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

ALISHER NORBOEV,
Petitioner,

v.

TODD M. LYONS, ET AL.,
Respondents.

Case No. CIV-26-00107-SLP

RESPONDENTS' OBJECTION TO REPORT AND RECOMMENDATION

Respondents respectfully object pursuant to 28 U.S.C. § 636(b)(1) to the Report and Recommendation (R&R) entered February 10, 2026 (Doc.15). Respondents reassert and do not waive the arguments set forth in their Response (Doc. 13) but focus here on two dispositive errors. First, the R&R misapplies the jurisdiction channeling provisions of the Immigration and Nationality Act, including 8 U.S.C. § 1252(g). Second, the R&R fails to apply the plain language of 8 U.S.C. §§ 1225(a)(1) and 1225(b)(2)(A) and instead relies on structural reasoning that cannot be reconciled with the statutory text or governing precedent. In addition, while not controlling in this Circuit, the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*[1] confirms that the Respondent's interpretation of § 1225 is correct and that detention without bond is mandatory for people like Petitioner who entered the United States unlawfully and are present without admission.

I. The INA's jurisdiction channeling provisions bar relief

[1] *See Buenrostro-Mendez v. Bondi, et al.*, No. 25-20496, 2026 WL 323330, at *4 (5th Cir. Feb. 6, 2006).

Section 1252(g) provides that no court shall have jurisdiction to hear any cause or claim arising from the decision or action by the Secretary to commence proceedings, adjudicate cases, or execute removal orders, *see* 8 U.S.C. § 1252(g). The Tenth Circuit applies a direct and immediate connection test, asking whether the challenged action is directly and immediately connected to one of the enumerated discretionary decisions. *See Tsering v. U.S. Immigration & Customs Enf't,* 403 F. App'x 339, 343 (10th Cir. 2010).

Respondents are aware of this Honorable Court's holdings in *Jose-De-Jose v. Noem*, No. CIV-25-1454-SLP, 2026 WL 360045 (W.D. Okla. Feb. 9, 2026); *Lopez v. Corecivic*, No. CIV-25-1175-SLP, 2026 WL 165490 (W.D. Okla. Jan. 21, 2026); and *Cortes v. Holt*, No. CIV-25-1176-SLP WL 147435 (W.D. Okla. Jan. 20, 2026), and understand this case may be resolved similarly. This Objection is filed to preserve argument on appeal that other Courts, including the United States Court of Appeals for the Fifth Circuit,[2] have found persuasive.

The R&R incorrectly concludes that this Court has jurisdiction. R&R at 5. Here, the immigration officer's determination under 8 U.S.C. § 1225(b)(2)(A) that Petitioner is an applicant for admission who is not clearly and beyond a doubt entitled to be admitted directly triggered mandatory detention and referral to proceedings under 8 U.S.C. § 1229a. The statutory classification decision is inseparable from the commencement of proceedings. Petitioner's challenge is not merely about detention conditions but about

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[2] *See Buenrostro-Mendez v. Bondi, et al.*, No. 25-20496, 2026 WL 323330, at *4 (5th Cir. Feb. 6, 2006).

which statutory mechanism DHS was required to use. That is precisely the type of claim § 1252(g) protects from district court interference. *See Id.* at 343 (holding that claims directly and immediately connected to commencement of removal proceedings fall within the jurisdictional bar). The jurisdictional conclusion in the Report should therefore be rejected.

II. Tenth Circuit authority confirms the government's position

The Tenth Circuit has repeatedly emphasized that courts must apply immigration detention statutes according to their plain text. In *Valdez-Sanchez v. Gonzales*, the court reiterates that when statutory language is clear, courts must enforce it as written. 485 F.3d 1084, 1087–88 (10th Cir. 2007).

Likewise, in *Soberanes v. Comfort*, the Tenth Circuit upheld detention authorized by statute and rejected attempts to expand procedural protections beyond what Congress provided, explaining that detention pursuant to express statutory authority does not violate due process absent an independent constitutional defect. 388 F.3d 1305, 1311 (10th Cir. 2004).

Applying those principles here, 8 U.S.C. § 1225(a)(1) provides that an alien present in the United States who has not been admitted shall be deemed an applicant for admission. Section 1225(b)(2)(A) then mandates that if an 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 § 1229a. 8 U.S.C. § 1225(b)(2)(A). The word shall is mandatory, and nothing in the statute provides for a bond hearing.

The Tenth Circuit has not recognized a judicial authority to graft bond procedures onto mandatory detention statutes. *See Soberanes*, 388 F.3d at 1311. Under binding Circuit precedent, where Congress has spoken clearly, courts must enforce the statute as written. *See Valdez-Sanchez*, 485 F.3d at 1087–88.

III. The plain text of 8 U.S.C. § 1225 controls

The central statutory question is whether Petitioner falls within 8 U.S.C. § 1225(b)(2)(A) or 8 U.S.C. § 1226(a). Section 1225(a)(1) provides that an 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). Petitioner concedes he entered without admission. Under the statute, he is therefore an applicant for admission.

Section 1225(b)(2)(A) provides that if an 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 § 1229a. 8 U.S.C. § 1225(b)(2)(A). The word shall is mandatory. In *Jennings v. Rodriguez*, the Supreme Court held that §§ 1225(b)(1) and 1225(b)(2) mandate detention and do not provide for bond hearings.

The R&R concludes that the phrase seeking admission narrows the category of applicants for admission and excludes aliens apprehended in the interior. R&R at 20. That reasoning cannot be reconciled with the text. As the Fifth Circuit recently held in *Buenrostro*, there is no material disjunction between being an applicant for admission and seeking admission. See *Buenrostro*, No. 25-20496, 2026 WL 323330, at *9–12 (5th Cir. Feb. 6, 2026) (holding that there is no material disjunction between applying for something and seeking it, and that applicants for admission necessarily are seeking admission). The

Fifth Circuit carefully examined the same argument advanced here and concluded that ordinary usage does not distinguish between applying for something and seeking it, explaining that the text and context of § 1225 contradict the effort to separate those terms. *Id.* at *9–13. The court further held that § 1225 applies to aliens present without admission and mandates detention without bond.

IV. Structure and purpose do not override clear text

The R&R relies heavily on statutory structure and perceived congressional purpose to limit § 1225 to arriving aliens. That analysis disregards the deeming clause in § 1225(a)(1). Congress expressly provided that aliens present without admission are deemed applicants for admission. The R&R's reading effectively excises that clause from operative effect within § 1225(b)(2)(A).

Buenrostro confirms that IIRIRA eliminated the historical distinction that previously gave more favorable treatment to unlawful entrants than to those presenting at ports of entry, emphasizing that § 1225(a)(1) placed all unadmitted aliens on equal footing as applicants for admission. *See id.* at *3–6. By treating unadmitted aliens as applicants for admission, Congress placed both categories on equal footing. The R&R's interpretation would restore the very anomaly Congress sought to eliminate.

The Fifth Circuit also rejected reliance on longstanding executive practice to narrow the statute, explaining that years of consistent practice cannot override clear statutory text. See id. at *17–18 (citing *Pereira v. Sessions*, 585 U.S. 198 (2018)). Past administrations may have exercised enforcement discretion differently, but that does not alter the statute's plain meaning. Years of contrary practice cannot overcome clear text.

V. Section 1226 does not displace section 1225

The R&R suggests that interpreting § 1225 to apply to aliens present without admission renders portions of § 1226, including amendments under the Laken Riley Act, superfluous. R&R at 14. That is incorrect. Section 1226 applies to admitted aliens and other categories distinct from applicants for admission. Overlap between statutory provisions does not create ambiguity where the operative text is clear. The existence of mandatory detention provisions in § 1226(c) does not authorize courts to disregard § 1225(b)(2)(A). As the Fifth Circuit held, overlap between §§ 1225 and 1226 does not create ambiguity and does not permit rewriting the mandatory detention language of § 1225(b)(2)(A). *See Buenrostro* at *14–16.

VI. Mandatory detention under § 1225 is constitutional

The Supreme Court has consistently recognized Congress's plenary authority over admission and detention of aliens seeking entry. Section 1225(b)(2)(A) reflects Congress's decision to mandate detention for applicants for admission pending removal proceedings. *Jennings* makes clear that courts may not graft bond requirements onto § 1225. Petitioner is in removal proceedings and is receiving processes as provided by statute. There is no constitutional basis to override Congress's detention mandate.

CONCLUSION

The R&R's recommendation rests on a misapplication of 8 U.S.C. § 1252(g) and an incorrect reading of 8 U.S.C. § 1225. The plain language of the statute, Supreme Court precedent, and persuasive authority from the Fifth Circuit compel the opposite conclusion. Petitioner is deemed an applicant for admission and is subject to mandatory detention under

§ 1225(b)(2)(A). Respondents respectfully request that the Court sustain these objections, reject the Report and Recommendation in its entirety, and deny the Petition.

Dated: February 17, 2026

Respectfully submitted,

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