

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ARGAM NAZARIAN

Petitioner,

v.

Case No. 3:25-cv-00465

ANGEL GARITE, in his official capacity as
Assistant Field Office Director of Enforcement
and Removal Operations, El Paso Field Office,
U.S. Immigration and Customs Enforcement;

MARY DE ANDA-YBARRA, in her official
capacity as Field Office Director of
Enforcement and Removal Operations, El Paso
Field Office, U.S. Immigration and Customs
Enforcement;

TODD LYONS, in his official capacity as
Acting Director and Senior Official Performing
the Duties of the Director of U.S. Immigration
and Customs Enforcement;

KRISTI NOEM, in her official capacity as
Secretary of the U.S. Department of Homeland
Security; and

PAMELA BONDI, in her official capacity as
United States Attorney General

Respondents.

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT TO
28 U.S.C. § 2241 OR ORDER TO
SHOW CAUSE WITHIN 3 DAYS**

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TO SHOW CAUSE WITHIN THREE DAYS

I. INTRODUCTION

1. Petitioner Argam Nazarian sits detained by Respondents in the El Paso Service Processing Center. His detention is a relatively new development. In fact, Mr. Nazarian, who has been present in the United States since 2021, litigated the entirety of his petition for asylum in front of an immigration judge in Los Angeles, California prior to his detention. He was awaiting a ruling on that petition when Respondents detained him on June 23, 2025 and whisked him away to El Paso, Texas, hundreds of miles away from his family and support system. An El Paso-based immigration judge agreed with Mr. Nazarian that he poses no danger to the community or flight risk, and ordered him released on bond. Despite this, Respondents are unlawfully blocking his release, asserting incorrectly that he is subject to mandatory detention.

2. Mr. Nazarian entered the United States without inspection on August 26, 2021. Agents with the U.S. Department of Homeland Security (DHS) released him on his own recognizance the following month and served him with a Notice to Appear (NTA) in immigration court. *See* Notice to Appear, Ex. 1. For years, Mr. Nazarian lived and worked in the Los Angeles area. He lived amongst family and friends in a tight-knit Christian community. He diligently pursued his claim for asylum, hiring counsel, collecting extensive evidence related to his claim, and attending all of his removal proceedings. He had no interaction with law enforcement.

3. On June 23, 2025, amid Mr. Nazarian's efforts to pursue lawful immigration status, DHS agents detained Mr. Nazarian while he was on his way to work. On August 6, 2025, an El Paso-based immigration judge ordered him released on a \$1,500 bond, the lowest amount possible under the Immigration and Nationality Act (INA). *See* Immigration Judge Order Granting Bond, Ex. 4. DHS blocked Mr. Nazarian's release by immediately invoking the automatic stay power contained in 8 C.F.R. § 1003.19(i)(2) and erroneously asserting on appeal to the Board of

Immigration Appeals (BIA) that Mr. Nazarian could not be released from detention because he is an “applicant for admission” under the INA. *See* Forms EOIR-26 and EOIR-43, Ex. 6. Mr. Nazarian has been detained ever since.

4. Mr. Nazarian’s detention is unlawful on both statutory and constitutional grounds. On statutory grounds, Respondents’ assertion that individuals who enter without inspection are applicants for admission and categorically ineligible for bond, a position recently espoused by the BIA in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA Sept. 5, 2025), violates the INA. On constitutional grounds, Respondents’ detention of Mr. Nazarian without providing evidence that he is a flight risk or a danger to the community violates his Fifth Amendment procedural due process and substantive rights to be free from unlawful imprisonment.

II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

6. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

7. Venue is proper in this district pursuant to 28 U.S.C. § 2241 because Mr. Nazarian is detained at the El Paso Service Processing Center, within the Western District of Texas, El Paso Division.

8. Venue is also proper in this district pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas.

III. PARTIES

9. Petitioner Argam Nazarian is a citizen of Iran. He has been detained by Respondents since June 23, 2025. After arresting him in Los Angeles County, California, officers with U.S. Immigration and Customs Enforcement (ICE) sent Mr. Nazarian to a detention facility in El Paso, refused to set bond for his release, and refused to release him after an immigration judge set bond for his release. Mr. Nazarian has resided in Glendale, California since 2021 and timely filed an application for asylum based on his fear of being persecuted for his Christian faith if removed to Iran. He was awaiting a ruling on this application when he was detained by ICE.

10. Respondent Angel Garite is the Assistant Field Office Director for the El Paso Field Office of ICE's Enforcement and Removal Operations division. As Assistant Field Office Director, Respondent Garite serves in a role similar to that of a warden for the El Paso Service Processing Center, where Mr. Nazarian is detained. As such, he is the immediate physical custodian of Mr. Nazarian. His address is 8915 Montana Avenue, El Paso, Texas 79925. He is named in his official capacity.

11. Respondent Mary De Anda-Ybarra is the Director of the El Paso Field Office of ICE's Enforcement and Removal Operations division. As such, she is Mr. Nazarian's immediate custodian and is responsible for his detention and removal. Her address is ICE El Paso Field Office, 11541 Montana Avenue, Suite E, El Paso, Texas 79936. She is named in her official capacity.

12. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States and is legally responsible for pursuing any effort to remove Mr. Nazarian and confine him pending removal. As such, he is a custodian of Mr. Nazarian. His address is U.S. Immigration and Customs

Enforcement, Office of the Principal Legal Advisor, 500 12th St. SW, Mailstop 5900, Washington, D.C. 20536. He is named in his official capacity.

13. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a) and is legally responsible for pursuing any effort to confine and remove Mr. Nazarian. As such, she is a custodian of Mr. Nazarian. Respondent Noem's address is Office of the General Counsel, MS 0485 Department of Homeland Security, 2707 Martin Luther King, Jr. Ave. SE, Washington, D.C. 20528-0525. Ms. Noem has ultimate custodial authority over Mr. Nazarian and is sued in her official capacity.

14. Respondent Pamela Bondi is Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(g); and as such, is a custodian of Mr. Nazarian. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530-0001. An agency under her authority, the Board of Immigration Appeals, recently declared that immigration judges (IJs) do not have jurisdiction to set bond for immigrants who are not admitted or paroled into the United States. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Ms. Bondi is sued in her official capacity.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. There is no statutory requirement of administrative exhaustion before immigration detention may be challenged in federal court by a writ of habeas corpus. *See* 8 U.S.C. § 1252(d)(1); *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007) ("Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.").

16. The Supreme Court has recognized that exhaustion is not required where an individual “may suffer irreparable harm if unable to secure immediate judicial consideration of her claim.” *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). This is the case here, where Mr. Nazarian raises statutory and constitutional claims that the agency cannot redress, and where each day that passes is one in which he is being unconstitutionally deprived of his liberty.

17. Even if the Court were to consider requiring exhaustion as a prudential matter, further pursuing administrative remedies is unnecessary when it would be futile or the agency has predetermined a dispositive issue. *McCarthy*, 503 U.S. at 147–48 (holding that an administrative remedy is inadequate when it “lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute” or where the “challenge is to the adequacy of the agency procedure itself”). Here, pursuing administrative remedies is futile on two grounds.

18. First, Respondents have perfected an automatic stay against an IJ’s order to release Mr. Nazarian on bond, and the appeal remains pending at the BIA. In an intervening decision following the IJ’s order, the BIA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). There, the BIA held that all noncitizens like Mr. Nazarian, who entered the United States without inspection, admission, or parole, are now considered “applicants for admission” for the purposes of detention under the INA and thus are ineligible for bond hearings before an IJ. The BIA must apply this decision to DHS’s appeal of Mr. Nazarian’s bond, and therefore, is expected to find that the IJ did not have jurisdiction to enter a bond. This intervening decision renders pursuing administrative remedies futile.

19. Second, Mr. Nazarian alleges that both categorizing him as statutorily ineligible for bond, and the use of the automatic stay against him, are a violation of both federal law and the U.S. Constitution. As an administrative court, the BIA does not have jurisdiction to consider Mr.

Nazarian's claims for relief. *See, e.g., Cantu-Delgadillo v. Holder*, 584 F.3d 682, 687 (5th Cir. 2009) (noting that "the BIA lacked jurisdiction to consider [petitioner's due process] challenges."); *Matter of C-*, 20 I. & N. 529, 532 (1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the [INA] and the regulations."). Therefore, habeas corpus is an appropriate avenue to vindicate Mr. Nazarian's statutory and constitutional rights and to restore his liberty. He should not be required to exhaust his administrative remedies prior to seeking habeas relief.

V. STATEMENT OF FACTS

20. Mr. Nazarian is a 27-year-old native and citizen of Iran. Born and raised in the Christian faith, Mr. Nazarian and his family faced sharp persecution due to their religious beliefs. This persecution led the family to enter the United States as refugees in 2008 when Mr. Nazarian was a minor. Unfortunately, Mr. Nazarian's father, who frequently abused the family, forced them to return to Iran not long after they arrived.

21. Upon returning to Iran, Mr. Nazarian, his mother, and his brother continued to face abuse from his father. Mr. Nazarian's father had converted to Islam and justified his abuse on account of his family's refusal to convert as well. In 2016, the three fled for Armenia, his mother's country of birth, but continued to face threats from individuals in Iran. Eventually, Mr. Nazarian's brother and mother fled to the United States, while Mr. Nazarian attempted to resettle in Russia. Although Mr. Nazarian met and married a Russian citizen, he was unable to adjust his status in Russia. Fearing that he would be forcibly returned to Iran, Mr. Nazarian and his wife escaped into Ukraine and flew to Mexico where they made their way to the U.S.-Mexico border.

Mr. Nazarian is initially detained, released, and settles in Los Angeles.

22. On August 26, 2021, Mr. Nazarian and his wife entered the United States at or near San Luis, Arizona. Ex. 1. On August 27, 2021, the couple was apprehended and detained by United States Border Patrol. *Id.* That same day, Border Patrol agents issued Mr. Nazarian a Notice to Appear, charging Mr. Nazarian as removable from the United States under 8 U.S.C. § 1182(a)(6)(A)(i), having entered the United States without inspection. *Id.* He was placed in removal proceedings in Eloy, Arizona. *Id.*

23. On September 15, 2021, Respondents released Mr. Nazarian because he neither presented a flight risk nor a danger to the community. *See* I-830 Release on Recognizance, Ex. 3. He then made his way to Glendale, California where his mother and brother were residing, and officials transferred his removal proceedings to Los Angeles, California.

24. For several years, Mr. Nazarian dutifully abided by the conditions of his release. He joined a close-knit community of Armenian Christians in Los Angeles and found employment installing air conditioners. He also served as the primary caretaker for his mother, who suffers from several chronic and ongoing health conditions, including a systemic autoimmune disorder. Because his mother must take heavy doses of medication to control these conditions that prevent her from driving, Mr. Nazarian was primarily responsible for driving his mother to appointments and for other errands.

25. In the time since his release, Mr. Nazarian also actively pursued his asylum claim. He obtained immigration counsel and located copious documentation connected to the abuse and persecution he faced in Iran. He also attended several initial immigration hearings in the intervening time. In April of 2025, Mr. Nazarian attended and testified at a hearing regarding the

merits of his asylum claim. *See* Hearing Notices, Ex. 12. At the end of that hearing, the IJ advised that he would reset the case for the purposes of issuing a written decision. *Id.*

Mr. Nazarian is re-detained and denied release after being granted bond.

26. In the early morning on June 23, 2025, Mr. Nazarian was walking to his car to go to work, when he saw several vehicles parked near his home. He observed numerous individuals wearing hats and face coverings in these vehicles. As Mr. Nazarian walked from his home, several individuals exited these vehicles and approached him before he could get to his vehicle. Mr. Nazarian did not see any government insignias on the clothing or vehicles of these individuals. They did not identify themselves as law enforcement in any way, and did not show any badges. Several of the individuals physically seized Mr. Nazarian, placed handcuffs on him, and compelled him to enter one of the vehicles. Mr. Nazarian initially believed these individuals to be kidnappers.

27. Once the individuals forced Mr. Nazarian inside one of the vehicles, several began accosting him with questions. One of the individuals asked Mr. Nazarian if he had a “deportation order.” Mr. Nazarian did not know that these were ICE agents until he was in the vehicle. He responded that he had a pending asylum case. The ICE agents then took Mr. Nazarian to a building in downtown Los Angeles. Mr. Nazarian saw a sign outside the building indicating that it was a federal building. The agents removed Mr. Nazarian from the vehicle and walked him inside.

28. Once inside the federal building, agents were walking Mr. Nazarian to a holding area when one of the agents asked Mr. Nazarian if he was a “U.S. citizen” or had a “green card.” Mr. Nazarian told the agent that he had a pending asylum case. Before Mr. Nazarian could explain more, an agent then told him to “shut up” and get into a holding area. Agents then placed him in a holding area with several other individuals, and walked away.

29. Mr. Nazarian languished in this federal building for several days. He was unable to contact his family or his legal counsel. A few days later, agents loaded Mr. Nazarian on a bus to Arizona. Once in Arizona, he was placed on a flight to El Paso. In El Paso, agents drove Mr. Nazarian to a detention facility with tents, before transferring him to the El Paso Processing Center, where Respondents continue to detain him as of the date of this petition.

30. Soon after being detained in El Paso, Mr. Nazarian moved for a custody redetermination through counsel. On August 6, 2025, El Paso IJ Michael Pleters agreed with Mr. Nazarian that he had jurisdiction to grant him a bond, and that Mr. Nazarian presented neither a flight risk nor a danger to the community. *See* Mem. Decision of the Immigration Judge, Ex. 5. Further, IJ Pleters noted that Mr. Nazarian “has no apparent criminal history and is eligible and has a plausible claim for relief from removal.” *Id.* The IJ granted him bond set at the \$1,500 statutory minimum. *Id.*; *see* 8 U.S.C. § 1226(a)(2)(A).

31. On the same day as IJ Pleters’ decision, an attorney for DHS filed an EOIR-43 form with the BIA. *See* Forms EOIR-26 and EOIR-43. This form allows DHS to invoke an automatic stay pursuant to 8 C.F.R. § 1003.19(i)(2). DHS perfected its appeal on August 11, 2025, through the filing of a form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge. *Id.* In this form, an attorney representing DHS explained the basis for its appeal, relying exclusively on the assertion that because Mr. Nazarian last entered the United States without inspection, he is being held under 8 U.S.C. § 1225(b)(2)(A), which requires that he be detained during the pendency of his removal proceedings. *Id.* Also on August 11, 2025, DHS amended Mr. Nazarian’s Notice to Appear to include an allegation of removability based on his not being in possession of an unexpired visa under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *See* I-261 Additional Charges of Inadmissibility, Ex. 9.

32. On August 27, 2025, in a response to ICE's appeal of the IJ's granting bond, Mr. Nazarian denied that he can be held under 8 U.S.C. § 1225(b)(2)(A). *See* Br. Opposing DHS's Appeal of Bond Order, Ex. 7. He asserted that section 1225(b)(2)(A) does not apply to individuals like him, who previously entered without inspection and are now residing in the United States. *Id.* Instead, he asserted that he is detained subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. *Id.*

33. On September 5, 2025, one month after DHS invoked the automatic stay to block Mr. Nazarian's release, the BIA issued a published decision finding that immigrants present without admission, like Mr. Nazarian, are held under 8 U.S.C. § 1225(b)(2)(A), and thus, ineligible for bond. *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

34. Mr. Nazarian remains in detention due to DHS's invocation of the automatic stay, and the government's novel reinterpretation of the statutory scheme for immigration detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

35. Mr. Nazarian and his family continue to suffer as a direct result of his detention. Prior to his detention, Mr. Nazarian was the primary caregiver of his mother, who suffers from numerous health conditions. His mother relies on him to remind her when to take her medication, and since his detention, has frequently missed doses. From detention, Mr. Nazarian can only call his brother to remind him of the appropriate times for his mother to take her medication, which is not a reliable method of ensuring her medications are taken on time. This causes his mother's fingers and arms to become stiff, and she experiences nausea and vomiting. Since Mr. Nazarian's detention, his brother has assumed the role of their mother's primary caretaker, but he is unable to provide the same level of care because he works extra hours to cover the financial support Mr.

Nazarian used to provide his family prior to detention. Mr. Nazarian's brother recently advised him that a panel of his mother's bloodwork indicates that it has worsened since he was detained. Moreover, Mr. Nazarian himself has languished in detention. Since being detained, he has been prescribed medication for depression.

36. Furthermore, prior to being detained, Mr. Nazarian injured his left knee and was awaiting surgery. Inside the detention center, he cannot get proper medical attention for the swelling and pain in his knee. He cannot walk normally without pain. At least once, Mr. Nazarian has had to pop his knee back into place himself because he is unable to receive timely medical attention in the facility.

VI. LEGAL FRAMEWORK

37. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

The statutory framework for detention & release on bond under the INA.

38. The INA prescribes two basic forms of detention for the vast majority of noncitizens in removal proceedings prior to an IJ entering an order of removal.

39. First, the INA provides for mandatory detention of noncitizens subject to expedited removal proceedings under 8 U.S.C. § 1225(b)(1)¹ and for other recent arrivals who are “applicants for admission” under section 1225(b)(2).

40. Second, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Noncitizens detained under section 1226(a) are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), with the exception of noncitizens who have been arrested, charged with, or convicted of certain crimes. *See* 8 U.S.C. § 1226(c).

41. The detention provisions at section 1226(a) and section 1225(b) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

42. In 1997, after Congress amended the INA through IIRIRA, the Executive Office for Immigration Review (EOIR), which houses the immigration courts, and the legacy Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of Aliens,” the agencies explained that “[d]espite being applicants for admission, *aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.*” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for

¹“Expedited removal proceedings” refers to a summary removal process used at the discretion of DHS officials who encounter noncitizens at or near the border and within two years of their entrance into the United States. Here, DHS officials used their authority to place Mr. Nazarian in standard removal proceedings under 8 U.S.C. § 1229a. *See* Notice to Appear, Exh. 1.

consideration for bond and bond hearings before IJs under section 1226 and its implementing regulations.

43. In the decades that followed the creation of this detention scheme, the legacy Immigration and Naturalization Service, and then DHS, determined that noncitizens who entered without inspection and who were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible for bond.

44. That practice was consistent with decades of practice under previous detention statutes, in which noncitizens who were not “applicants for admission”—because they were already present in the United States—were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that current section 1226(a) simply “restates” the detention authority previously found at § 1252(a)). Recently, nearly 30 years after this scheme was codified, DHS reinterpreted this statute. DHS now takes the position that anyone who last entered the United States without inspection, regardless of whether they were placed in expedited or standard removal, is considered to be an “applicant for admission” and thus, statutorily ineligible for bond.

45. On September 5, 2025, the BIA parroted this novel interpretation in a published decision, *Matter of Yajure Hurtado*. 29 I. & N. Dec. 216 (BIA 2025). There, the BIA held that all noncitizens who are present in the United States without having been admitted are subject to mandatory detention under section 1225(b)(2)(A) and are ineligible for bond hearings. *Yajure Hurtado*, 29 I. & N. at 216.

46. ICE and EOIR have adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington Immigration Court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided in the country, the U.S. District Court for the Western District of

Washington found that such a reading of the INA is likely unlawful and that section 1226(a), not section 1225(b), applies to noncitizens who entered the United States without inspection – making them eligible for bond. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1263 (W.D. Wash. 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

47. “The idea that a different detention scheme would apply to non-citizens ‘already in the country,’ as compared to those ‘seeking admission into the country,’ is consonant with the core logic of our immigration system.” *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)).

48. Thus, the interpretation endorsed by DOJ and DHS is inconsistent with the INA. As the *Rodriguez* court explained, the plain text of the statutory provisions demonstrates that section 1226(a), not section 1225(b), applies to people like Mr. Nazarian. *Rodriguez*, 779 F. Supp. 3d at 1257–58.

49. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a). These removal hearings are held under section 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].” 8 U.S.C. § 1229(a)(1).

50. Specifically, section 1226 applies to noncitizens charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such noncitizens makes clear that, by default, they are afforded a bond hearing under subsection (a). As the *Rodriguez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins.*

Co., 559 U.S. 393, 400 (2010)). Section 1226 therefore applies to noncitizens who face charges of being inadmissible to the United States, including those like Mr. Nazarian who are present without admission or parole.

51. By contrast, section 1225(b) applies to those arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of noncitizens who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287.

52. The use of the present participle in section 1225 further demonstrates that its applicability does not extend to people, like Mr. Nazarian, who are already present in the United States. *See United States v. Wilson*, 503 U.S. 329 (1992) ("Congress' use of verb tense is significant in construing statutes."). The present participle "denotes an ongoing process" that "necessarily implies some sort of present-tense action." *Martinez*, 2025 WL 2084238 at *6 (concluding that a noncitizen was not subject to detention under section 1225(b)(2)(A) because they were not seeking admission); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 at *7 (S.D.N.Y. Aug. 13, 2025) ("someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater.").

53. The regulations enacting section 1225(b)(2) similarly use the present participle to refer to "arriving aliens." *See, e.g.*, 8 C.F.R. § 235.2(c). These regulations define an "arriving alien" as "an applicant for admission coming or attempting to come into the United States at a port-of-

entry.” 8 C.F.R. § 1.2. A person who has been living in the United States for years is plainly not “coming or attempting to come into the United States.” *See id.*

54. Individuals who are statutorily eligible for a bond—referred to in the INA and implementing regulations as a custody redetermination—may move for bond at any time. 8 C.F.R. § 1003.19(e). An IJ may order an individual released on bond of at least \$1,500 and dictate any other conditions as prescribed. *See* 8 U.S.C. § 1226(a)(2)(A). As illustrated by Mr. Nazarian’s circumstances, however, such an order does not always guarantee that ICE complies with the order and releases the detainee. Regulations further allow ICE to unilaterally block a noncitizen’s release by automatically staying their release. 8 C.F.R. § 1003.19(i)(2). This stay allows DHS to independently block an individual’s release on bond when it “has determined that an alien should not be released,” *id.*, as long as DHS perfects the stay by filing a Notice of Appeal within 10 business days. *Id.* § 1003.6(c)(1). Once this appeal is perfected, a noncitizen can be detained until the BIA decides the bond appeal or 90 days pass. *Id.* § 1003(c)(4). At the end of the automatic stay period, the IJ’s order remains stayed for up to 30 days while the BIA considers any discretionary stay. *Id.* § 1003(c)(5). A noncitizen has no mechanism by which they can challenge this unilateral, 120-day additional period of detention.

The Fifth Amendment due process protections for individuals in immigration detention.

55. The Fifth Amendment “entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

56. Due Process requires that there be “adequate procedural protections” to ensure that the government’s asserted justification for a noncitizen’s physical confinement “outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

57. “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process is due, this Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government’s interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

VII. REQUEST FOR ORDER TO SHOW CAUSE UNDER 28 U.S.C. § 2243

58. Mr. Nazarian respectfully requests that this Court issue an Order to Show Cause requiring Respondents to show cause as to his detention within three days. The Court must grant a petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

VIII. CLAIMS FOR RELIEF

Count I

Fifth Amendment Substantive Due Process (Automatic Stay)

59. Mr. Nazarian incorporates by reference the preceding paragraphs.

60. The Due Process Clause of the Fifth Amendment provides that no state shall deprive any person of liberty without due process of law. U.S. Const. amend. V.

61. The “Due Process Clause applies to all persons within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 690. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Id.*

62. Confinement for noncriminal purposes is only allowed “in narrow nonpunitive circumstances, where a special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (internal quotations and citations omitted).

63. With respect to immigration confinement, the Supreme Court has recognized two special justifications: preventing danger to the community or flight from immigration enforcement. *See id.*

64. Respondents’ confinement of Mr. Nazarian is wholly unjustified with respect to either rationale.

65. Soon after detaining Mr. Nazarian, ICE released Mr. Nazarian on his own recognizance – indicating that Respondents themselves found him to be a low flight risk and a low risk to public safety. Nevertheless, ICE re-detained him with no changes in those circumstances and continues to keep him confined.

66. At his bond hearing, Mr. Nazarian bore the burden of establishing “to the satisfaction of the Immigration Judge” that he is neither a flight risk nor a danger to the community. *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006). Mr. Nazarian did just that. In objecting to his release, Respondents attempted a tortured, incorrect reading of the INA that would force him to be detained for the pendency of his claim, despite the equities he has built up over the years he has been released, and despite his right to be free from imprisonment. Nevertheless, Mr. Nazarian met his burden, and the IJ granted his bond. Nothing has disturbed this finding.

67. Respondents’ continued confinement of Mr. Nazarian, therefore, no longer bears a “reasonable relationship” to any legitimate, nonpunitive government purpose. *Zadvydas*, 533 U.S. at 690.

68. Because Respondents have custody over Mr. Nazarian in violation of his Fifth Amendment rights, the Court should issue a writ of habeas corpus directing Respondents to release Mr. Nazarian to safeguard his constitutional liberties. *See*, 28 U.S.C. § 2241.

Count II

Fifth Amendment Procedural Due Process (Automatic Stay)

69. Mr. Nazarian incorporates by reference the preceding paragraphs.

70. When the government interferes with a liberty interest, “the procedures attendant upon that deprivation [must be] constitutionally sufficient.” *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). The constitutional sufficiency of procedures is determined by weighing three factors: (1) the private interest that will be affected by the official action, (2) the risk of erroneous deprivation of that interest through the available procedures, and (3) the government’s interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

71. Mr. Nazarian has a weighty liberty interest as his freedom “from government . . . detention . . . lies at the heart of the liberty that [the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 693.

72. The risk of erroneous deprivation of Mr. Nazarian’s liberty through the use of the automatic stay is extremely high. The government has already used the automatic stay provision to unilaterally override the IJ’s determination without any procedural protections at all. “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner,” *Mathews*, 424 U.S. at 333 (quotation omitted), yet the government’s decision to seek an automatic stay is not subject to review by an impartial adjudicator, and Mr. Nazarian has no legal avenue to contest it.

73. Finally, the government’s interest in preserving its unilateral authority to prevent the release of noncitizens who have already shown they are neither a flight risk nor a danger is minimal. Providing additional procedural protections here introduces no additional administrative burdens because the regulations *already* provide the government with the opportunity to seek a discretionary or emergency stay of a bond decision. Unlike the automatic stay provision here, a discretionary stay requires DHS to justify the confinement of a noncitizen to the BIA and gives the noncitizen the opportunity to respond. Permitting the BIA to determine whether a stay of release is in fact warranted reduces the risk of erroneous deprivation without any meaningful costs to the government.

74. Because Respondents have custody of Mr. Nazarian in violation of his Fifth Amendment rights, the Court should issue a writ of habeas corpus directing Respondents to release Mr. Nazarian to safeguard his constitutional liberties. 28 U.S.C. § 2241. Numerous courts throughout the country have found that this automatic stay violates an individual’s right to

meaningful procedural due process. *See, e.g., Aditya W. H. v. Trump*, No. 25-CV-1976, 2025 WL 1420131 at *14 (D. Minn. May 14, 2025); *Mohammed H. v. Trump*, No. 25-CV-1576, 2025 WL 1334847 at *6 (D. Minn. May 5, 2025); *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 at *16 (D. Minn. Aug. 14, 2025); *Anicasio v. Kramer*, No. 25-cv-3158, 2025 WL 2374224 at *5 (D. Neb. Aug. 14, 2025). As such, this Court should likewise find that Mr. Nazarian’s detention represents a violation of his right to procedural due process and order him released according to the bond conditions set by the IJ.

Count III
Administrative Procedure Act *Ultra Vires* (Automatic Stay Regulation)

75. Mr. Nazarian incorporates by reference the preceding paragraphs.

76. The Administrative Procedure Act provides that courts “shall ... hold unlawful and set aside agency action” that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(C).

77. The automatic stay regulation exceeds the authority given to the Attorney General by Congress and unlawfully eliminates IJs’ discretionary authority to make custody determinations. Congress gave the Attorney General discretion to decide whether to release detained noncitizens pending removal proceedings if they have not been convicted of certain criminal offenses and are not linked to terrorist activities. *See* 8 U.S.C. §§ 1226(a), (c). The Attorney General has delegated this authority to IJs, who have discretion to determine whether to release these noncitizens on bond. 8 C.F.R. §§ 1003.19, 1236.1; *see also* 28 U.S.C. § 510 (permitting the Attorney General to delegate her functions to officers or employees within the Department of Justice).

78. Specifically, the automatic stay regulation is *ultra vires* because it directly contradicts authority given solely to the Attorney General “to delegate detention determinations to

‘any other officer, employee, or agency of the Department of Justice.’” *See, e.g., Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3, 2025). However, “DHS, the party that invoked the automatic stay provision, is not within the Department of Justice, but is a separate executive department.” *Id.* Permitting DHS to unilaterally override the findings of a DOJ agent effectively delegates that discretionary detention authority to DHS and thereby exceeds the statutory authority Congress gave the Attorney General. *Id.*

79. Congress has not similarly delegated the authority to DHS to independently make such a custody determination following a custody determination by an agent of DOJ. Nor is there statutory authority for DHS to unilaterally stay an IJ’s bond determination. Despite this lack of statutory authority, the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) purports to give DHS the authority to unilaterally override the IJ’s decision.

80. Accordingly, the automatic stay regulation is unlawful and *ultra vires*, and this Court should find that the government cannot continue to hold Mr. Nazarian on this basis, and should order his release.

Count IV
Violation of the Immigration and Nationality Act
(Respondents’ Custody Determination is Contrary to 8 U.S.C. § 1226)

81. Mr. Nazarian incorporates by reference the preceding paragraphs.

82. The mandatory detention provision in 8 U.S.C. § 1225(b)(2) does not apply to noncitizens, like Mr. Nazarian, who were already inside the United States prior to being apprehended and placed into standard removal proceedings by Respondents. Such noncitizens are detained under section 1226(a) and are generally entitled to a bond hearing, unless they have been arrested, charged with, or convicted of certain crimes that would subject them to mandatory detention. *See* 8 U.S.C. § 1226(c).

83. Mr. Nazarian has not been arrested, charged with, or convicted of certain crimes that would subject him to mandatory detention. *See* 8 U.S.C. § 1226(c).

84. Accordingly, Respondents' assertion that they are detaining Mr. Nazarian under 8 U.S.C. § 1225(b)(2), a statute that does not apply to him, violates the INA because Mr. Nazarian is detained under 8 U.S.C. § 1226(a) and thus statutorily eligible to be released on bond, as ordered by the IJ.

85. Furthermore, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the intervening BIA decision that parrots Respondents' contention that Mr. Nazarian is detained under 8 U.S.C. § 1225(b)(2), is not entitled to judicial deference. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 410 (2024) ("Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority").

86. For these reasons, this Court should enter a declaratory judgment finding that Mr. Nazarian is detained under 8 U.S.C. § 1226(a), and order him released on the bond issued by the IJ.

Count V
Fifth Amendment Procedural Due Process
(Respondents' Custody Determination is Unconstitutional)

87. Mr. Nazarian incorporates by reference the preceding paragraphs.

88. When the government interferes with a liberty interest, "the procedures attendant upon that deprivation [must be] constitutionally sufficient." *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). The constitutional sufficiency of procedures is determined by weighing three factors: (1) the private interest that will be affected by the official action, (2) the risk of erroneous deprivation of that interest through the available procedures, and (3) the government's interest,

including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *See Mathews*, 424 U.S. at 335.

89. Mr. Nazarian has a weighty liberty interest as his freedom “from government . . . detention . . . lies at the heart of the liberty that [the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 693.

90. The risk of erroneous deprivation of Mr. Nazarian’s liberty is extremely high, given that the government, pursuant to *Matter of Yajure Hurtado*, is detaining Mr. Nazarian under a statute that does not apply to him, and denying him his statutory right to a bond hearing on the erroneous assertion that he is subject to mandatory detention.

91. Finally, the government’s interest in preserving its unilateral authority to prevent the release of noncitizens who have already shown they are neither a flight risk nor a danger is minimal. Providing additional procedural protections here introduces no additional administrative burdens as Mr. Nazarian is statutorily entitled to a bond hearing under 8 U.S.C. § 1226(a).

92. Because Respondents have custody of Mr. Nazarian in violation of his Fifth Amendment rights, the Court should issue a writ of habeas corpus directing Respondents to release Mr. Nazarian to safeguard his constitutional liberties. *See* 28 U.S.C. § 2241. Numerous courts throughout the country have found that the use of the mandatory detention provision as affirmed in *Matter of Yajure Hurtado* violates an individual’s right to meaningful procedural due process. *See, e.g., Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025). As such, this Court should likewise find that Mr. Nazarian’s detention represents a

violation of his right to procedural due process and order him released according to the bond conditions set by the IJ.

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner, Argam Nazarian prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner;
- c. Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243, directing Respondents to show cause why the petition for a writ of habeas corpus filed by Mr. Nazarian pursuant to 28 U.S.C. § 2241 should not be granted within three days;
- d. Declare that Respondents' confinement of Mr. Nazarian violates the Fifth Amendment;
- e. Order Respondents to release Mr. Nazarian upon receipt of payment of the \$1,500 bond originally ordered by the immigration judge or, in the alternative hold a constitutionally adequate custody redetermination proceeding at which DHS bears the burden of justifying Mr. Nazarian's detention by clear and convincing evidence;
- f. Enjoin Respondents from re-invoking the automatic stay against Mr. Nazarian in any future custody redetermination hearing.
- g. Enjoin the BIA from granting a discretionary stay of any custody redetermination order absent a meaningful opportunity for Mr. Nazarian to oppose and the issuance of a reasoned decision justifying the grant.
- h. Prohibit the re-detention of Mr. Nazarian unless and until the Respondents provide Mr. Nazarian's counsel and a U.S. District Court with jurisdiction over Mr. Nazarian notice of their intent to re-detain him and demonstrate by clear and convincing evidence at a hearing that the Court subsequently calendars that the re-detention of Mr. Nazarian is the least restrictive means of preventing danger to the community and/or addressing risk of flight from immigration enforcement;
- i. Award reasonable attorneys' fees and costs for this action;
- j. Issue declaratory relief holding that merely being a noncitizen who has not been admitted or paroled does not create sufficient legal conditions for mandatory detention under § 1225(b)(2)(A), and that Mr. Nazarian is held under 8 U.S.C. § 1226(a), and thus eligible for bond;

- k. Grant him any preliminary relief to which he shows himself to be entitled; and
- l. Grant such further relief as the Court deems just and proper.

Dated: October 10, 2025.

Respectfully submitted,

/s/ Daniel Hatoum
Daniel Hatoum
Attorney-in-Charge
Texas Bar No. 24099136
TEXAS CIVIL RIGHTS PROJECT
P.O. Box 219
Alamo, Texas 78516
(956) 787-8171 ext. 127
(956) 787-6348
daniel@texascivilrightsproject.org

Daniel Woodward
Texas Bar No. 24138347
TEXAS CIVIL RIGHTS PROJECT
P.O. Box 17757
Austin, Texas 78760
(512) 474-5073 ext. 210
danny@texascivilrightsproject.org

Evan Brown*
(MN Bar #0401171)
Contreras Edin Law, PA
663 University Ave. West 200
St. Paul, MN 55104
(651) 771-0019
EvanB@contrerasedinlaw.com

**Pro Hac Vice Application Forthcoming*

28 U.S.C. § 2242 VERIFICATION STATEMENT

The undersigned counsel submits this verification on behalf of Petitioner. Undersigned Counsel has discussed with Petitioner the events described in this Petition for Habeas Corpus and, on the basis of those discussions, verifies that the statements in the Petition are true and correct to the best of his knowledge and belief.

Dated: October 10, 2025

/s/Evan Brown

Evan Brown*

(MN Bar #0401171)

Contreras Edin Law, PA

663 University Ave. West 200

St. Paul, MN 55104

(651) 771-0019

EvanB@contrerasedinlaw.com