

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;

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

Respondents.

MOTION FOR PRELIMINARY INJUNCTION RELIEF ORDERING RELEASE
PENDING FINAL JUDGMENT

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Petitioner, Argam Nazarian, respectfully requests this Court exercise its authority under the All Writs Act, 28 U.S.C. § 1651, the habeas corpus statute, 28 U.S.C. § 2241, and its inherent equitable authority to issue a preliminary injunction, to direct Respondents to release him during the pendency of these proceedings and forbid them from further confining him during the pendency of these proceedings, unless he receives constitutionally adequate procedural protections, including notice and a post-deprivation judicial hearing.

Due to the urgent circumstances and important questions of statutory and constitutional law presented by this case, Mr. Nazarian requests an expedited hearing on this motion.

I. INTRODUCTION AND FACTUAL BACKGROUND

Mr. Nazarian is a Christian of Armenian descent and a citizen of Iran. Verified Pet. for Writ of Habeas Corpus, Appl. For Order to Show Cause, Dkt. 1, (“Verified Pet.”). He was admitted as a refugee to the United States in 2008 when he was a child, but Mr. Nazarian was forced by his father to return to Iran. *Id.* ¶ 20. Mr. Nazarian’s father converted to Islam and abused Mr. Nazarian for choosing to retain his Christian faith. *Id.* ¶ 21. Mr. Nazarian returned to the United States on August 26, 2021, by entering without inspection in Arizona. *Id.* ¶ 22. At that time, he was encountered by Border Patrol, briefly detained in a U.S. Immigration and Customs Enforcement (ICE) facility, and then released with a Notice to Appear in Immigration Court. *Id.* ¶¶ 22–23. This Notice to Appear charged Mr. Nazarian as removable under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”).

Mr. Nazarian then settled with his family, including his mother and brother, in Los Angeles, California. *Id.* ¶ 23. He timely filed an application for asylum and other protection. *Id.* ¶ 9. Throughout the next several years, Mr. Nazarian pursued his asylum claim. *Id.* ¶ 25. In April of 2025, an individual hearing was held on the merits of Mr. Nazarian’s asylum claim. *Id.* At that time, the immigration judge presiding over the removal proceedings set another hearing to issue a

written decision. *Id.*

Mr. Nazarian is detained and ICE blocks his release on bond.

In the early morning of June 23, 2025, Mr. Nazarian was walking to his car to go to work when he saw multiple individuals in hats and face coverings nearby. *Id.* ¶ 26. Mr. Nazarian did not see any government insignias on the clothing and vehicles of the men as they approached. *Id.* As Mr. Nazarian walked from his home, several individuals exited these vehicles and approached him before he could get to his vehicle. *Id.* The individuals did not identify themselves as law enforcement in any way, and did not show any badges. *Id.* Several of the individuals physically seized Mr. Nazarian, placed handcuffs on him, and compelled him to enter one of the vehicles. *Id.* Mr. Nazarian initially believed these individuals to be kidnappers. *Id.* Mr. Nazarian was then transported to a federal building in Los Angeles, sent on a bus to Arizona, and flown to El Paso, Texas, where he was detained. *Id.* ¶¶ 27, 29.

Soon after being detained and transferred, Mr. Nazarian moved for a custody redetermination, commonly referred to as a bond hearing. *Id.* ¶ 30. At a bond hearing on August 6, 2025, Immigration Judge Michael Pleters (“IJ Pleters”) of the El Paso Immigration Court ordered Mr. Nazarian released on a bond in the amount of \$1,500. *Id.* During this hearing, an attorney for ICE urged its position that the court did not have jurisdiction to issue Mr. Nazarian a bond because he is being held under 8 U.S.C. § 1225, which would make Mr. Nazarian ineligible for bond. *Id.* ¶ 31. In ordering Mr. Nazarian released, IJ Pleters found that he had jurisdiction to issue bond, and that Mr. Nazarian “ha[d] proven by a preponderance of the evidence that he does not pose either a danger to the community or a flight risk if released on bond.” *Id.* ¶ 30. 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.*

Despite the fact that he was ordered released, Respondents refused to release Mr. Nazarian to his family and the community of support waiting for him in Los Angeles, California. On August 11, 2025, an attorney for ICE attempted to amend his Notice to Appear to include a charge of removability under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* ¶ 31. Immediately following the August 6, 2025 bond hearing, ICE blocked Mr. Nazarian's release by invoking an automatic stay under federal regulations. *Id.* On the same day as the bond hearing, an attorney for ICE appealed IJ Pleters' decision by filing an EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination. *Id.* Federal regulations allow ICE to automatically stay an individual's release "when [it] has decided an alien should not be released or has set a bond of \$10,000 or more" by filing an automatic stay form within one business day of the decision. *Id.* ¶ 54. If an appeal is filed within ten business days, this stay remains in effect for the duration of the appeal. *Id.* ICE perfected the automatic stay in Mr. Nazarian's case on August 11, 2025. *Id.* ¶ 31. In this appeal, ICE again raised its position that because he last entered the United States without inspection, he is being held under 8 U.S.C. § 1225, which would make Mr. Nazarian ineligible for bond. *Id.* ICE's appeal of Mr. Nazarian's bond remains pending at the BIA. *Id.* ¶ 18.

On September 5, 2025, the BIA issued its published decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), incorrectly parroting ICE's statutory interpretation of the INA and holding that all noncitizens who entered the United States without admission or parole, like Mr. Nazarian, are now considered applicants for admission and thus are ineligible for immigration judge bond hearings. *Id.* ¶ 33. Due to this decision, Mr. Nazarian expects that ICE's appeal will be sustained and he will be found ineligible for bond. Accordingly, on October 10, 2025, Mr. Nazarian filed a habeas corpus petition challenging the legality of his confinement.

Mr. Nazarian is his mother's primary caregiver.

Mr. Nazarian and his family have suffered greatly since his detention. Mr. Nazarian's mother has "several chronic and ongoing health conditions, including a systemic autoimmune disorder." *Id.* ¶ 24. Mr. Nazarian serves as his mother's primary caregiver and provides the necessary support to ensure her safety, compliance with treatment, and quality of life. *Id.* ¶ 35. Prior to his detention, Mr. Nazarian took his mother to all of her doctor's appointments and ensured that she took her medications on time. *Id.* ¶¶ 24, 35. When Mr. Nazarian's mother does not take her medication on time, she experiences nausea, vomiting, and stiffness in her fingers and arms. *Id.* ¶ 35. Since his detention, Mr. Nazarian's brother has assumed the role of primary caretaker. *Id.* However, he is unable to provide the same level of care as Mr. Nazarian because he works extra hours to cover the financial support Mr. Nazarian used to provide his family prior to detention. *Id.* Since his detention, Mr. Nazarian's mother more frequently misses taking her medication, which worsens her symptoms and condition. *Id.* Mr. Nazarian's assistance is essential to his mother's ability to maintain her health and to avoid medical complications.

II. STANDARD OF REVIEW

"The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom." *Boumediene v. Bush*, 553 U.S. 723, 739 (2008). "[C]ommon-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances." *Id.* at 779. Thus, as codified in 28 U.S.C. § 2241, habeas corpus has "never been a static, narrow, formalistic remedy." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). Rather, its "scope has grown to achieve its grand purpose[:] the protection of individuals against erosion of their right to be free from wrongful restraint[]." *Id.*

This Court has the inherent authority to release Mr. Nazarian pending the adjudication of his habeas petition. *Calley v. Callaway*, 496 F.2d 701, 702 (5th Cir. 1974); *see also Mapp v. Reno*, 241 F.3d 221, 230 (2d. Cir. 2001). This authority ensures that the writ remains an effective remedy under extraordinary circumstances. *See Mapp*, 241 F.3d at 230. A habeas petitioner should be released pending resolution of his habeas petition where (1) the petitioner raises substantial legal claims upon which he has a high probability of success, and (2) extraordinary or exceptional circumstances exist. *See Calley*, 496 F.2d at 702; *Mapp*, 241 F.3d at 230. Exceptional circumstances include “serious deterioration of the petitioner’s health while incarcerated” and periods of detention so short that failing to grant the motion would render the writ ineffective. *Id.*; *see also Nelson v. Davis*, 739 F. App’x 254, 254–55 (5th Cir. 2018) (restating test from *Calley*). District Courts within the Fifth Circuit have recognized and applied the legal framework of *Calley* and *Mapp* to determine release pending disposition of noncitizens’ habeas petitions challenging immigration confinement. *See, e.g., Singh v. Gillis*, No. 5:20-CV-96, 2020 WL 4745745, at *2 (S.D. Miss. June 4, 2020) (collecting cases).

Similarly, under Federal Rule of Civil Procedure 65, this Court can issue a preliminary injunction (PI). To enter a PI, the Court must find that four factors, on balance, weigh in a petitioner’s favor: (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest. *Speaks v. Kruse*, 445 F.3d 396, 399–400 (5th Cir. 2006) (quotations omitted). Interim relief under the *Mapp* framework is coextensive with relief under the traditional PI framework in the civil immigration context. *See Basank v. Decker*, 613 F. Supp. 3d 776, 794 (S.D.N.Y. 2020) (granting petitioners’ motion for a PI and holding that

petitioners also qualified for relief under *Mapp* framework).

As outlined in the request to show cause in Petitioner's Habeas Petition, the Court does not need to rely on interim remedies, and can issue an order to show cause to resolve the case immediately. However, if the Court wishes to find good cause to give Respondents additional time to brief the issues, the following interim relief should be considered. First, this Court can issue a PI that releases Mr. Nazarian for the remainder of the case. *Basank*, 613 F. Supp. 3d at 795. Similarly, under the *Mapp* framework, the Court can order Mr. Nazarian's release on personal recognizance pending a ruling on the merits, *see, e.g., Mahdawi v. Trump*, 781 F. Supp. 3d. 214, 325 (D. Vt. 2025), or alternatively order a judicial bail hearing in which the Court assesses whether Mr. Nazarian needs to pay a bond and, if so, in what amount, *see Khalil v. Trump*, 2:25-CV-1963, Dkt. 316, at 1 (D.N.J. June 20, 2025) (releasing petitioner on bail from immigration custody while federal habeas petition is pending); *Ozturk v. Trump*, 783 F. Supp. 3d. 801, 804, 812 (D. Vt. 2025) (releasing petitioner under *Mapp* following a bail hearing); *Suri v. Trump*, No. 1:25-CV-480, 2025 WL 1392143, at *1 (E.D. Va. May 14, 2025) (granting release on bail). Additionally, the Court has the equitable authority to collapse the preliminary injunction and merits inquiry and grant Mr. Nazarian's habeas petition immediately. A federal district court did so recently in the case of a petitioner who, like Mr. Nazarian, was arrested by the U.S. Department of Homeland Security (DHS) after DHS had already granted release with "no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond." *Valdez v. Joyce*, No. 1:25-CV-4627, 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025).

III. ARGUMENT

Mr. Nazarian satisfies the standard for release pending the Court's resolution of this case and for a preliminary injunction.

A. Mr. Nazarian is likely to succeed on the merits of his claims that Respondents' use of the automatic stay provision to detain Mr. Nazarian is unlawful.

1. Respondents' use of the automatic stay provision violates Mr. Nazarian's substantive due process rights under the Fifth Amendment.

Under the automatic stay regulation, DHS may unilaterally prevent an immigration judge's custody redetermination from going into effect whenever DHS believes a noncitizen "should not be released." 8 C.F.R. § 1003.19(i)(2). This means the person will necessarily remain in custody until either the Board of Immigration Appeals ("BIA") decides the custody redetermination appeal or ninety days pass. *Id.* § 1003.6(c)(4). Since DHS has ten days to file the notice of appeal before the ninety-day clock begins, the automatic-stay provision creates a 100-day due-process-free zone where there is no ability to be heard at a meaningful time, nor to present evidence and argument to a neutral arbiter. *Id.* And at the end of the automatic stay period, the immigration judge's order to release a noncitizen on bond remains stayed for up to thirty days while the BIA considers any request for a discretionary stay. *Id.* § 1003.6(c)(5). Thus, the regulations permit a 130-day period of confinement without any administrative procedures to contest or challenge that confinement.

Mr. Nazarian's detention violates his substantive liberty interest in "[f]reedom from imprisonment." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). That freedom "lies at the heart of the liberty that [the Due Process] Clause protects." *Id.* Indeed, because "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

Specifically, immigration detention is civil and must "bear[] a reasonable relation to the purpose for which the individual [is] [detained]" so that it remains "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690 (citation modified); *see also Schall v. Martin*, 467 U.S. 253, 264 (1984) (detention must be a proportional—not excessive—response to a legitimate state

objective). The only legitimate purposes for civil immigration detention are mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *see also, e.g., Addington v. Texas*, 441 U.S. 418, 426 (1979) (“The [government] has no interest in confining individuals involuntarily if they . . . do not pose some danger.”).

Neither purpose is served by Mr. Nazarian’s detention. Indeed, DHS determined that Mr. Nazarian was neither a flight risk nor a danger to the community when it made the decision to release him four years ago after he entered the United States without inspection. *See* Verified Pet. ¶ 2; 8 C.F.R. § 236.1(c)(8) (“the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding”). An immigration judge (IJ) in El Paso, Texas recently held that Mr. Nazarian is neither a flight risk nor a danger to the community—and released him on the lowest bond allowed by statute. *Id.* ¶ 3. In the years since his release from ICE custody, Mr. Nazarian has lived in and around the Los Angeles, California area without incident, and has had no interactions with law enforcement. Furthermore, Mr. Nazarian is awaiting a ruling on a compelling asylum claim for relief from removal. He has attended all of his immigration court hearings, and has ample reason to attend his immigration hearings and not abscond. Accordingly, there is no reasonable reason that Mr. Nazarian is being detained, and this detention violates his Fifth Amendment substantive liberty interest to be free from unlawful imprisonment.

DHS’ invocation of the automatic-stay provision to prevent Mr. Nazarian’s release is likewise unmoored from any lawful purpose. At this point, “[t]he Government has made no effort to explain what ‘special justification’ exists to deny [Mr. Nazarian] the liberty the IJ ordered subject to bond.” *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *13 (D. Md. Aug. 24, 2025). Because the automatic-stay provision operates “[s]imply by fiat—without

introducing any proof,” *Mohammed H. v. Trump*, No. 25-cv-1576, 2025 WL 1692739, at *5 (D. Minn. June 17, 2025), the automatic stay has enabled the government to prolong Mr. Nazarian’s confinement without a lawful basis. “As such, the automatic stay results in Petitioner’s arbitrary detention violative of [Mr. Nazarian’s] substantive due process rights guaranteed by the Fifth Amendment.” *Leal-Hernandez*, 2025 WL 2430025, at *13 (collecting cases).

2. Respondents’ use of the automatic stay provision violates Mr. Nazarian’s procedural due process rights under the Fifth Amendment.

Respondents’ continued detention of Mr. Nazarian by invoking the automatic stay of his release violates his right to procedural due process. When the Government deprives someone of 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) (citation omitted). The constitutional sufficiency of procedures is determined by weighing three factors: (i) the private interest that will be affected by the official action, (ii) the risk of erroneous deprivation of that interest through the available procedures, and (iii) 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). All three *Mathews* factors weigh in favor of Mr. Nazarian.

First, Mr. Nazarian is likely to show he has a strong liberty interest in his release pending appeal. That is because “[f]reedom 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*, 533 U.S. at 690.

Second, the automatic-stay provision creates a serious risk of erroneous deprivation because it eliminates any procedural safeguard to prevent prolonged, unwarranted detention pending DHS’ appeal. *See Günaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL

1459154, at *9 (D. Minn. May 21, 2025 (“[T]he challenged regulation permits an agency official who is also a participant in the adversarial process to unilaterally override the immigration judge’s decision.”); *Leal-Hernandez*, 2025 WL 2430025, at *14 (“The automatic stay is a violent distortion of proper, legitimate process whereby the Government, as though by talisman, renders itself at once prosecutor and adjudicator.”).

Third, Respondents’ interest in using these procedures and the administrative burdens of instituting an alternative are minimal. For one, “an immigration judge has already made a bail determination” that accounts for Respondents’ safety and flight concerns. *Ashley v. Ridge*, 288 F. Supp. 2d 662, 671 (D.N.J. 2003). To the extent DHS believes the immigration judge made an erroneous decision, it can seek an emergency stay under 8 C.F.R. § 1003.19(i)(1). Under that provision, and unlike the automatic stay provision, the adjudication of whether the non-citizen should remain confined pending appeal is made by the BIA. The BIA could also ensure that DHS has a brief period of time to request and receive an emergency stay by issuing administrative stays akin to those issued by federal courts “to allow sufficient time to consider the emergency stay [pending appeal].” *Tex. All. for Retired Americans v. Hughs*, No. 20-40643, 2020 WL 5814260, at *1 (5th Cir. Sep. 28, 2020) (granting administrative stay and requesting response the following day). Alternatively, a substantially shorter automatic stay window could achieve this purpose. *See, e.g., Hamama v. Adducci*, No. 17-CV-11910, 2018 WL 1905074, at *2 (E.D. Mich. Apr. 23, 2018) (concluding that reducing the automatic stay to 30 days would “allow the Government sufficient time to file a motion for discretionary stay, the detainee sufficient time to respond, and the BIA sufficient time to reach a decision”), *vacated on other grounds*, 946 F.3d 875 (6th Cir. 2020). Since the government can address its concerns at bond hearings before immigration judges and the

alternative safeguard of seeking an emergency stay already exists under 8 C.F.R. § 1003.19(i)(1), relying on existing procedures would not pose undue burdens on the government.

Finally, numerous U.S. District Courts across the country have found that the automatic stay provision violates an individual's procedural due process rights under the Fifth Amendment. *See, e.g., Alvarez Martinez v. Noem*, No. 5:25-CV-01007-JKP2025, 2025 WL 2598379, at *4 (W.D. Tex. Sep. 8, 2025) (finding detained petitioner was "likely to succeed in demonstrating the automatic stay regulation found at 8 C.F.R. § 1003.19(i)(2) violates [his] procedural due process rights under the Fifth Amendment"); *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 14, 2025); *Günaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *10 (D. Minn. May 21, 2025); *Jimenez v. Kramer*, No. 25-cv-3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 25-cv-3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *see also Ashley v. Ridge*, 288 F. Supp. 2d 662, 668 (D.N.J. 2003) (invalidating a similar regulator provision that automatically stayed bond for immigration petitioners); *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1078 (N.D. Cal. 2004) (same). The same result should be reached here.

3. *Respondents' use of the automatic stay provision violates the APA because it is ultra vires.*

The automatic stay regulation violates the Administrative Procedure Act (APA) and is *ultra vires* because it is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C). Specifically, the provision improperly delegates discretionary detention authority to DHS that Congress reserved exclusively for the Attorney General. Courts across the country have affirmed the same. *See, e.g., Leal-Hernandez*, 2025 WL 2430025, at *15 (finding the government's use of automatic stay provision to appeal IJ's bond decision *ultra vires* because it "renders both the discretionary nature of Petitioner's detention and the IJ's authority a nullity"); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sep.

3, 2025) (holding that the automatic stay provision is *ultra vires* because it “exceeds the statutory authority Congress gave to the Attorney General”); *Zavala v. Ridge*, 310 F. Supp. 2d. 1071, 1079 (N.D. Cal. 2004) (finding the automatic stay regulation *ultra vires* because it “effectively eliminates the discretionary nature of the immigration judge’s determination and results in a mandatory detention . . . of a new class of aliens, although Congress has specified that such individuals are not subject to mandatory detention”). For these reasons, the automatic stay provision violates the APA, and Mr. Nazarian’s continued detention pursuant to the automatic stay provision is unlawful.

B. Mr. Nazarian is likely to succeed on the merits of his claims that is he being wrongfully detained under 8 U.S.C. § 1225(b)(2).

4. Respondents’ detention of Mr. Nazarian under 8 U.S.C. § 1225(b)(2) violates the Immigration and Nationality Act.

Mr. Nazarian is likely to succeed on his claim that his detention under 8 U.S.C. § 1225(b)(2) violates the INA. On August 6, 2025, Respondents appealed IJ Pleters’ granting of bond, asserting that Mr. Nazarian is detained under 8 U.S.C. § 1225(b)(2) and thus ineligible for bond. On September 5, 2025, the Board of Immigration Appeals parroted Respondents’ position, 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).

The government’s position contravenes the plain reading of the INA, goes against over twenty years of agency interpretation and practice, and has been universally rejected by the dozens of federal courts to address the issue. *See, e.g., Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *XX (W.D. La. Sep. 11, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *XX (W.D. La. Aug. 27, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *XX (D. Mass. July 7, 2025); *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL

2531566, at *2 (D. Neb. Sep. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Barrera, v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *XX (W.D. Ky. Sep. 19, 2025) (rejecting the BIA’s reasoning in *Matter of Yajure Hurtado*); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *27 (W.D. Wash. Sep. 30, 2025) (granting summary judgment holding detention under § 1225(b)(2)(A) is unlawful for a local class of people who “(1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231”).

Respondents’ assertion that Mr. Nazarian is detained under 8 U.S.C. § 1225(b)(2) is plainly incorrect because, as a person who is already present in the United States, Mr. Nazarian is properly detained under § 1226(a) and is thus eligible for a bond hearing. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Courts have long recognized that § 1225(b) “applies primarily to aliens seeking entry into the United States,” while § 1226 “applies to aliens already present in the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 297, 303 (2018); *see also Lopez Santos*, 2025 WL 2642278, at *4 (explaining that both statutes are necessary because they “differentiat[e] between the detention of arriving aliens who are seeking entry into the United States under § 1225 and the detention of those who are already present in the United States under § 1226.”). Indeed, “[t]he 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*, 583 U.S. at 289).

The text of the INA affirms that Mr. Nazarian is properly detained under § 1226(a) and

thus eligible for a bond hearing. Section 1226 explicitly applies to people who are charged as being inadmissible, including those who entered without inspection, undercutting Respondents' argument that § 1225(b)(2)(A) governs the detention of people who are inadmissible because they entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E) states that people who are "inadmissible under paragraph (6)(A) . . . section 1182(a)"—*i.e.*, noncitizens who have previously entered without inspection—and are charged with, arrested for, or convicted of certain crimes must be detained. The explicit reference to such people in this specific exception makes clear that, by default, such people are afforded a bond hearing under § 1226(a). "When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Therefore, noncitizens like Mr. Nazarian, who are present in the United States and charged as inadmissible because they entered without inspection, are subject to detention under § 1226.

Meanwhile, § 1225(b) applies to people arriving at ports of entry or those who very recently entered the United States. The section's title refers to "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." 8 U.S.C. § 1225. As several courts have noted, "[t]he added word of 'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already." *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sep. 19, 2025) (citing *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sep. 9, 2025)).

The use of the present participle in § 1225 further demonstrates that its applicability does not extend to people 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 v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citations and internal quotations omitted) (concluding that noncitizen was not subject to detention under § 1225(b)(2)(A) because they were not seeking admission).

Section 1225(b)(2)(A) applies to noncitizens “seeking admission.” The use of present participle in the phrase “seeking admission” implies a “present-tense action” and does not apply to a person who has been living in the country for years. *Martinez*, 2025 WL 2084238, at *6; *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025) (“[S]omeone 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.”). The regulations enacting § 1225(b)(2) similarly use the present participle to refer to “arriving aliens.” 8 C.F.R. § 235.2(c). These regulations define “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.” *Id.*

Neither is the Court required to adhere to the BIA’s decision in *Matter of Yajure Hurtado* that asserts identical arguments that an individual who has been living in the United States is detained under 8 U.S.C. § 1225(b)(2) and thus ineligible for a bond hearing. *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, as the APA requires.”). In fact, numerous courts across the country have rejected the BIA’s position that individuals living in the United States are detained under 8 U.S.C. § 1225(b)(2). *See, e.g., Barrera v. Tindal*, No. 25-cv-54541 (RGJ), 2025 WL 2690565, at *5 (W.D. Ky. Sep. 19, 2025) (“[B]ecause it is the

responsibility of the court to decide whether the law means what the agency says[,] the Court disagrees with the holding of *Matter of Yajure* [*Hurtado*] and declines to follow it.”); *Chang Barrios v. Shepley*, No. 1:25-CV-00406-JAW, 2025 WL 2772579, at *9 (D. Me. Sep. 29, 2025) (rejecting *Matter of Yajure Hurtado* because “this Court is not bound by agency interpretations, especially those in conflict with well-reasoned decisions by other federal courts”). This Court, too, should find that Mr. Nazarian is erroneously detained under 8 U.S.C. § 1225(b)(2).

In sum, the textual structure of the INA, longstanding agency practice, and dozens of recent federal court decisions all affirm that Mr. Nazarian is likely to succeed on the merits of his claim that his detention is contrary to the INA.

5. *Respondents’ detention of Mr. Nazarian under 8 U.S.C. § 1225(b)(2) violates Mr. Nazarian’s procedural due process rights under the Fifth Amendment.*

Mr. Nazarian is also likely to succeed on his claim that his detention violates his Fifth Amendment procedural due process rights. Even “[w]hen the government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner.” *United States v. Salerno*, 481 U.S. 739, 746 (1987). The sufficiency of any process afforded is determined by weighing three factors: (i) the private interest that will be affected by the official action, (ii) the risk of erroneous deprivation of that interest through the available procedures, and (iii) 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. Each factor weighs heavily in favor of Mr. Nazarian’s immediate release.

First, Mr. Nazarian has a strong interest in freedom from arbitrary civil imprisonment *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (Noting that “[t]he interest in being free from physical detention” is “the most elemental of liberty interests.”). *See supra* Section III.A.2.

Second, the risk of erroneous deprivation under existing procedures is extreme because Respondents have offered no evidence that Mr. Nazarian's detention is justified to prevent flight or mitigate the risks of danger to the community. Respondents determined that Mr. Nazarian is not a flight or security risk on September 15, 2021, when he was released on his own recognizance after entering without inspection. Verified Pet. ¶ 23. Four years later, on August 6, 2025, an El Paso Immigration Judge made identical findings and granted Mr. Nazarian a bond. *Id.* ¶ 3. Since the bond hearing, Respondents have offered no evidence that Petitioner's current detention is justified to prevent flight or mitigate the risks of danger to the community. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). Accordingly, in the absence of *any* evidence to justify Petitioner's detention, there is a grave risk of erroneous deprivation of Petitioner's liberty.

Finally, Respondents' interests in continuing to detain Mr. Nazarian are minimal at best. Providing him with a hearing to evaluate whether the circumstances of his re-detention were warranted would not impair any legitimate interests that Respondents may have. Indeed, federal district courts routinely perform the type of custody hearing sought here. *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *12 (W.D. Tex. Sep. 22, 2025) (finding that "the incremental cost" of performing such hearings must be minimal given that "the Government conducted them for decades until its reinterpretation of the law earlier this year."). Moreover, the cost of the hearing would "likely be outweighed by costs saved by reducing unnecessary detention." *Black v. Decker*, 103 F.4th 133, 154–55 (2d Cir. 2024).

Accordingly, Mr. Nazarian's detention without a bond hearing violates his procedural due process rights.

C. The equities favor preliminary injunctive relief.

The remaining factors favor granting a preliminary injunction, *see Book People, Inc. v. Wong*, 91 F.4th 318, 340–41 (5th Cir. 2024), and this case presents exceptional circumstances warranting immediate release, *see Mapp*, 241 F.3d at 226.

First, Mr. Nazarian and his family face irreparable harm from his continued confinement. “In the immigration context, unlawful detention is a sufficient irreparable injury.” *Arias Gudino v. Lowe*, No. 1:25-CV-00571, 2025 WL 1162488, at *13 (M.D. Pa. Apr. 21, 2025). This is because of the “evidence of subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

Those harms are undoubtedly present here, as Mr. Nazarian’s family relies on him, both to provide for the family, and for care. Prior to detention, Mr. Nazarian took his mother to all her doctor’s appointments and ensured that she took her medications on time. Verified Pet. ¶¶ 24, 35. When Mr. Nazarian’s mother does not take her medication on time, she experiences nausea, vomiting, and stiffness in her fingers and arms. *Id.* ¶ 35. Since his detention, Mr. Nazarian’s brother has assumed the role of 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. *Id.* Since his detention, Mr. Nazarian’s mother more frequently misses taking her medication on time, which worsens her symptoms and condition. *Id.* Mr. Nazarian’s assistance is thus essential to his mother’s ability to maintain her health and to avoid complications.

In addition, deprivation of a constitutional right “for even minimal periods of time” is an immediate and irreparable harm as soon as it occurs. *See Kostak*, 2025 WL 2472136, at *3 n.43 (quoting *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012)).

If the Court finds that Mr. Nazarian's constitutional rights are being violated, that alone is sufficient to constitute irreparable harm for purposes of granting the preliminary injunction.

Second, the equities weigh in favor of granting a PI. The hardships and public interest "factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). However, the government "cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). Indeed, the public interest weighs in favor of protecting constitutional rights and limiting government overreach. *See Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1056 (5th Cir. 1997) ("public interest is enhanced" when procedure comports with basic constitutional due process protections).

Here, Respondents will likely argue that the government has an interest in enforcing immigration laws. While true, that hardly weighs in favor of the government's position here. "Granting preliminary injunctive relief will simply require Respondents to comply with their legal obligations and afford Petitioners procedural protections in connection with Respondents' exercise of discretion." *Abdi v. Duke*, 280 F. Supp. 3d 373, 410 (W.D.N.Y. 2017), *order vacated in part*, *Abdi v. McAleenan*, 405 F. Supp. 3d 467 (W.D.N.Y. 2019). Nor is the government losing its ability to enforce immigration laws at all. Mr. Nazarian can receive *all* of the relief he asks for in this Motion, and he would still be subject to immigration court proceedings and the federal government's enforcement of immigration law.

D. Even if the Court does not agree on the preliminary injunction equities, Mr. Nazarian's detention constitutes the special circumstances raised in *Mapp* and *Calley*, which counsels for release.

The placement of Mr. Nazarian in detention gives rise to the special circumstances contemplated by *Mapp* and *Calley*. "Examples of 'extraordinary circumstances' include the

serious deterioration of the petitioner's health while incarcerated" and "short sentences for relatively minor crimes so near completion that extraordinary action is essential to make collateral review truly effective, and extraordinary delay. . . ." *Kennedy v. Adler*, 35 F. App'x 386 (5th Cir. 2002) (per curiam) (citing *Calley*, 496 F.2d at 702). As shown above, this case involves the decline in the health and wellness of Mr. Nazarian's family members.

Further, cases involving a short sentence warrant release under the *Mapp* framework because the brevity of the sentence may keep a court from being able to rule on the legality of detention before the case is mooted out. *See, e.g., Levy v. Parker*, 396 U.S. 1204, 1205 (1969) (Douglas, J., on application for bail). Thus, *Mapp* and *Calley* help keep "the writ effective" by allowing petitioners to challenge even short periods of detention. Here, Mr. Nazarian's due process-free detention under the automatic stay provision is the exact type of detention the *Mapp* and *Calley* frameworks were meant to challenge—detention for short periods of time that nonetheless, violate Mr. Nazarian's constitutional rights. Accordingly, immediate relief under *Mapp* is appropriate.

IV. CONCLUSION

For the foregoing reasons, the Court should grant this Motion and order Respondents to release Mr. Nazarian immediately pending resolution of this case on the merits and prohibit Respondents from further confining him during the proceedings' pendency unless he receives constitutionally adequate procedural protections, including notice and a post-deprivation judicial hearing.

Dated: October 10, 2025.

Respectfully submitted,

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**Pro Hac Vice Application Forthcoming*

CERTIFICATE OF SERVICE

I certify that on October 10, 2025, I filed this document through CM/ECF and directed that it be mailed via certified mail to the Respondents.

/s/ Daniel Hatoum

Daniel Hatoum