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

RICARDO ALBERTO HERNANDEZ CASALLAS,	)	
Petitioner,	)	
v.	)	Case No. CIV-26-00053-J
DON JONES, et al.,	)	
Respondents.	)	

RESPONDENT'S OBJECTIONS TO REPORT AND RECOMMENDATION

Respondents respectfully submit these Objections to the Report and Recommendation entered January 29, 2026. The Report recommends granting habeas relief in part and ordering a bond hearing under 8 U.S.C. § 1226(a). That recommendation is contrary to the Immigration and Nationality Act, controlling Supreme Court precedent, and binding Tenth Circuit authority. The Report should be rejected and the Petition denied.

I. STANDARD OF REVIEW

Under 28 U.S.C. § 636(b)(1), the Court must conduct de novo review of any portion of the Report to which specific objection is made. See *Morales-Fernandez v. INS*, 418 F.3d 1116, 1119 (10th Cir. 2005). Respondents object to the jurisdictional analysis, the statutory interpretation of 8 U.S.C. § 1225, and the conclusion that Petitioner is entitled to a bond hearing under § 1226(a).

II. THE COURT LACKS JURISDICTION OVER PETITIONER'S STATUTORY CLAIM

A. Section 1252(g) Bars Review

The Report concludes that 8 U.S.C. § 1252(g) does not strip jurisdiction because Petitioner allegedly challenges only detention rather than the commencement of proceedings. That conclusion misapplies Supreme Court and Tenth Circuit precedent.

Section 1252(g) deprives district courts of jurisdiction over any claim arising from the decision or action of the Attorney General or DHS to commence proceedings, adjudicate cases, or execute removal orders. In *Reno v. American Arab Anti Discrimination Committee*, 525 U.S. 471, 482 to 487 (1999), the Supreme Court held that § 1252(g) is a discretion protecting provision designed to prevent judicial interference with prosecutorial decisions at the core of the removal process.

In the Tenth Circuit, the relevant inquiry is whether the challenged action is directly and immediately connected to the decision to commence removal proceedings. *Tsering v. U.S. Immigration and Customs Enforcement*, 403 F. Appx. 339, 343 (10th Cir. 2010); *Aguilar Alvarez v. Holder*, 528 F. Appx. 862, 870 to 871 (10th Cir. 2013).

Here, Petitioner detention flows directly from the examining officer determination under 8 U.S.C. § 1225(b)(2)(A) and the commencement of proceedings under § 1229a. Petitioner's claim that DHS should have detained him under § 1226 rather than § 1225 is a direct challenge to the statutory mechanism DHS selected to commence proceedings. Such claims fall squarely within § 1252(g).

The Report attempts to sever detention from commencement. That distinction is foreclosed by *AADC* and *Tsering*. Detention under § 1225(b)(2)(A) is the statutorily prescribed consequence of the commencement decision and cannot be reviewed in isolation.

B. Section 1226(e) Confirms the Discretionary Nature of the Detention Choice

Congress further insulated these determinations from judicial review by providing that discretionary judgments regarding the application of § 1226 are not subject to review. 8 U.S.C. § 1226(e). The Supreme Court has emphasized that courts may not impose additional procedural requirements where Congress has spoken clearly. *Jennings v. Rodriguez*, 583 U.S. 281, 300 to 305 (2018).

Petitioner seeks precisely what § 1226(e) forbids: judicial second guessing of DHS choice of detention authority. The Report failure to apply §§ 1252(g) and 1226(e) is reversible error.

III. THE REPORT MISINTERPRETS THE PLAIN TEXT OF SECTION 1225

A. Section 1225(a)(1) Deems Petitioner an Applicant for Admission

The statutory analysis must begin and end with the text where, as here, Congress has spoken clearly. See *BedRoc Ltd. LLC v. United States*, 541 U.S. 176, 183 (2004).

Section 1225(a)(1) provides that any noncitizen present in the United States who has not been admitted shall be deemed an applicant for admission. Petitioner concedes he entered without inspection and has never been admitted. As a matter of law, he is an applicant for admission.

The Report acknowledges this definition but then nullifies it by imposing an extra statutory requirement that Petitioner must be actively seeking admission at the moment of apprehension. That requirement appears nowhere in the statute and contradicts the deeming language Congress enacted.

B. Section 1225(b)(2)(A) Mandates Detention Pending Proceedings

Once a noncitizen is an applicant for admission, § 1225(b)(2)(A) applies. If the examining officer determines the applicant is not clearly and beyond a doubt entitled to be admitted, the statute mandates detention for a proceeding under § 1229a.

The Supreme Court has repeatedly recognized that when Congress mandates detention, courts may not rewrite the statute to add bond hearings. *Demore v. Kim*, 538 U.S. 510, 523 to 531 (2003); *Jennings*, 583 U.S. at 300 to 305. Section 1225(b)(2)(A) contains no bond provision and admits of no judicially created exception.

C. The Phrase Seeking Admission Creates No Ambiguity

The Report concludes that the phrase seeking admission introduces ambiguity. That reading is inconsistent with ordinary usage and Supreme Court guidance. An applicant for admission is, by definition, seeking admission. The statute does not distinguish between those apprehended at the border and those encountered in the interior.

Congress eliminated the entry fiction and entry doctrine through IIRIRA. See *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 109 to 113 (2020). The Report interpretation revives doctrines Congress expressly rejected.

IV. RELIANCE ON TITLES AND STRUCTURE CANNOT OVERRIDE TEXT

The Report relies heavily on the title of § 1225 and statutory headings. The Supreme Court has made clear that titles and headings cannot limit or contradict operative text. *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206, 212 (1998); *Florida Department of Revenue v. Piccadilly Cafeterias*, 554 U.S. 33, 47 (2008).

Section 1225(b)(2)(A) expressly provides for referral to full removal proceedings under § 1229a. The Report selective reading of the title ignores that text and renders portions of the statute superfluous.

V. CONGRESSIONAL PURPOSE CONFIRMS APPLICATION OF SECTION 1225

Congress enacted § 1225(a)(1) to ensure that noncitizens present without admission are treated as applicants for admission, eliminating the anomaly that previously favored unlawful entrants. *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020).

The Report interpretation reinstates that anomaly by granting greater procedural rights to noncitizens who evaded inspection. Nothing in Supreme Court or Tenth Circuit precedent supports that result.

VI. THE REPORT IMPROPERLY CONSTRUCTS ARGUMENTS FOR PETITIONER

Petitioner did not argue that he was not seeking admission, nor did he advance the statutory reconstruction relied upon by the Report. Courts may not act as advocates or supply arguments for litigants. *Garrett v. Selby Connor Maddux and Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

VII. PETITIONER HAS NO CONSTITUTIONAL RIGHT TO A BOND HEARING

The Supreme Court has repeatedly rejected constitutional bond requirements where Congress has authorized detention. *Demore*, 538 U.S. at 531; *Jennings*, 583 U.S. at 304. Detention under § 1225(b)(2)(A) is mandatory and limited to the pendency of proceedings. The Report suggestion that due process requires a bond hearing is foreclosed by Supreme Court precedent.

VIII. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court reject the Report and Recommendation, sustain these Objections, and deny the Petition for Writ of Habeas Corpus in its entirety.

Respectfully submitted,

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