' OBJECTION TO REPORT AND RECOMMENDATION

Respectfully submitted,
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RESPONDENTS' OBJECTION TO REPORT AND RECOMMENDATION

Respondents *respectfully* object to the Report and Recommendation (R&R) entered on December 16, 2025 (Doc. 14) and also urge that this case should be dismissed as moot.

While this objection expressly reasserts and does not waive the arguments set forth in the Response (Doc. 16), it focuses on the R&R's failure to apply the plain meaning of § 1225(b)(2)(A) and address Petitioner's application for legal residency as "seeking admission."[1] Before doing so, Respondents first note that this case is now **moot**.

INTRODUCTION

As reflected in Petitioner's Status Report (Doc. 15), Petitioner received a bond hearing—apparently at the urging of Petitioner's counsel who (erroneously) argued that the R&R was *binding* on the immigration judge (IJ). While the IJ denied bond partially

[1] Respondents acknowledge this Court's ruling in *Colin v. Holt*, No. CIV-25-1189-D, 2025 WL 3645176 (W.D. Okla. Dec. 16, 2025) that was issued on the same day as the R&R, and understand this case may be similarly decided. However, this objection is asserted to preserve appellate issues and because **"[a] growing number of courts have gone the other way."** *Coronado v. DHS*, 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025); *see also Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025); *Hernandez Cruz v. Noem*, No. 8:25-CV-02566-SB-MAA, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025); *Valencia v. Chestnut*, No. 1:25-CV-01550 WBS JDP, 2025 WL 3205133, at *3 (E.D. Cal. Nov. 17, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Oliveira v. Patterson*, 6:25-cv-01463-DCJ-DJA, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, Case No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646 (W.D. La. Oct. 22, 2025), *report and recommendation adopted*, No. 6:25-CV-00451, 2025 WL 3113644 (W.D. La. Nov. 6, 2025); *Rojas v. Olson*, Case No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025);*Vargas Lopez v. Trump*, No. 25-CV-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

based on the *Matter of Hurtado's* reading of § 1225 that is the basis of this suit, the IJ also denied bond based on "Flight Risk." Doc. 15-1. Accordingly, Petitioner has received his bond hearing and this case is **moot** and should be dismissed. As set out in the Response, the jurisdiction channeling provisions of the INA preclude further review and Petitioner's path for appeal is through the BIA.

Should the Court nonetheless proceed to review the R&R, it should be rejected. The R&R concludes that a noncitizen who *applied* for cancellation of removal to obtain legal residency is somehow not *seeking* admission. But that conclusion defies common sense, ordinary language, and the statutory language, structure, and history.

The R&R concedes, as it must, that Petitioner *is* an "applicant for admission." R&R at 11. Specifically, he is an applicant for admission because he is "present in the United States" but "has not been admitted." 8 U.S.C. § 1225(a)(1). But the R&R then concludes that § 1225(b)(2)(A) does not apply because Petitioner is not "seeking admission" at the border. R&R at 12. But those two contentions do not align. Congress amended § 1225 in 1996 to make clear that an applicant for admission *includes* those that are "**present in the United States**" and **"[have] not been admitted"**—i.e., those *not* at the border. The R&R effectively nullifies that addition and reinstates the entry doctrine Congress sought to abolish by holding that applicants for admission must be seeking admission at the border to be detained under § 1225. That holding cannot be squared with the definition of "applicant for admission," as well as several other provisions within § 1225.[2]

[2] For instance, § 1225(b)(1)(A)(iii)(II) provides for *expedited* removal proceedings for certain noncitizens "physically present in the United States" for up to "2-year[s]," without

Moreover, the R&R fails to address the fact that the Petitioner *is* seeking a form of admission by filing to cancel his removal and obtain legal residency status. That fact was included in the Petition (¶10) and addressed in the Response. Moreover, the Response detailed why that is a form of admission (Response at 25) and Petitioner did not respond in his Reply. Against that backdrop, to the extent something more than being an applicant for admission is required, Petitioner's application is plainly *seeking admission*.

ARGUMENT

Although the R&R reviews the title and structure of the §§ 1225 and 1226, the crux of the recommendation turns on what it means to be "seeking admission." The R&R concludes that it requires an application at the border. But that conclusion cannot be squared with the text, structure, title, and history of § 1225.

I. The Plain Language of § 1225(b)(2)(A) Applies to Petitioner

Section 1225(b)(2)(A) provides that:

> [I]n the case of an alien who is an **applicant for admission**, if the examining immigration officer determines that an alien **seeking admission** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title. (emphasis added)

The R&R concedes that Petitioner is an "applicant for admission." R&R at 11. 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." 8 U.S.C. § 1225(a)(1) (emphasis added). Petitioner contends he has been present in the

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any proximity to the border requirement. A noncitizen residing in the interior of the country for more than a year is hardly an "arriving" noncitizen seeking admission at the border.

country since 2002. Petition at 1. Accordingly, he is an "applicant for admission." *Mejia 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."); *Vargas Lopez*, 2025 WL 2780351, *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)").

A. Applicants for Admission … Seek Admission

The R&R's reliance on "seeking admission" to read in geographic and temporal limitations fails to give effect to the plain language of the statute and defies cannons of interpretation. Indeed, the Supreme Court has treated § 1225(b)(2)(A) as applying to "*all applicants for admission* not covered by § 1225(b)(1)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (emphasis added); *see also Sandoval*, 2025 WL 3048926, *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.").

Statutory language "is known by the company it keeps." *Dubin v. United States*, 599 U.S. 110, 124 (2023) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). Section 1225(b)(2)(A) requires the detention of an "applicant for admission, if the examining immigration officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted." (emphasis added). The statutory text and

context show that being an "applicant for admission" is a means of "seeking admission." In other words, every "applicant for admission" is inherently and necessarily "seeking admission," at least absent a choice to withdraw their applications for admission or seek voluntary departure. No additional affirmative step is necessary.

Section 1225(a)(3) confirms this by providing that all noncitizens "who are applicants for admission or *otherwise seeking admission* ... shall be inspected by immigration officers." (emphasis added). The word "'[o]therwise' means 'in a different way or manner . . . .'" *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Att'y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("The phrase 'or otherwise' operates as a catchall: the specific items that precede it are *meant* to be subsumed by what comes after the 'or otherwise.'" *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019) (same); *see also* Black's Law Dictionary 1101 (6th ed. 1990) ("Otherwise. In a different manner; in another way, or in other ways"). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that any alien who is an "applicant for admission" *is* "seeking admission" for purposes of Section 1225(b)(2)(A).

"Seeking admission" is thus 'a term of art' that includes not only aliens who "entered the United States with visas or other entry documents before their presence became lawful" but also aliens who "entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of [INA §]

235(a)(1) . . . ." *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Id.* at 743. For example, an alien who previously unlawfully entered the United States and never is admitted, departs, and subsequently submits a literal application for admission to the United States—*e.g.*, obtaining travel documents, such as a visa, and presenting at a port of entry for inspection—is deemed to be "*again* seek[ing] admission" to the United States. *Id.* at 743-44 & n.6 (emphasis added) (quoting and discussing 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission "by operation of law." *Id.*

The everyday meaning of the statutory terms also supports this reading. One may "seek" something without "applying" for it—for example, one who is "seeking" happiness is not "applying" for it. But one *applying* for something necessarily is *seeking* it. *Accord Mejia Olalde*, 2025 WL 3131942, at *3 ("To 'seek' is a synonym of to 'apply' for."). *Compare* Webster's New World College Dictionary (4th ed.) at 69 ("apply" means "To make a formal request (*to* someone *for* something)"), *with id.* at 1298 ("seek" means "to request, ask for"). For example, a person who is "applying" for a job or admission to college is "seeking" the job or admission to the college. *See* The American Heritage Dictionary of the English Language 63 (1980) ("American Heritage Dictionary") ("apply" means "[t]o request or *seek* employment, acceptance, or *admission*" (emphasis added)).[3]

[3] Resort to the same dictionary relied upon by the R&R underscores this point. R&R at 13 (citing dictionary for "seeking"). Specifically, Merriam-Webster defines "applicant" as

Likewise, an alien who is "applying" for admission to the United States (*i.e.*, an "applicant for admission") necessarily is "seeking admission" to the United States. *Accord Rojas*, 2025 WL 3033967, at *8 ("seeking admission" is "best read as simply another way of referring to aliens who are applicants for admission"); *Cabanas*, 2025 WL 3171331, at *5 ("There is no material disjunction—by the terms of the statute or the English language—between the concept of 'applying' for something and 'seeking' something. That Petitioner has resided in the United States without valid permission for years thus doesn't render § 1225(b)(2)(A) inapplicable." (cleaned up).[4]

All of this confirms that neither the duration of a noncitizen's unlawful presence in the United States nor his distance from the border when apprehended alters the legal reality that an "applicant for admission" is "seeking admission." "Congress knows how to limit the scope" of the INA "geographically and temporally when it wants to." *Mejia Olalde*,

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"one who applies." Applicant, Merriam-Webster, https://www.merriam-webster.com/dictionary/applicant (last visited December 19, 2025). Thus, an "applicant for admission" is one who *applies for* admission. Again, that accords with common understandings of plain language.

[4] In *Colin*, 2025 WL 3645176 at *5, this Court found a movie theater analogy persuasive. Roughly stated, it suggested that someone who sneaks into a theater would not be regarded as "seeking admission" midway through the show. But the theater situation is not analogous for several reasons. First, there is no quasi-attendance status among movie watchers analogous to noncitizens. Presence permits watching the movie in a way that presence in the country does not confer the same status as citizens or legal permanent residents. Second, the illicit movie attendee was not statutorily **deemed an "applicant for admission" when "present in the theater without admission."** Understood more analogously, the attendee is not yet admitted and so is seeking admission by virtue of the statutory designation of not yet being admitted. The analogy only works by *negating* the very statutory provision it seeks to explain, underscoring the problem with it in the first instance.

2025 WL 3131942, at *4. For example, Section 1225(b)(1) may apply to aliens "arriving in the United States" or who "ha[ve] been physically present in the United States continuously for [a] 2-year period." 8 U.S.C. § 1225(b)(1). So, "[i]f Congress meant to say that an alien no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Mejia Olalde*, 2025 WL 3131942, at *4. It did not. To the contrary, Section 1225(a)(1)'s inclusion of *both* aliens "arriving" and those "present in the United States" confirms that *all* aliens who are not admitted are "applicants for admission," regardless of the length of their presence in the country.

None of this is to say, however, that "seeking admission" has no meaning or is surplus beyond "applicant for admission." To the contrary, as § 1225(a)(3) shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," not the exclusive way. For example, lawful permanent residents returning to the United States are not "applicants for admission," but they still may be deemed to be "seeking admission" in some circumstances. *See* 8 U.S.C. § 1101(a)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of "applicants for admission," the statute unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain admission. Stowaways, too, are not "applicants for admission" but are still subject to inspection for admissibility. *See* 8 U.S.C. §§ 1182(a)(6)(D); 1225(a)(2). Moreover, given the complexity of the statutory scheme and IIRIRA's changes, Congress's use of the phrase "or otherwise seeking admission" ensured that all aliens would be subject to Section 1225(a)'s inspection requirement—including aliens who entered before IIRIRA's effective date.

The R&R resists this conclusion by implicitly suggesting a new class of noncitizens; namely those that are in the country illegally, wanting to stay, and not departing, but that are somehow still not construed as "seeking" admission. But that creative construction finds no basis in the INA and leads to the absurd result that immigration officers cannot immediately detain a noncitizen residing in the United States without determining if they were somehow *actively* seeking admission (a standard not identified or defined in the INA or implementing regulations). Instead, the proper standard for the immigration officer is that which is plainly stated in the INA; namely, whether the noncitizen is "entitled to be admitted." *See Coronado*, 2025 WL 3628229, at *9 (noting that Petitioner's reading does not square with examining officer's articulated obligations and stating "one would also assume that Congress would have provided some directives as to the contours of that subset, *e.g.*, factors to consider in deciding whether a given 'applicant for admission' (an expressly defined term) is also 'seeking admission.' But Congress did not do so.").[5]

[5] In *Colin*, 2025 WL 3645176, at *5 n.2, this Court disagreed because noncitizens can still be arrested under § 1226(a) without inquiring about whether the noncitizen is actively and currently "seeking admission." But § 1226(a) requires a warrant to arrest, whereas § 1225(b)(2)(A) permits immediate arrest when inadmissible noncitizens are encountered by immigration officers. The Court's holding effectively eliminates warrantless arrest authority for inadmissible noncitizens in the country. And the availability of an arrest under § 1226 does not address the core issue that the R&R's reading of § 1225(b)(2)(A) still requires an unstated standard of what constitutes "seeking admission" for immigration officers' evaluation that is notably absent from the statute. That absence further evidences the implausibility of the R&R's reading. *See Coronado*, 2025 WL 3628229, at *9.

B. Petitioner's Application for Cancellation Demonstrates He *Is* Seeking Admission

Petitioner sought cancellation of removal and to obtain legal residency with a 42B Application. *See* Response at 25 n.13. That is significant. Even if some additional step beyond being an "applicant for admission" is required, Petitioner has certainly done so.

Petitioner's 42B Application seeks a form of admission. If successful, Petitioner's status would be a legal resident and he would have a form of legal admission. 8 U.S.C. § 1229b(b) ("The Attorney General may cancel removal of, and adjust to the status of an alien **lawfully admitted** for permanent residence, an alien who is inadmissible or deportable from the United States if the alien …"); 8 U.S.C.A. § 1101(a)(20) ("The term '**lawfully admitted** for permanent residence' means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws" (emphasis added)); *Djong v. Mayorkas*, No. 24-CV-00475-CNS, 2024 WL 5089985, at *4 n.5 (D. Colo. Dec. 12, 2024) ("The INA allows immigration judges to adjust the status of certain noncitizens to lawful permanent resident during a removal proceeding to avoid removal."). Again, Petitioner *is* seeking admission.

The R&R does not address this point and neither does Petitioner. Accordingly, it is conceded.

II. The Title, Structure, and History of § 1225 Are Inconsistent with the R&R's Construction

A. The Title and Structure of § 1225 Support the Respondents' Reading

The R&R evaluates the title of the section and concludes that it limits the application of the section to "arriving aliens." R&R at 10. That conclusion suffers several infirmities,

including the notable omission *of the remainder of the title* and the resulting incongruence with—if not outright superfluity of—the text of the provision if accepted.

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 inadmissible arriving aliens*, **referral for hearing.**

The R&R focuses (and italicizes) only the reference to "*arriving aliens*." R&R at 10. 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 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 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."). The Respondents' reading accords with that difference, whereas the R&R's exclusive focus on the "arriving" limitation cannot.

That same conclusion is also apparent from the subtitles within § 1225. 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."

More generally, Congress used the phrase "arriving alien" throughout Section 1225. *See, e.g.* 8 U.S.C. §§ 1225(a)(2), (b)(1), (c)(1), (d)(2). The phrase distinguishes a noncitizen presently or recently "arriving" in the United States from other "applicants for admission" who, like Petitioner, have been in the United States without being admitted. 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.").

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,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.").

The R&R's interpretive insertion of an "arriving" limitation into *all* of § 1225 undoes that fix and incentivizes noncompliance with immigration laws by providing more protection to those that bypass border inspections and evade detection to reside within the United States—a result at odds with the intent of Congress when amending § 1225 of the

INA. *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]").

III. The Laken Riley Act Does Not Render § 1225(b)(2)(A) Superfluous

The R&R asserts that a recent amendment to the INA—the Laken Riley Act ("LRA")—would be superfluous if the government's reading of § 1225(b)(2)(A) is accepted. R&R at 15. But that confuses a Venn diagram of overlapping enforcement schemes that facilitate prosecutorial discretion with perfectly congruent (and therefore superfluous) enforcement provisions that do not exist. *Melgar v. Bondi*, 8:25CV555, 2025 WL 3496721, at *12 (D. Neb. Dec. 5, 2025) ("Thus, the Court concludes that the two statues 'overlap' as to aliens they cover, like a Venn Diagram."). Instead, in both 1996 and 2025, Congress wanted *more* enforcement of immigration restrictions and enacted complementary provisions to effectuate that purpose.[6]

[6] *See Cabanas*, 2025 WL 3171331 *6 ("[T]he Laken Riley Act did have such effect, given that it required mandatory detention for criminal, inadmissible aliens who had not been subject to it—under either § 1225 or § 1226—by longstanding practice of prior Administrations. But this means only that Congress determined to narrow aspects of the

Section 1226(a)'s general detention authority, which permits the issuance of warrants to detain all noncitizens for their removal proceedings, must be read alongside § 1225, which specifically addresses the detention of applicants for admission which is a subset of noncitizens subject to § 1226. And § 1226 does not displace the more specific provisions in § 1225 governing the detention of applicants for admission. It is well established that where "there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one." *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 375 (1990) (citation omitted). Here, § 1225 is narrower in scope than § 1226. It applies only to "applicants for admission," which includes noncitizens present in the United States who have not been admitted. *See* 8 U.S.C. § 1225(a)(1).

To be sure, as amended by the LRA, § 1226(c)(1)(E) mandates detention for a group of noncitizens that includes a narrow subset of applicants for admission that may also be subject to § 1225(b)(2)(A) detention; namely, those who both entered without inspection and were arrested for, committed, or have admitted to committing one of a list of enumerated crimes. But § 1226(c)(1)(E) applies to *all* noncitizens who meet the criminal criteria and is thus broader. Conversely, the mandatory detention provisions of § 1226(c)(1)(E) do not reach the rest of applicants for admission under § 1225(b)(2)(A) who do *not* meet the criminal criteria. Put simply, the two enforcement provisions have overlap much like a Venn diagram, but they are not perfectly overlapping so as to make a provision

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discretion available to any Administration prioritizing removal proceedings toward § 1226. It doesn't follow that the Laken Riley Act undercuts the more fulsome, executive authority that Congress provided to exist independently under the text of § 1225(b)(2)(A)").

superfluous. *See Am. Car Rental Ass'n v. Humphreys*, 2025 WL 1758898, at *5 (D. Colo. May 29, 2025) ("There is, to be sure, significant overlap between the two. But the canon against superfluity only requires what its name implies; it does not require that each provision have entirely distinct coverage—just that total superfluity be avoided.").

As the Supreme Court has acknowledged, some overlap and 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.*; *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019) ("Sometimes the better overall reading of the statute contains some redundancy."). Section 1225(b)(2)(A) allows detention upon encountering an immigration agent and § 1226(c) provides for detention by the issuance of a warrant. Two *different* routes to detention, in addition to two different (albeit with some overlap) groups of noncitizens affected.

Moreover, if Petitioner's construction is correct, then one would expect to find a cross-reference to § 1225(a)(1) in § 1226(c)(1)(E)(i) or simply a reference to all "applicants for admission." That would be the direct manner accomplishing what the R&R suggests. But the LRA has no such cross reference, demonstrating that the LRA amendment is not limited to "applicants for admission."

Petitioner's assertion is also contradicted by the statute. The plain language of the LRA applies to *all* noncitizens who meet its criminal criteria, not just "applicants for

admission." For example, § 1226(c)(1)(E)(i) applies to noncitizens inadmissible under "paragraph … (6)(C) … of section 1182(a)." In turn, the referenced paragraph (6)(C) of § 1182(a) addresses misrepresentation of material facts and applies *even if a noncitizen obtained admission* (meaning, not an "applicant for admission") by fraud or misrepresentation. *See* 8 U.S.C. § 1182(a)(6)(C) ("Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible."). Put simply, even as amended by the LRA, § 1226 applies to *all* noncitizens and sweeps much broader. It is plainly not limited to applicants for admission. *Sandoval*, 2025 WL 3048926, at *5 ("Petitioner's argument that § 1226 would be rendered superfluous under Respondents' interpretation of § 1225(b)(2) is unpersuasive. The statutory scheme of the INA does not render these two provisions mutually exclusive, and there are many other categories of aliens to whom § 1226(a) is applicable, but not § 1225(b)(2)"); *Hernandez Cruz*, 2025 WL 3482630, at *4 ("But the fact that Congress added this provision as part of the Laken Riley Act in 2025 cannot be read to displace or supersede § 1225's requirement that all applicants for admission, including those who unlawfully came to the United States without inspection, be detained."); *Cabanas*, 2025 WL 3171331 *6 ("Simply put, amendment by the recent Laken Riley Act to § 1226 isn't superfluous. Beyond that, and regardless, the Supreme Court holds, redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." (cleaned up)).

Further, even if there is some overlap in the class of noncitizens between § 1225(b)(2)(A) and the LRA, the two provisions use different means, have different obligations, and invert the order of detention and examination. Those differences independently undercut any assertion of superfluity.

Finaly, the R&R suffers from a basic chronology problem. The Laken Riley Act passed on January 22, 2025, and was signed by the President on January 29, 2025. But as noted in the Petition, the more expanded use of § 1225 was not announced by ICE and DOJ until July of 2025 and *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 216 (BIA 2025) was decided later, in September of 2025. As such, Congress did not have the benefit of knowing the Executive's expanded use of § 1225 when it passed the Laken Riley Act. It was legislating against the backdrop of a more restrained enforcement strategy of the prior administration. That is significant:

> When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect. Here, at the time of enactment, the Laken Riley Act *did* have such effect, given that it *required* mandatory detention for criminal, inadmissible aliens who had not been subject to it—under either § 1225 or § 1226—by longstanding practice of prior Administrations. But this means only that Congress determined to narrow aspects of the discretion available to any Administration prioritizing removal proceedings toward § 1226. It doesn't follow that the Laken Riley Act undercuts the more fulsome, executive authority that Congress provided to exist independently under the text of § 1225(b)(2)(A). Simply put, amendment by the recent Laken Riley Act to § 1226 isn't superfluous.

Cabanas, 2025 WL 3171331, at *6 (cleaned up); *see also Valencia*, 2025 WL 3205133, at *4 ("This argument reverses the order of events. The Laken Riley Act was passed before the new interpretation of Section 1225 was issued. The Laken Riley Act could not therefore

'perform the work' of the expansive reading of Section 1225, because that work had not yet been done.").

CONCLUSION

In 1996, Congress deemed noncitizens already "present in the United States" to be "applicants for admission" to end the special treatment provided those that enter the country illegally. But the R&R urges a reading of § 1225(b)(2)(A) that effectively repeals that statutory fix, such that noncitizens are only "applicants for admission" at the border when seeking to enter. That reading cannot be squared with the text, structure, or intent of IIRIRA. Instead, by virtue of being an applicant for admission, a noncitizen is seeking admission even if within the United States. And if more is necessary, Petitioner still falls within § 1225(b)(2)(A) because he is and has been seeking admission through his *application* for cancellation of removal, which would then permit legal residency.

Accordingly, the Petition should be denied and the case dismissed.

Dated: December 23, 2025

Respectfully submitted,
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