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

FLORENTINO LEAL DAMIAN	)	
	)	
Petitioner,	)	
	)	
v.	)	
DON JONES, et al.,	)	CIV-25-1561-J
	)	
Respondents.	)	
	)	
	)	

RESPONDENTS' OBJECTION TO REPORT AND RECOMMENDATION

Respectfully Submitted,

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Respondents respectfully object to the Report and Recommendation (R&R) entered on February 2, 2026 (Doc. 10). While this objection expressly reasserts and does not waive the arguments set forth in the Response (Doc. 8), it focuses on the R&R's failure to apply the plain meaning of § 1225(b)(2)(A), arguments that other Courts, to include the United States Court of Appeals for the Fifth Circuit, *see Buenrostro-Mendez v. Bondi*, No. 25-20494, 2026 WL 323330, (5th Cir. Feb. 6, 2026), and judges within this judicial district, have found persuasive.[1]

INTRODUCTION

The R&R asserts that an alien who is applying for cancellation of his removal is somehow not *seeking* admission. But that conclusion defies common sense and ordinary language, to say nothing of express statutory language. *See Buenrostro-Mendez,* 2026 WL 323330, at *4 ("The text and context of § 1225 contradict the petitioners' reading of the statute.").

In reaching this conclusion, the R&R finds that the text of § 1225(b)(2)(A) is ambiguous and then evaluates the statutory title, structure, and purpose to conclude that §

[1] This Court is currently split on this issue. While Judges Dishman and Wyrick have adopted the Respondents' position, *see Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025); *Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026), other members of the Court have disagreed. *See, e.g.*, *Malacidze v. Noem,* No. CIV-25-1527-D, 2026 WL 227155 (W.D. Okla. Jan. 28, 2026); *Medina Vasquez v. Grant*, No. CIV-25-1377-D, 2026 WL 209979 (W.D. Okla Jan. 27, 2026); *Cortes v. Holt*, No. CIV-25-1176-SLP, 2026 WL 147435, at *1 (W.D. Okla. Jan. 20, 2026); *Rojas v. Noem*, No. CIV-25-1236-HE, 2026 WL 94641 (W.D. Okla. Jan. 13, 2026); *Valdez v. Holt*, No. CIV-25-1250-R, 2025 WL 3709021 (W.D. Okla. Dec. 22, 2025); *Colin v. Holt, et al.*, No. CIV-25-1189-D, 2025 WL 3645176 (W.D. Okla. Dec. 16, 2025); *Escarcega v. Olson*, No. CIV-25-1129-J, 2025 WL 3243438 (W.D. Okla. Nov. 20, 2025).

1225(b)(2)(A) applies only to arriving aliens actively seeking admission at or near the border or port of entry. R&R at 15. In so doing, the R&R departs from the plain language of the statute. Section 1225 is unambiguously *not* limited to "arriving" noncitizens "at or near the border." And several provisions make that clear. For instance, the very first provision of § 1225 deems aliens "present in the United States"—without any temporal or geographic limitations—to be "an applicant for admission." 8 U.S.C. § 1225(a)(1). As such, at the outset, the R&R reads limitations into the statutory definition that do not exist and are contrary to the express language.[2] Specifically, the R&R reads an "arriving" and "at or near the border" limitation into "applicant for admission."

Further, § 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 any proximity to the border requirement. An alien residing in the interior of the country for more than a year is hardly an "arriving" alien seeking admission at the border. Again, the R&R's reading of § 1225 is inconsistent with that express language.

The difference is not trivial. Limiting § 1225 to "arriving aliens" will have serious implications for other immigration enforcement. For instance, under § 1225, DHS has

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[2] *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451, at *4 (E.D. Wis. Dec. 8, 2025) ("But the definition of 'applicant for admission' does not contain any temporal or geographic limitations. Moreover, it would make little sense to reward those undocumented immigrants who successfully evaded detection upon arrival in the United States and traveled into the interior of the country with discretionary release, while mandating the detention of those individuals who were not so successful or who sought entry at a border or port of entry. Construing the statute in such a way would incentivize illegal entry into the country on a massive scale.").

exercised its unreviewable authority to designate aliens that have entered illegally and been present in the country for up to two years (i.e., not "arriving") for expedited removal under § 1225(b)(1)(A)(iii). *See* Designating Aliens for Expedited Removal, 90 FR 8139 (Jan. 24, 2025). As such, the R&R's structural limitation on the reach of § 1225 not only misreads the plain language of the statute but also impedes immigration enforcement more generally.

Resolution of the Petition begins and ends with the plain text of § 1225(b)(2)(A). Petitioner is a noncitizen present in the United States, who was and is seeking admission, and an immigration officer determined he is not entitled to be admitted beyond a doubt. On that basis, he is not entitled to a bond hearing, and the Petition should be denied.

ARGUMENT

The R&R starts by finding that the "statutory text does not provide a definitive answer as to what it means to be present without admittance where, as here, the alien has already entered and spent many years residing in the United States." R&R at 12. While that assessment is not evident from the language of the provision, the R&R nonetheless proceeds to evaluate the title, structure, and legislative history of § 1225, with a particular focus on what it means to be "seeking admission" (effectively ignoring the "applicant for admission" deeming provision). The R&R is wrong at each step.

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

The R&R's initial question, "can Petitioner — an alien who has not been admitted or inspected, but has lived in the United States for over two years — be *classified* as an alien who is an "applicant for admission," is answered by the plain language of § 1225(b)(2)(A). R&R at 2 (emphasis added). Thus, no such "classification" is necessary

because the statute explicitly deems a category of aliens as "applicants for admission." Is Petitioner "[a]n alien present in the United States who has not been admitted?" 8 U.S.C. § 1225(a)(1). If the answer to that question is "yes," then Petitioner "... **shall be deemed** ... an applicant for admission." *Id.* (emphasis added).

Petitioner contends he has been present in the country since 2023. Pet. ¶ 42. Accordingly, he is an "applicant for admission." *Sosa v. Holt*, No. 25-1257-PRW, 2026 WL 36344, at *3 (W.D. Okla. Jan. 6, 2026) (finding a similarly situated petitioner "fits neatly into the definition of an 'applicant for admission.'"); *Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL 3131942 at *3 (E.D. Mo. Nov. 10, 2025) ("[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 v. Trump*, No. 25-CV-526, 2025 WL 2780351, *9 (D. Neb. Sept. 30, 2025) ("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 R&R does not (and cannot) really contest that point. Instead, despite its emphasis on the statutory title, structure, and history of § 1225, a close reading of the R&R reveals that it actually rests on the purported limitation of "seeking admission" in § 1225(b)(2)(A), which provides:

> [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)

Put differently, the R&R contends that "seeking admission" must mean some additional steps than merely being an "applicant for admission," and using context and history, construes "seeking admission" to limit the provision to noncitizens seeking admission at the border. But that conclusion effectively nullifies the "present in the United States" deeming provision of § 1225(a)(1). *Sosa*, 2026 WL 36344, at *3 ("Everything turns on the meaning of the phrase 'applicant for 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 v. Acuna*, Case No. 6:25-cv-01467, 2025 WL 3048926, *5 n.5 (W.D. La. Oct. 31, 2025) ("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. *Sosa*, 2026 WL 36344, at *4 ("And once deemed an 'applicant for admission,' an alien is necessarily 'seeking admission.' Thus, Congress's use of 'seeking admission' is perfectly consistent with its unambiguous definition of 'applicant for admission,' which sweeps in *all* aliens present in the United States but not yet admitted.").

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). *Montoya v. Holt*, CIV-25-01231-JD, 2025 WL 3733302, at *7 (W.D. Okla. Dec. 26, 2025) ("Here, § 1225(a)(3) explains how the contested phrases relate. Specifically, 'applicants for admission or otherwise seeking admission' creates a formal logical relationship between the two concepts."). 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). *Montoya*, 2025 WL 3733302, at *8 ("The better reading starts with the period-correct definitions of 'otherwise,' which are '[i]n a different manner; in another way, or in other ways.'" (citing *Otherwise*, Black's Law Dictionary (6th ed. 1990)).

"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) (emphasis 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.*; *see also Montoya*, 2025 WL 3733302, at *9 ("So, all 'applicants for admission' are 'seeking admission.' The former is sufficient (but not necessary) for the latter, and the latter is necessary (but not sufficient) for the former.").

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)). 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 v Olson*, Case No. 25-cv-1437-bhl, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) ("seeking admission" is "best read as simply another way of referring to aliens who are applicants for admission"); *Cabanas v. Bondi*, 2025 WL 3171331, at *5 (S.D. Tex. Nov. 13, 2025) ("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).

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*, 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; *see also Sosa*, 2026 WL 36344, at *3. But 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. *Montoya*, 2025 WL 3733302, at *2 ("The statute gives no temporal or geographic limitations on the status of being an applicant for admission.").

None of this is to say, however, that "seeking admission" has no meaning 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. *Montoya*, 2025 WL 3733302, at *2 ("The statute does not create a third 'non-seeking applicant' category, and the 'applicant for admission' category explicitly includes both arriving and present unadmitted aliens."). Further, it 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 v. DHS*, 25-cv-831, 2025 WL 3628229, at *9 (S.D. Ohio Dec. 15, 2025) (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.").

The R&R's reading of "seeking admission" as something more than being an "applicant for admission" creates greater ambiguity and problems then it purports to resolve. *Sosa*, 2026 WL 36344, at *4 ("the R&R's conclusion that Petitioner is not an applicant for admission creates more questions than it answers."). Congress made it plain

that an "applicant for admission" includes those "present in the country." But the R&R and the cases it cites heighten "seeking admission" to such an undefined and unobtainable level that noncitizens "present in the country" can never be subject to § 1225(b)(2)(A), undoing the clearly defined meaning of an "applicant for admission."

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 13. That conclusion suffers several infirmities, including the lack of consideration due to *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 (which, for the reasons addressed above is 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 13. But focusing on "arriving aliens" 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, aliens 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."). In other words, the same statute addresses different removal procedures for "arriving aliens" and those aliens present in the country. The Respondents' reading of § 1225 accords with that difference, whereas the R&R's exclusive focus on the "arriving" limitation cannot. *Sosa*, 2026 WL 36344, at *3 ("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."); *Montoya*, 2025 WL 3733302, at *6 ("The Government also correctly points out that the R. & R.'s focus on § 1225's title is misplaced.").

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." 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 an alien 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."). In other words, IIRIRA "aimed to reduce th[e] incongruity" created by the statute, which "afforded greater procedural and substantive rights to aliens who bypassed entry procedures." *Buenrostro-Mendez*, 2026 WL 323330, at *1.

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 v. Noem*, Case No. 3:25-cv-02325-CAB, 2025 WL 2730228, at *4 (S.D.

Cal. Sept. 24, 2025) (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 v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972, at *6 (W.D. La. Nov. 4, 2025) (holding that application of § 1225(b)(2)(A) to those residing in the "country comports with the legislative history of [IIRIRA]").

C. Prior Regulatory Commentary Is Consistent with Respondents' Reading

The R&R points to contemporaneous *commentary* explaining the implementing regulations for IIRIRA (but notably, not the regulations themselves) to suggest that the Executive understood § 1225 to only apply to arriving aliens in 1996. Specifically, it quotes from Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings, Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) which states: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." R&R at 19.

But the R&R does not cite, and thus fails to grapple with, the opening phrase "*Despite being applicants for admission.*" That is critical context. The commentary

acknowledges that those in the country without having been admitted *are* "applicants for admission" under § 1225, but announces the *discretionary* choice to use § 1226 for detentions and thus permit bond hearings. In other words, "the Federal Register suggests that past Administrations recognized that IIRIRA conferred more authority upon them than they chose to exercise." *Buenrostro-Mendez*, 2026 WL 323330, at *8. A new administration has deviated from that discretionary choice, as it is permitted to do. Thus, the R&R (and the decisions it cites) erroneously conflate prior enforcement discretion with statutory interpretation.

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 16. But "Section 1226(a) undeniably does work independent from § 1225(b)(2)(A) because only § 1226(a) applies to admitted aliens who overstay their visas, become deportable on many different grounds, or were admitted erroneously due to fraud or some other error." *Buenrostro-Mendez*, 2026 WL 323330, at *7. Thus, the R&R 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.[3] *Sosa*, 2026 WL 36344, at *5 ("Any overlap between the two provisions is thus better understand as a belt-and-suspenders approach to an immigration crisis.").

Section 1226(a)'s general detention authority, which permits the issuance of warrants to detain all aliens for their removal proceedings, must be read alongside § 1225, which specifically addresses the detention of applicants for admission which is a subset of aliens 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 aliens 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.

[3] *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 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)").

But § 1226(c)(1)(E) applies to *all* aliens 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 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 this construction were 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." *Montoya*, 2025 WL 3733302, at *12 (The LRA does not "allow the Court to impute the term 'arriving' to each subsection of § 1225.").

The statute contradicts this assertion. The plain language of the LRA applies to *all* aliens who meet its criminal criteria, not just "applicants for admission." For example, § 1226(c)(1)(E)(i) applies to aliens 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 an alien 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* aliens 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 v. Noem*, 8:25-cv-02566SB-MAA, 2025 WL 3482630, at *4 (C.D. Cal. Dec. 2, 2025) ("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's conclusion in this regard 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 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. As recently recognized by the Fifth Circuit, Congress was legislating against the backdrop of a more restrained enforcement strategy of the prior administration. *See Buenrostro-Mendez*, 2026 WL 323330, at *7 ("As for the Laken Riley Act, Congress passed the Act at a time when the Executive was still declining to exercise its full enforcement authority under the INA. Accordingly, the Act did have a substantial effect when passed insofar as it required the detention without bond or parole of certain aliens the administration was then treating as bond-eligible."). 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 v. Chestnut*, 1:25-cv-01550 WBS JDP, 2025 WL 3205133, at *4 (Nov. 17, 2025) ("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 asylum.

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

Respectfully Submitted,

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