

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

ZHI FENG HE,
Petitioner,

v.

PAMELA BONDI, ET AL.,
Respondents.

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Case No. CIV-25-1435-G

FEDERAL RESPONDENTS' OBJECTION
TO REPORT AND RECOMMENDATION

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DEPARTMENT OF HOMELAND
SECURITY

Objection to Report and Recommendation

NOW COME Respondents Attorney General Pamela Bondi, Secretary of Homeland Security Krisit Noem, Acting Director of U.S. Immigration and Customs Enforcement (ICE) Todd M. Lyons, Acting Executive Associate Director for Enforcement and Removal Operations (ERO) Marcos Charles, ERO Field Office Director Mark Siegel, ICE, and the U.S. Department of Homeland Security (DHS) (collectively, the “Federal Respondents”) who object to Magistrate Judge Chris M. Stephens’s Report and Recommendation (R&R) [Doc. 14] insofar as it recommends that the Court grant in part Petitioner Zhi Feng He’s Petition for Writ of Habeas Corpus [Doc. 1] and order the Federal Respondents to provide him a bond hearing within five business days or to release him if a bond hearing is not conducted within that time. *See* R&R [Doc. 14] at 1, 27. The Federal Respondents do not object to the recommendations to decline to decide Petitioner’s due process claim and deny his motion to appoint counsel. *Id.* at 26-27. In support of their objection, the Federal Respondents respectfully submit the following:

Brief in Support of Objection

1. Introduction:

Petitioner contends that his detention under 8 U.S.C. § 1225(b)(2)(A) is unlawful and that his custody is properly governed by § 1226(a). Petition [Doc. 1] at 7; *see also id.* at 2, Ground Two. The R&R agrees with Petitioner that § 1226(a) applies to his detention and finds that he falls within the confines of § 1226(a), not § 1225(b)(2)(A). R&R [Doc. 14] at 10, 12. That determination is based on Magistrate Judge Stephens’s review of “the statutory text, Congressional intent, ... § 1226(a)’s application for the past three decades,”

and recent cases addressing the issue. *Id.* at 11. The Federal Respondents respectfully submit that proper analysis starts and ends with the statutory text. The text establishes that Petitioner is properly detained pursuant to § 1225(b)(2)(A) and he is not entitled to a bond hearing.

2. Background:

Mr. He is a native and citizen of China who entered the United States illegally in December 2022. Petition [Doc. 1] at 4. He was not admitted or paroled after inspection by an immigration officer, and later that month he was placed in removal proceedings. He was charged under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) (codified at 8 U.S.C. § 1182(a)(6)(A)(i)) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. Notice to Appear (NTA) [Doc. 9-1] at 1. Mr. He applied for asylum, and shortly thereafter DHS released him on his own recognizance. Petition [Doc. 1] at 4; Form I-589, Application for Asylum and for Withholding of Removal [Doc. 9-2].

ICE re-detained him on September 16, 2025. He is held at the Cimarron Correctional Facility under 8 U.S.C. § 1225. Petition [Doc. 1] at 4; Notice [Doc. 9-3].

On December 1, 2025, an Immigration Judge (IJ) determined that Mr. He is inadmissible under INA § 212(a)(6)(A)(i). The IJ denied his requests for asylum and withholding of removal and ordered him removed to China. Order [Doc. 9-4] at 1, 3. Mr. He has appealed the IJ's removal order. Federal Respondents' Supplemental Brief [Doc. 13] at 2.

3. Mr. He is an applicant for admission under 8 U.S.C. § 1225:

Mr. He's request for a bond hearing turns on whether ICE may detain him under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A) or must instead proceed under the bond-eligible framework of § 1226(a). The canons of statutory construction compel a different conclusion than the one reached by the R&R.

According to the R&R, the “statutory text does not provide a definitive answer as to what it means to be present without admittance where, as here, the noncitizen has already entered and has been residing in the United States.” R&R [Doc. 14] at 12-13. The R&R “concludes the terms ‘applicant for admission’ and ‘seeking admission’ in § 1225(b)(2)(A) do not cleanly apply to noncitizens like Petitioner.” *Id.* at 16.

Section 1225(a)(1) defines which aliens are “applicants for admission,” stating:

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1).

Congress “explicitly defined” the phrase “applicant for admission” as “[a]n alien present in the United States who has not been admitted or who arrives in the United States ...” *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344, at *3 (W.D. Okla. Jan. 6, 2026) (quoting 8 U.S.C. § 1225(a)(1)). “Congress explicitly said that any alien ‘present in the United States who has not been admitted’ is deemed an ‘applicant for admission.’” *Id.* at *4. Under the plain language of § 1225(a)(1), an alien who is present in the United States and charged with being inadmissible under 8 U.S.C. §

1182(a)(6)(A)(i)) as having entered the United States without inspection is deemed an applicant for admission. *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302, at *7 (W.D. Okla. Dec. 26, 2025).

Petitioner admits that he “crossed the United States-Mexico border on or about December 22, 2022 and was subsequently arrested by border patrol agents.” Petition [Doc. 1]. He was “not then admitted or paroled after inspection by an Immigration Officer,” and DHS charged him as removable under 8 U.S.C. § 1182(a)(6)(A)(i). NTA [Doc. 9-1] at 1. Congress has statutorily deemed and has explicitly defined Petitioner to be an “applicant for admission.” An alien who enters the United States without being formally admitted, and who, like Petitioner, concedes that he was not admitted, “fits neatly into the definition of an ‘applicant for admission.’” *Gutierrez Sosa*, 2026 WL 36344, at *3.

The R&R improperly grafts onto § 1225(a)(1) qualifiers that are not in the statutory text, questioning “whether ‘an applicant for admission’ who is ‘seeking admission’ includes a noncitizen like Petitioner, *who was living in the United States when arrested.*” R&R [Doc. 14] at 12 (emphasis added). According to the R&R, the text of § 1225(a)(1) “does not provide a definitive answer as to what it means to be present without admittance where, as here, the noncitizen *has already entered and has been residing in the United States.*” *Id.* at 12-13 (emphasis added).

“It is a fundamental principle of statutory interpretation that ‘absent provision[s] cannot be supplied by the courts.’” *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (quoting A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 94 (2012)). When a court effectively adds language to a statute’s text, it moves away from statutory

construction to statutory enlargement, but this “transcends the judicial function.” *Nichols v. United States*, 578 U.S. 104, 110 (2016) (quoting *Iselin v. United States*, 270 U.S. 245, 251 (1926)). “[C]ourts ‘ordinarily resist reading words or elements into a statute that do not appear on its face.’” *Montoya*, 2025 WL 3733302, at *6 (quoting *Bates v. United States*, 522 U.S. 23, 29 (1997)).

Searching for textual ambiguity where there is none, the R&R embarks on “an analysis of the statute’s title.” R&R [Doc. 14] at 13. “Section 1225 is titled: ‘Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing.’” *Id.* (emphasis added by the R&R). According to the R&R, “[u]se of the term ‘arriving’ to describe noncitizens indicates the section governs entrance of noncitizens to the United States.” *Id.*

“But ‘the title of a statute and the heading of a section cannot limit the plain meaning of the text.’” *Gutierrez Sosa*, 2026 WL 36344, at *3 (W.D. Okla. Jan. 6, 2026), quoting *Yates v. United States*, 574 U.S. 528, 559 (2015) (Kagan, J. dissenting) (quoting *Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528-529, (1947) (internal quotations omitted)). Nothing in the title of § 1225 is inconsistent with the plain meaning of the statutory text.

The title describes three categories of contents, each separated by a semicolon, and each of which generally describes various parts of § 1225. Nothing about the title’s distinct reference to “inspection by immigration officials” and “expedited removal of inadmissible arriving aliens” works to transform the whole of § 1225 into a section applying to only some undefined subset of aliens (those who have “recently” arrived). To do so would ignore both the plain language and broader operation of § 1225, which deals with inspection of recently arrived aliens and “other aliens” alike.

Gutierrez Sosa, 2026 WL 36344, at *3.

The R&R construes the term “arriving” in the title of § 1225 to indicate that § 1225 “governs entrance of noncitizens to the United States.” R&R [Doc. 14] at 13. But Congress did not include in § 1225(a)(1) the term “entrance” and it is not the proper function of a court to add absent words to statutes. A title or heading “cannot substitute for the operative text of the statute.” *Fla. Dep’t of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008). A statute’s title cannot limit the plain meaning of its text. *Pennsylvania Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998).

Furthermore, “by focusing on the middle part of § 1225’s title regarding ‘expedited removal of inadmissible arriving aliens,’ the R. & R. fails to appreciate the remainder of the title.” *Montoya*, 2025 WL 3733302, at *6. For example, the title’s third part, “referral for hearing,” relates to aliens subject to full removal proceedings. *Id.* “Aliens subject to expedited removal do not receive *any* hearing, while unadmitted aliens subject to § 1225(b)(2)(A) receive a removal hearing under § 1229a, though not a bond hearing.” *Id.*

The R&R points to § 1225(b)(2)’s subheading, “Inspection of Other Aliens,” and construes this to “reinforc[e] the idea that it applies to those coming in, not already present.” R&R [Doc. 14] at 14. But as the Court in *Montoya* found, this subheading title simply does not reinforce the idea that the subsection applies to aliens coming in, not already present. “Nothing in the language of § 1225 limits its operation to only those applicants for admission who are arriving.” *Montoya*, 2025 WL 3733302, at *7.

The R&R urges that § 1225 “is also located between two other sections dealing with arrivals of noncitizens,” namely, § 1224 (“Designation of ports of entry for aliens arriving by aircraft”) and § 1225a (“Preinspection at foreign airports”). R&R [Doc. 14] at 13. The

Court in *Gutierrez Sosa* responded to the same observation about the placement of § 1225:

Because § 1225 is sandwiched between two titles that on their face deal with arriving aliens, and because much of § 1225 deals with the logistics of aliens entering the United States, the R&R concludes that despite what it says, § 1225 is only concerned with *recently* arrived aliens. But this sort of statutory context can't change the meaning of unambiguous statutory language. Moreover, to limit, as the R&R suggests, the reach of § 1225(a)(1) to aliens attempting to enter the United States would *create* confusion in an otherwise clear statute, as § 1225(a)(1) applies to “alien[s] *present* in the United States who ha[ve] not been admitted...” Section 1225 is thus plainly concerned with more than just the preadmission process.

Gutierrez Sosa, 2026 WL 36344, at *4 (emphasis supplied by the Court; internal footnote omitted).

In sum, Mr. He “is an applicant for admission under the plain language of § 1225(a)(1) because he is present in the United States and charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.” *Montoya*, 2025 WL 3733302, at *7.

4. Mr. He is seeking admission:

According to the R&R, the phrase “seeking admission” requires that the applicant “must be presently and actively seeking lawful entry into the United States,” and this most logically occurs at a border upon inspection. R&R [Doc. 14] at 15. As such, the R&R concludes that mandatory detention under § 1225(b)(2)(A) applies to “arriving noncitizens actively seeking admission at or near the border or port of entry.” *Id.*

However, an alien who is “applicant for admission” is necessarily “seeking admission.” *Gutierrez Sosa*, 2026 WL 36344, at *4.

Section 1225(a)(1) “deem[s]” “an alien present in the United States who has not been admitted ... an applicant for admission.” The statute doesn't describe

what the alien is doing. It imposes a status by operation of law.

Montoya, 2025 WL 3733302, at *8.

“The statute gives no temporal or geographic limitations on the status of being an applicant for admission.” *Id.* at *2.¹ “All aliens ... who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). The word “otherwise” in § 1225(a)(3) “establishes that ‘aliens ... seeking admission’ is the category to which ‘applicants for admission’ belong.” *Montoya*, 2025 WL 3733302, at *8. “If ‘applicants for admission’ are subject to inspection because they fall within the broader class of those ‘seeking admission,’ then the statute necessarily treats ‘seeking admission’ as a condition that attaches to anyone deemed an ‘applicant for admission.’” *Id.*

The condition of “seeking admission” is statutorily imposed. “Seeking” does not describe the alien’s mindset or what he is doing. “The alien is ‘seeking admission’ in the same way the alien is ‘an applicant for admission’—by congressional decree.” *Id.* All “applicants for admission” are, by operation of statute, “seeking admission.” *Id.*

5. Prior application of § 1226(a) does not dictate its application now:

The R&R favors Petitioner in part because of “§ 1226(a)’s application for the past three decades” by the Board of Immigration Appeals (BIA). R&R [Doc. 14] at 11. However, a long-established agency practice does not justify a rule that denies statutory

¹ See also *Gutierrez Sosa v. Holt*, 2026 WL 36344, at *4 (“Does anyone seriously think that Congress created a regime that rewards those aliens who evade deportation for long enough by making them no longer subject to automatic detention when caught? Such a perverse incentive structure surely wasn’t what Congress intended.”).

text its fairest reading. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). As explained in *Gutierrez Sosa*, “any long-standing agency practice of detaining aliens who entered the United States without inspection pursuant to § 1226 rather than § 1225(b)(2) can’t justify ignoring the law.” 2026 WL 36344, at *5. Past misreading or misapplication of the law to afford bond hearings neither justifies nor compels the Court to do the same in this instance. *Id.*

The past decision to grant bond hearings to applicants for admission “reflected an exercise of agency discretion.” *Montoya*, 2025 WL 3733302, at *12. “[T]he statutory propriety of denying bond hearings under § 1225(b)(2)(A) went without judicial inquiry until now for the simple reason that ‘the judicial power of federal courts is constitutionally restricted to cases and controversies.’” *Id.*, quoting *Flast v. Cohen*, 392 U.S. 83, 94 (1968).

6. Other judges’ application of § 1226(a) does not compel the Court in this instance to do the same:

The R&R notes that “five Judges in this District have recently applied § 1226(a) to habeas petitioners similarly situated to Petitioner.” R&R [Doc. 14] at 11 (citing cases); *see also id.* at 23 (“[T]he five above-referenced District Judges have ruled in at least 16 separate habeas challenges that § 1226(a) governs petitioners who are already in the country.”). On the other hand, the Honorable Jodi Dishman and Patrick Wyrick “have adopted Respondents’ position and applied § 1225(b)(2)(A).” *Id.* at 23-24, citing *Gutierrez Sosa*, 2026 WL 36344, at *3, and *Montoya*, 2025 WL 3733302, at *6-12.

The authority in the Western District is split. The Federal Respondents respectfully submit that, given the depth of the analysis in *Montoya* and *Gutierrez Sosa*, the Court

should be guided by those cases. The statutory text establishes that Petitioner is properly detained under § 1225(b)(2)(A), and he is not entitled to a bond hearing.

7. Mr. He soon may be subject to mandatory detention:

On December 1, 2025, Immigration Judge (IJ) Ivan Gardzelewski determined that Mr. He is inadmissible and ordered him removed to China. Order [Doc. 9-4] at 1, 3. When an alien is ordered removed, a statutory 90-day removal period begins. 8 U.S.C. § 1231(a)(1)(A). “During the removal period, the Attorney General shall detain the alien.” *Id.*, § 1231(a)(2).² “When an alien has been found to be unlawfully present in the United States and a final order of removal has been entered, the Government ordinarily secures the alien’s removal during a subsequent 90-day statutory ‘removal period,’ during which time the alien normally is held in custody.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). The Supreme Court in *Zadvydas* explained further:

After entry of a final removal order and during the 90-day removal period, ... aliens must be held in custody. § 1231(a)(2). Subsequently, as the post-removal-period statute provides, the Government “may” continue to detain an alien who still remains here or release that alien under supervision. § 1231(a)(6).

Id. at 683.

Mr. He appears *pro se* herein, but he is represented by counsel in the Immigration Court proceedings. Order [Doc. 9-4] at 1. Mr. He’s counsel reserved the right to appeal

² Courts have characterized statutory references to the Attorney General in the INA as a legal artifact. *See, e.g., Awe v. Napolitano*, 494 F. App’x 860, 862 n. 3 (10th Cir. 2012); *Djong v. Mayorkas*, No. 24-CV-00475-CNS, 2024 WL 5089985, at *1, n. 1 (D. Colo. Dec. 12, 2024); *Zein v. United States Att’y Gen.*, No. 3:21-CV-511-RGJ, 2022 WL 419591, at *2 (W.D. Ky. Feb. 10, 2022); *Ali v. Swacina*, No. 15CV61820BLOOMVALLE, 2015 WL 8610535, at *3 (S.D. Fla. Dec. 14, 2015).

the IJ's order of removal, *id.* at 4, an appeal was filed, and receipt of the appeal was acknowledged by immigration authorities. Supplemental Brief [Doc. 13] at 2.

A removal order becomes final upon determination by the BIA or the expiration of time within which an alien may seek BIA review. *Luna-Garcia v. Holder*, 777 F.3d 1182, 1185 (10th Cir. 2015) (citing 8 U.S.C. § 1101(a)(47)(B)); *Yusupov v. Att'y Gen. of U.S.*, 518 F.3d 185, 195-96 (3d Cir. 2008); *Del Pilar v. U.S. Atty. Gen.*, 326 F.3d 1154, 1156 (11th Cir. 2003) (citing 8 U.S.C. § 1101(a)(47)(B)(i)-(ii)). If the BIA denies Mr. He's appeal and the removal order becomes final, then he will be subject to the mandatory detention provision of 8 U.S.C. § 1231(a)(1).³

Respectfully submitted this 5th day of February, 2026.

ROBERT J. TROESTER
United States Attorney


³ Magistrate Judge Stephens reports that he is “puzzled why Respondents [first] advised the Court on January 12, 2026, about Petitioner’s anticipated removal when the BIA—three days earlier—had issued a receipt acknowledging Petitioner’s appeal of his removal order.” R&R [Doc. 14] at 3, n. 2; *see also* Federal Respondents’ Notice [Doc. 12] (01/12/26) (“The Federal Respondents intend to remove Petitioner Zhi Feng He from the United States after at least seventy-two (72) hours have passed from the filing of this notice ... and to remove Petitioner from the United States to the People’s Republic of China on or about January 21, 2026.”). On January 16, 2026, the Federal Respondents informed the Court, “DHS/ICE does not intend to remove Petitioner while his appeal is pending but may remove him upon the order of removal becoming final. (This development supersedes Federal Respondents’ Notice [Doc. 12], wherein they disclosed their intent to remove Petitioner from the United States to the People’s Republic of China on or about January 21, 2026.)” Supplemental Brief [Doc. 13]. Magistrate Judge Stephens understandably is puzzled by the Federal Respondents’ changing reports about their plans to effectuate Mr. He’s removal. The Federal Respondents apologize for their changing reports and the confusion engendered by their reports, but to explain the sequence of events that resulted in the differing reports would require disclosure of attorney-client communications and attorney work-product.

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Certificate of Service

I hereby certify that on the 5th day of February, 2026, I electronically transmitted the foregoing document to the Clerk of Court using the Electronic Case Filing (ECF) System for filing, and I further certify that on the 5th day of February, 2026, I served the foregoing document via U.S. Mail on the following, who is not a registered participant of the Court's ECF System:

Zhi Feng He
A-Number 
Cimarron Correctional Facility
3200 S Kings Hwy
Cushing, OK 74023

/s/ R. D. Evans, Jr.
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