IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

XIAOLONG PAN — **PETITIONER**

V. — **CIVIL ACTION NO. 5:25-cv-00127-DCB-BWR**

RAFAEL VERGARA, WARDEN,
ADAMS COUNTY CORRECTIONAL CENTER — **RESPONDENT**

RESPONSE IN OPPOSITION TO PETITION
FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Respondent Rafael Vergara, Warden of Adams County Correctional Center, by and through the United States Attorney for the Southern District of Mississippi, and the undersigned Assistant United States Attorney, submits this response in opposition to Petitioner Xiaolong Pan's petition [1] for writ of habeas corpus under 28 U.S.C. § 2241.

I. INTRODUCTION

On October 24, 2025, Petitioner Xiaolong Pan filed a § 2241 petition, challenging his detention within the institutional custody of Immigration and Customs Enforcement ("ICE") and requesting either immediate release or a bond hearing. *See* Dkt. No. 1, at ¶ 4. However, as explained below, Pan is an "applicant for admission," and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Accordingly, his petition should be denied.

II. BACKGROUND

Pan is a native and citizen of China. *See* Ex. A, at 1, *Notice to Appear*. He entered the United States without inspection in December 2024, and was, subsequently, taken into ICE custody. *See id.*; *see also* Dkt. No. 1, at ¶ 16.

On January 28, 2025,[1] Pan was placed in removal proceedings pursuant to section 240 of the Immigration and Nationality Act ("INA"), and charged under section 212(a)(7)(A)(i) with being "an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act." Ex. A, at 1. He was served a Notice to Appear on March 14, 2025, outlining his charge and ordering him to appear before an immigration judge for a hearing on July 3, 2025. *See id.*

On June 2, 2025, Pan filed an I-589 or asylum application. *See* Ex. B, *Immigration Judge Order*. The application was denied by an immigration judge on July 30, 2025, on the basis that it was incomplete and not properly filed. *See id.* at 2. Consequently, the immigration judge ordered Pan removed to China pursuant to the charge in the Notice to Appear. *See id.* at 4. Pan appealed the immigration judge's order to the Board of Immigration Appeals in August 2025. *See* Ex. C, *Notice of Appeal*. The appeal is still pending.

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[1] Pan claims that he was granted parole in January 2025, *see* Dkt. No. 1, at ¶ 18, however, Pan has been in continuous ICE custody since his apprehension.

III. LEGAL FRAMEWORK

A. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens Unlawfully Present in the United States.

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *See Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). "Entry" referred to "any coming of an alien into the United States." 8 U.S.C. § 1101(a)(13) (1994). Whether an alien had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings. *Hing Sum*, 602 F.3d at 1099.

At the time, the INA "provided for two types of removal proceedings: deportation hearing and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). "A deportation hearing was the 'usual means of proceeding against an alien already physically in the United States,' while an exclusion hearing was the 'usual means of proceeding against an alien outside the United States seeking admission.'" *Id.* Aliens in deportation proceedings, unlike those in exclusion proceedings, were entitled to request release on bond. *See Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (2012) ("'Non-citizens who had entered without inspection could take advantage of the greater procedural

and substantive rights afforded in deportation proceedings,' while non-citizens who actually presented themselves to authorities for inspection were restrained by 'more summary exclusion proceedings.'").

B. IIRIRA Eliminated the Preferential Treatment of Aliens Unlawfully Present in the United States and Mandated Detention of all "Applicants for Admission."

Congress discarded that regime through enactment of IIRIRA[2], Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of "ensur[ing] 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.'" *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, "[u]nder the new regime, 'admission' now determines whether a non-citizen is subject to grounds of deportability or inadmissibility within the context of a removal proceeding." *Hing Sum*, 602

[2] The Illegal Immigration Reform and Immigrant Responsibility Act.

F.3d at 1100.

IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8:

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that an alien "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed ... an applicant for admission":

> 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) (emphasis added). "All aliens ... who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States" are required to "be inspected by [an] immigration officer[]." *Id.* § 1225(a)(3).

Section 1225(b): IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited Section 240 proceedings—and mandated that applicants for admission be detained pending those proceedings. *See* 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for so-called "expedited removal proceedings," *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of aliens—those who (1) are "arriving in the United States," or who (2) have "not been admitted or paroled into the United States" and have "not affirmatively shown, to the

satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall "order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum ... or a fear of persecution." *Id.* § 1225(b)(1)(A)(i). In that event, the alien "shall be detained pending a final determination of credible fear or persecution and, if found not to have such a fear, until removed." *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.3(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is a "catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that these aliens be detained pending Section 240 removal proceedings:

> Subject to subparagraphs (B) and (C), in 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 [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added);[3] *see* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin").

While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole, however, "shall not be regarded as admission of the alien." *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that "the purposes of such parole ... have been served," the "alien shall ... be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

In sum, the key distinction between sections (b)(1) and (b)(2) of 1225 is that only (b)(1) provides for expedited removal, while section (b)(2) provides for standard removal proceedings under § 1229a. Both sections require mandatory detention pending conclusion of the inspection process, whether it is by expedited removal or the conclusion of § 1229a removal proceedings.

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[3] Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewmen, (3) stowaways, or (4) aliens who "arriv[e] on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States." 8 U.S.C. § 1225(b)(2)(B)-(C).

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas, or are later determined to have been improperly admitted. *See Jennings*, 583 U.S. at 303 (stating that "§ 1226 applies to aliens already present in the United States"). The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2).[4]

That "default rule," however, does not apply to certain criminal aliens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain classes of criminal aliens—those who are inadmissible or deportable because the alien (1) "committed" certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1)(A)-(E). The Executive must detain these aliens "when the alien is released, without regard to whether the alien is

[4] Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." *Id.*

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; and (2) are "charged with, [] arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of" certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).[5]

IV. ARGUMENT

A. Pan is properly detained under 8 U.S.C. § 1225(b)(2) and is not entitled to release.

Pan seeks release pursuant to 8 U.S.C. § 1226. However, the plain language of § 1225(b)(2)(A) shows that Pan is unambiguously an "applicant for admission" subject to mandatory detention under § 1225(b)(2), as he entered the country without inspection and was never "admitted" into the United States. The statutory intent of § 1225(b) and the well-reasoned decisions of sister courts further support the applicability of § 1225(b)(2) to Pan.

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[5] The Laken Riley Act's addition of § 1226(c) does not invalidate §1225(b)'s mandatory detention requirement merely because it could appear redundant. As the Supreme Court has acknowledged, "redundancies are common in statutory drafting ... redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute..." *Barton v. Barr*, 590 U.S. 222, 239 (2020). Importantly, the statutes at issue were "implemented at different times and intended to address different issues. The INA is a complex set of legal provisions created at different times and modified over a series of years. Where these provisions impact one another, they cannot be read in a vacuum." *Matter of Hurtado*, 29 I&N Dec. 216, *227 (BIA 2025).

1. The plain language of 8 U.S.C. § 1225(b)(2)(A) mandates detention.

Pan asserts that he cannot be subject to mandatory detention under 8 U.S.C. § 1225(b). *See* Dkt. No. 1, at ¶ 34. Pan, however, unambiguously meets every element in the text of the statute.

When engaging in statutory interpretation, "[w]e begin, as always, with the text." *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017). "If the statutory language is plain, [the Court] must enforce it according to its terms." *King v. Burwell*, 576 U.S. 473, 486 (2015); *see also Restaurant Law Center v. U.S. Dep't of Labor*, 120 F.4th 163, 171 (5th Cir. 2024) ("As usual, we start with the statutory text.").

The applicable detention statute, 8 U.S.C. § 1225(b)(2)(A), is simple and unambiguous. As noted above, the statute expressly provides "in 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." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

The first relevant term is "applicant for admission," which is statutorily defined. *See* 8 U.S.C. § 1225(a)(1). The statute deems any alien (a person who is not a citizen or national of the United States, 8 U.S.C. § 1101(a)(3)) "present in the United States who has not been admitted" to be an "applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, under its plain terms, all unadmitted foreign nationals in the United States are "applicants for admission,"

regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission. *See id.* While this may seem like a counterintuitive way to define an "applicant for admission," "[w]hen a statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up). Thus, under the plain text of the statute, Pan is unambiguously an "applicant for admission" because he is a foreign national, he was not admitted, and he was present in the United States when he was apprehended by ICE. *See* Ex. A.

The next relevant portion of the statute is whether an examining immigration officer determined that Pan is "seeking admission." *See* 8 U.S.C. § 1225(b)(2)(A). The INA defines "admission" as "the *lawful entry* of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added).[6] Therefore, the inquiry is whether an immigration officer determined that Pan was seeking a "lawful entry." *See id.; see also Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) (noting that under the INA, "admission" does not mean physical entry, but lawful entry after inspection by immigration authorities). This

[6] Section 1101(a)(13) also contains subsection (B), which addresses humanitarian parole and specifies that these parolees will not be considered admitted, and subsection (C), which addresses categories of certain aliens present in the United States are nonetheless regarded as "seeking an admission" and includes an alien "attempting to enter at a time and place other than as designated by immigration officers OR *has not been admitted to the United States after inspection and authorization by an immigration officer.*" *See* § 8 U.S.C. 1101(a)(13)(C)(vi) (emphasis added). This subsection further reiterates a clear statutory intent that aliens present in the United States without inspection and admission are considered to be "seeking admission."

element of "lawful entry" is important here for two reasons. First, a foreign national cannot legally be admitted into the United States without a lawful entry. *See* 8 U.S.C. §§ 1101(a)(13), 1225(a)(3); *see also Sanchez v. Mayorkas*, 593 U.S. 409, 411–12 (2021) (recognizing that "admission" means "lawful entry"). Second, a foreign national cannot *remain* in the United States without a lawful entry because a foreign national is removable if he or she did not enter lawfully. *See* 8 U.S.C. §§ 1182(a)(6), 1227(a)(1)(A). Indeed, the charges of removal against Pan are based on his unlawful entry. *See* Ex. A. So, unless he obtains a lawful admission in the future, he will be subject to removal in perpetuity. *See* 8 U.S.C. §§ 1101(a)(13), 1182(a)(6), and 1227(a)(1)(A).

The INA provides two examples of foreign nationals who have not yet been admitted but are not "seeking admission." The first is someone who withdraws his or her application for admission and "depart[s] immediately from the United States." 8 U.S.C. § 1225(a)(4); *see also Matushkina v. Nielsen* 877 F.3d 289, 291 (7th Cir. 2017) (providing a relevant example of this phenomenon). The second is someone who agrees to voluntarily depart "in lieu of being subject to proceedings under § 1229a . . . or prior to the completion of such proceedings." 8 U.S.C. § 1229c(a)(1). This means even in removal proceedings, a foreign national can concede removability and accept removal, in which case he will no longer be "seeking admission." 8 U.S.C. § 1229a(d). Foreign nationals present in the United States for more than two years who have not been lawfully admitted and who do not agree to immediately depart are seeking admission and must be referred for removal proceedings under § 1229a.

See 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). Notably, this is *not* the same as an expedited removal under § 1225(b)(1). Instead, under the clear provisions of § 1225(b)(2), removal proceedings must proceed as outlined under § 1229a.

Accordingly, Pan is "seeking admission" to the United States under § 1225(b)(2). He has not agreed to immediately depart, nor has he conceded his removability or allowed his removal proceedings to play out, which logically means that he must be seeking to remain in this country, which requires an "admission" (i.e. a "lawful entry" as discussed above). *See Thuraissigiam*, 591 U.S. at 108-09 (discussing how "[a]n 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)" is deemed "an applicant for admission"). Indeed, as stated above, Pan filed an asylum application in June 2025 and is currently appealing the denial of that application. *See* Ex. B, Ex. C; *see also Coronado v. Sec'y, DHS*, No. 1:25-CV-831, 2025 WL 3628229, at * 7 (S.D. Ohio Dec. 15, 2025) (finding that § 1225(b)(2) applied to an inadmissible alien, who had been in the country for several years and had a pending appeal of the denial of his asylum application was seeking admission).

Furthermore, treating Pan as if he is no longer "seeking admission" would reward him for violating the law, provide him, with better treatment than a foreign national who lawfully presented themselves for inspection at a port of entry, and encourage others to enter unlawfully - defying the intent reflected in the plain text of the statute. *See* 8 U.S.C. § 1225; *see also Thuraissigiam*, 591 U.S. at 140 (avoiding interpretation that might create a

"perverse incentive to enter at an unlawful rather than a lawful location").

Finally, the text provides that Pan "*shall be detained* for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Pan is not in expedited removal. He is instead in full removal proceedings where he is receiving the benefits of the procedures in immigration court (motions, hearings, testimony, evidence, and appeals) provided in § 1229a. *See* Ex. A. Therefore, he also meets this textual element within § 1225(b)(2)(A) because he is in 1229a removal proceedings and is thus subject to mandatory detention during the pendency of these proceedings.

In sum, the plain text of § 1225(b)(2) unambiguously applies to Pan. "Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. United States*, 242 U.S. 470, 485 (1917); *see also Jay v. Boyd*, 351 U.S. 345, 357 (1956) (courts "must adopt the plain meaning of a statute, however severe the consequences"). Therefore, no further exercise in statutory interpretation is necessary or permissible in this case and the court should conclude that Pan's detention under § 1225(b)(2)(A) is lawful.

2. Congress intended to *mandate* detention for all applicants for admission under § 1225.

With the passage of IIRIRA, Congress provided that mandatory detention pending removal proceedings is the norm—not the exception—for those who enter the country without inspection and who lack documents sufficient for admission or entry. *See* 8 U.S.C. § 1225(b)(2). And for good reason: detention pending removal proceedings is the historical

norm. *See Demore v. Kim*, 538 U.S. 510, 523 (2003) (citing *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("As we said more than a century ago, deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.'"). When Congress enacted 8 U.S.C. § 1225(b) as part of the immigration reforms of 1996, it determined that treating all unadmitted aliens similarly in terms of detention and removal eliminated unintended consequences and perverse incentives that pervaded the prior system, under which undocumented aliens who entered without inspection received more procedural protections—including the ability to seek release on bond—than those who presented themselves for inspection at ports of entry. *See Martinez*, 693 F.3d at 413 n.5; *see also Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL 3199872, at *5 (C.D. Cal. Nov. 12, 2025) ("That is consistent with Congress's intent: eliminating 'an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully,' and 'ensur[ing] 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.'"). Indeed, "Congress could have said that § 1225(b) applied only to arriving aliens if that's what was meant. But it didn't, even as three other closely related subsections did." *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at *4-6 (S.D. Tex. Nov. 13, 2025) (citing §§ 1225(a)(2), 1225(c)(1), and 1225(d)(2)).

In essence, the pre-1996 law favored those that entered the U.S. illegally and clandestinely, which Congress sought to end. Through mandatory detention of applicants for admission, Congress further ensured that the Executive Branch can give effect to the provisions for removal of aliens. *See Demore*, 538 U.S. at 531 ("Detention during removal proceedings is a constitutionally permissible part of that process.").

3. Applying the plain language of § 1225, many district courts have recognized that mandatory detention of inadmissible aliens is required by § 1225.

Applying the statute's plain language, many recent district court decisions support the application of § 1225(b)(2) mandatory detention to this case. For example, in *Chen v. Almodovar*, No. 1:25-cv-177-H, 2025 WL 3264478 (S.D.N.Y. Dec. 4, 2025), a district court in the Southern District of New York denied a habeas petition requesting release and/or a bond hearing and found that § 1225(b)(2) applied to a petitioner who is "an alien, who illegally entered the country, is present in the United States without being admitted, was determined not to be entitled to be admitted, and who is actively seeking admission through asylum[.]" *Id.* at *6. The court further stated:

> There is no support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens who are 'already here' after having illegally entered the country. Every judge agrees, because the statute plainly states, that the mandatory detention provision of Section 1225 applies to an "alien who is an applicant for admission" if other statutory conditions are met. As explained above, the term "applicant for admission" in Section 1225 is specifically defined to include an "alien *present in* the United States who has not been admitted." Furthermore, "admitted" and "admission" are specifically defined in terms of "*lawful*" entry. Thus, ruling that the mandatory detention provision of 1225 categorically does not apply to aliens

> who are present in the United States as a result of their illegal entry into the country flies in the face of defined statutory text. Moreover, this ruling flies in the face of Congress' decision, codified in the IIRIRA, to change the immigration system that had turned on whether "an alien [was] already here," and enact new laws for removal proceedings that focused on *lawful admission* in contrast to physical entry.

Id. at *5.

Other courts have reached the same conclusion. *See, e.g., Ferreira Candido v. Bondi, et al,* No. 1:25-cv-000867-JLS, 2025 WL 3484932, at *2 (W.D.N.Y. Dec. 4, 2025) (finding that "applicant for admission" and "seeking admission" are synonymous and holding that neither are entitled to a bond hearing); *Suarez v. Noem*, No. 1:25-cv-00202, 2025 WL 3312168, at *2 (E.D. Mo. Nov. 28, 2025) ("Section 1225 applies to 'alien[s],' who are 'present in the United States,' and who 'ha[ve] not been admitted' into the United States because they did not 'lawful[ly] ent[er] the country after inspection and authorization by an immigration officer.'"); *Maceda Jimenez v. Thompson*, No. 4:25-cv-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025) ("[T]he text of § 1225(b)(2)(A) supports the Government's position."); *Valencia v. Chestnut, et. al.*, No. 1:25-cv-01550-WBS-JDP, 2025 WL 3205133, at *3 (E.D. Cal. Nov. 17, 2025) ("The statutory language may cover a pro-active engagement with the process of becoming a lawful entrant, *but courts both in this circuit and elsewhere have recognized that the term also functions as a legal designation —describing an individual's legal status for purposes of the statutory removal scheme* -- rather than a description of present conduct.") (emphasis added); *Alonzo v. Noem, et. al.*, No. 1:25-cv-01519-WBS-SCR, 2025 WL 3208284, at *3 (E.D. Cal. Nov. 17, 2025) ("The reasonableness of [the Government's] argument is supported by the statutory

language."); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at *4-6 (S.D. Tex. Nov. 13, 2025) (denying habeas petition and finding 1225(b)(2) required mandatory detention); *Altamirano Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (Section 1225(b) "applies broadly to all aliens who are 'present in the United States and who have not been admitted.'"); *Mejia Olalde v. Noem*, No. 1:25-cv-00168, 2020 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) ("Because Mejia Olalde 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."); *Kum v. Ross, et al.*, No. 6:25-cv-00451-SEC-P, 2025 WL 3113644 (W.D. La. Nov. 6, 2025) *adopting report and recommendation*, 2025 WL 3113646, at *1-2 (W.D. La. Oct. 22, 2025) (finding that a petitioner who was present in the United States without having been admitted or paroled was an "applicant for admission" under § 1225(b)); *Oliveria v. Patterson, et al.*, No. 6:25-cv-01463, 2025 WL 3095972, at *5 (W.D. La. Nov. 4, 2025) (denying habeas relief to inadmissible alien present in the country without admission or parole for 9 years because the alien is an "applicant for admission" subject to mandatory detention under § 1225(b)(2)); *Barrios Sandoval v. Acuna, et. al.*, No. 6:25-cv-01467, 2025 WL 3048926, at *5 (W.D. La. Oct. 31, 2025) (denying habeas relief to inadmissible alien present in the country for 3 years without admission or parole because the alien is an "applicant for admission" subject to mandatory detention under §1225(b)(2)); *Cirrus Rojas v. Olson*, No. 25-cv-1437-BHL, 2025 WL 3033967, at *8 (E.D. Wisc. Oct. 30, 2025) ("Cirrus Rojas meets the definition of 'applicant for admission' in Section 1225(a)(1). He is an alien 'present' in the

United States and he has not been 'admitted.'"); *Garibay-Robledo v. Noem*, No. 1:25-cv-177-H, 2025 WL 3264478, at *2-3 (N.D. Tex. Oct. 24, 2025) (denying an injunction and request for a bond hearing under § 1226 by an inadmissible alien present in the country for over 30 years on the basis that an arriving alien is an applicant for admission); *Vargas Lopez v. Trump, et. al.*, No. 8:25-cv-526, 2025 WL 2780351, at *7-10 (D. Neb. Sept. 30, 2025) (denying habeas relief to inadmissible alien in the country for 12 years based on § 1225(b)(2)); *Chavez v. Noem, et. al.*, No. 3:25-cv-02325-CAB-SBC, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025) (denying injunctive relief to inadmissible alien based on 1225(b)(2)); *Pena v. Hyde*, No. 25-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) ("Because petitioner remains an applicant for admission, his detention is authorized so long as he is 'not clearly and beyond doubt entitled to be admitted' to the United States.").[7]

Thus, in addition to the plain language of the statute and the legislative history, the aforementioned decisions support the applicability of § 1225(b)(2) to aliens like Pan.

4. Petitioner's mandatory detention does not violate the Suspension Clause or the Fifth and Sixth Amendments.

Pan argues that his detention, which he characterizes as "indefinite" and "prolonged," violates the Constitution, including the Suspension Clause, the Due Process Clause of the Fifth Amendment, and the Sixth Amendment's protections against undue delay. Dkt. No. 1, at ¶¶ 28, 30. This claim lacks merit.

[7] This list of cases is not exhaustive.

As previously stated, Congress broadly crafted "applicants for admission" to include undocumented aliens present within the United States like Pan. *See* 8 U.S.C. § 1225(a)(1). Congress directed that aliens like Pan be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they—by definition—have crossed borders and traveled in violation of United States law. That is the prerogative of the legislative branch serving the interest of the government and the United States.

The Supreme Court has recognized this profound interest. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."). And with the power to remove aliens, the Supreme Court has recognized the United States' longtime Constitutional ability to detain those in removal proceedings. *See Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing*, 163 U.S. at 235 ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore*, 538 U.S. at 531 ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Jennings*, 583 U.S. at 286

("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made.").

In another immigration context (aliens already ordered removed and awaiting their removal), the Supreme Court has explained that detaining these aliens less than six months is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as unnecessarily restrictive in other contexts, such as during the pendency of removal proceedings under § 1225(b) and § 1226(c). This was an express holding of *Jennings*, stating "In Parts III-A and III-B [of the opinion], we hold that, subject only to express exceptions, §§ 1225(b) and 1226(c) authorize detention until the end of applicable proceedings." *Jennings*, 583 U.S. at 296-97. The Supreme Court in *Jennings* explained in detail why the *Zadvydas* opinion does not provide authority to graft a time limit onto the text of § 1225(b) (as opposed to § 1231(a)(6), which authorizes the detention of aliens who have already been removed from the country), noting that § 1225(b) uses the word "shall" instead of "may", specifies a clear time frame for detention during the pendency of proceedings, and provides an express exception to detention, which signals that there are no other circumstances under which a § 1225 detainee may be released. *Id.* at 298-300.

Further, in *Demore*, the Supreme Court explained Congress was justified in detaining aliens during the entire course of their removal proceedings. *See* 538 U.S. at 513. In that case, similar to undocumented aliens like Pan, Congress provided for the detention of certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court emphasized the constitutionality of the "definite termination point" of the detention, which was the length of the removal proceedings. *See id.* at 529. In light of Congress's interest in dealing with illegal immigration by keeping aliens in detention pending the removal period, the Supreme Court dispensed of any due process concerns. *See id.* generally.

Likewise, Pan is detained for the limited purpose of removal proceedings. His detention is not punitive or for other reasons than to address his removability from the United States. His detention under § 1225(b)(2) is also not indefinite, as it will end upon the conclusion of his removal proceedings. A period of detention for the purpose of removal proceedings or to effectuate removal does not violate the constitution. The *Jennings* Court, while examining a constitutional challenge, refused to put a six-month deadline on a 1225(b)(2) detention. *Jennings*, 583 U.S. at 302. Moreover, as the court noted in its report and recommendation in *Kum*, even lengthy detention is mandatory and lawful under § 1225(b). *See Kum*, 2025 WL 3113646, at *2, n. 2 (summarizing cases holding that lengthy periods of detention pending immigration proceedings have been deemed constitutional).

In his habeas corpus challenge in *Demore*, the alien did not contest Congress' general authority to remove criminal aliens from the United States. Nor did he argue that he was

not "deportable" within the meaning of § 1226(c). Rather, the alien in that case argued that the Government may not, consistent with the Due Process Clause of the Fifth Amendment, detain him for the period necessary for his removal proceedings. Similar to the alien in *Demore*, Pan is alleging that he should not be detained during the pendency of his removal proceedings. However, Congress made the decision to detain him during the removal proceedings, which is a "constitutionally permissible part of that process." *See Demore*, 538 U.S. at 531.

B. Pan's conditions of confinement claims are not cognizable under Section 2241.

Pan claims that his condition has deteriorated due to "inadequate medical care" and "unsanitary conditions" at ACCC, and asserts that his detention violates the Eighth Amendment's prohibition on cruel and unusual punishment.[8] *See* Dkt. No. 1, at ¶¶ 27, 32. Habeas, however, "is not available to review questions unrelated to the cause of detention[.]" *Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021). The "sole function" of habeas is to "grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose." *Pierre v. United States*, 525 F.2d 933, 935–36 (5th Cir. 1976). Indeed, the Fifth Circuit has long recognized that habeas corpus actions are the proper vehicle to "challenge the fact or duration of confinement," whereas allegations that challenge an individual's "conditions of confinement" are "properly brought in civil rights actions." *Schipke v. Van Buran*, 239 F. App'x 85, 85–86 (5th Cir. 2007); *see also Sacal-Micha v. Longoria*,

[8] As previously stated, Pan's mandatory detention is not punitive.

No. 1:20-cv-37, 2020 WL 1815691, at *4 (S.D. Tex. Apr. 9, 2020) ("A detention facility's protocols for isolating individuals, controlling the movement of its staff and detainees, and providing medical care are part and parcel of the conditions in which the facility maintains custody over detainees.").

As Pan's conditions of confinement claim does not challenge the cause or duration of his confinement, it must be dismissed. *See Dalouche v. Johnson*, No. 3:20-CV-2914-N-BH, 2021 WL 2188760, at *2–3 (N.D. Tex. Apr. 20, 2021), *report and recommendation adopted*, No. 3:20-CV-2914-N-BH, 2021 WL 2187231 (N.D. Tex. May 28, 2021) (dismissing conditions of confinement habeas claim of ICE detainee relating to COVID-19); *Cureno Hernandez v. Mora*, 467 F. Supp. 3d 454, 462 (N.D. Tex. 2020) ("Petitioner's complaints about the risk of infection and the inadequate protections in place at the BBDC are attacks on the conditions of his confinement that do not entitle him to release. His conditions of confinement—even if they are dangerous and unconstitutional—do not nullify an otherwise lawful detention."); *Morales v. Gillis*, No. 5:20-CV-181-DCB-MTP, 2021 WL 4319590, at *3 (S.D. Miss. Aug. 11, 2021), *report and recommendation adopted*, No. 5:20-CV-181-DCB-MTP, 2021 WL 4316947 (S.D. Miss. Sept. 22, 2021) (holding that petitioner could not invoke habeas corpus to challenge the conditions of their confinement and seek release); *Orellana Lluvicura v. Gillis*, 473 F. Supp. 3d 686, 688 (S.D. Miss. 2020) (finding that the petitioner's claim that his detention during the COVID-19 pandemic was punitive and constituted deliberate indifference to his due process rights was not cognizable under section 2241).

C. The Court lacks jurisdiction to grant declaratory relief.

Pan asks the Court to declare his "continued detention unconstitutional under the Suspension Clause, Fifth Amendment, and incorporated Eighth Amendment protections." Dkt. No. 1, at 13, ¶ (d). The Court lacks jurisdiction to grant his request. Congress has specifically precluded judicial review of a claim by an alien arising from the decision or action of the Attorney General to commence proceedings (in this case under § 1225(b)(2)(A), which requires mandatory detention) or to adjudicate cases (in this case, to hold removal proceedings in accordance with § 1229a). *See* 8 U.S.C. § 1252(g). By its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and APA) of claims arising from a decision or action to commence removal proceedings. *See Reno v. AADC*, 525 U.S. 471, 482 (1999). Therefore, the Court does not have subject-matter jurisdiction to grant declaratory relief.

D. The Court lacks jurisdiction to enjoin Pan's removal.

To the extent Pan requests the Court to enjoin his removal from the United States, the Court lacks jurisdiction. *See* Dkt. No. 1, at 13, ¶ h.

"The passage of the REAL ID Act divested district courts of jurisdiction over removal orders." *Moreira v. Mukasey*, 509 F.3d 709, 712 (5th Cir. 2007). Under the Act, "a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this Act...." 8 U.S.C. § 1252(a)(5). "[T]he terms 'judicial review' and

'jurisdiction to review' include habeas corpus review pursuant to section 2241 of Title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory)." *Id.* "Thus, the Act strips the district courts of jurisdiction to review general removal orders, via a petition for habeas corpus, leaving review of such orders to the courts of appeals." *Benitez-Garay v. Dep't of Homeland Sec.*, No. SA-18-CA-422-XR, 2019 WL 542035, at *3 (W.D. Tex. Feb. 8, 2019); *see also Idokogi v. Ashcroft*, No. 02-CV-205, 2003 WL 21018263, at *1 (5th Cir. 2003) ("The district court therefore correctly determined that it lacked jurisdiction to stay the order of removal."); *Singh v. Att'y Gen.*, No. 5:14-cv-41-DCB-MTP, 2014 WL 2805091, at *3 (S.D. Miss. June 20, 2014) (finding the REAL ID Act precluded the court from considering the petitioner's claims challenging his removal order).

Further, a habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. *See, e.g., Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (holding that a federal prisoner seeking habeas relief under § 2241 must first exhaust all available administrative remedies); *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (same); *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (same); *accord Lee v. Gonzales*, 410 F.3d 778, 786 (5th Cir. 2005) ("[A] petitioner must exhaust available avenues of relief and turn to habeas only when no other means of judicial review exists."); *see also Quinonez Mercado as next friend of Abarca-Jovel v. Dep't of Homeland Sec.*, No. 1:25-CV-12066-JEK, 2025 WL 2430423, at *3 (D. Mass. Aug. 22, 2025) (denying habeas petition where

petitioner never sought a bond hearing immigration court); *Palacios v. Venegas*, No. 1:25-CV-00108, 2025 WL 1999169, at *3 (S.D. Tex. June 9, 2025), *report and recommendation adopted*, No. 1:25-CV-00108, 2025 WL 1994779 (S.D. Tex. July 17, 2025) (dismissing case for lack of exhaustion where the petitioner admitted he had "never been to a court" or gone before an immigration judge); *Singh v. U.S. Immigr. & Customs Enf't*, No. CV H-22-3432, 2023 WL 3571958, at *2 (S.D. Tex. Apr. 26, 2023) (finding habeas relief unwarranted where the petition had not requested a bond hearing before an immigration judge before filing his petition). "Exhaustion allows an agency the first opportunity to apply [its] expertise and obviat[es] the need for [judicial] review in cases in which the agency provides appropriate redress." *Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (internal quotations omitted). It also "create[s] a useful record for subsequent judicial consideration." *Id.*

Here, Pan has appealed the denial of his asylum application to the Board of Immigration Appeals ("BIA") and is awaiting a decision. *See* Ex. C. He, therefore, does not have a final order of removal. If he is unsuccessful on appeal, any additional review is delegated to the court of appeals. Thus, this Court does not have jurisdiction to enjoin Pan's removal.

V. CONCLUSION

For the aforementioned reasons, Pan's § 2241 petition should be denied. As an inadmissible alien seeking admission, he is subject to mandatory detention for the duration of his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2) and is not entitled to release.

Date: December 22, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jessica Bourne Williams, Assistant United States Attorney, hereby certify that, on this date, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which sent notice to all counsel of record.

DATE: December 22, 2025

By: */s/Jessica Bourne Williams*
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