

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ARGAM NAZARIAN

Petitioner,

v.

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.

Case No. 3:25-cv-00465-LS

PETITIONER'S SUPPLEMENTAL BRIEFING

I. INTRODUCTION

Petitioner files this supplemental brief to address several outstanding issues raised during his November 5, 2025 hearing.

First, the Fifth Circuit does not have jurisdiction to review the Board of Immigration Appeals (BIA) decision denying Mr. Nazarian's bond. *Romero v. Hyde*, No. CV 25-11631-BEM,

2025 WL 2403827, at *6 (D. Mass. Aug. 19, 2025). Moreover, this Court has jurisdiction over statutory and constitutional challenges to agency bond decisions. *Demore v. Kim*, 538 U.S. 510, 517–18 (2003); *Martinez v. Clark*, 124 F.4th 775, 783–84 (9th Cir. 2024).

Second, Petitioner’s detention under 8 U.S.C. § 1225(b)(2)(A) is unlawful because he is not “seeking admission” into the United States. Mr. Nazarian is not “seeking admission” because he has been present in the United States since 2021 and because applying for asylum does not constitute “seeking admission.” *See Matter of V-X-*, 26 I. & N. Dec. 147, 150–52 (BIA 2013).

Finally, Petitioner affirms that release is the appropriate remedy under 28 U.S.C. § 2241, especially given that Mr. Nazarian was released on his recognizance in 2021, detained in 2025, and again ordered release on minimum bond by an El Paso immigration judge on August 6, 2025.

Habeas Pet. ¶¶ 22–30, Dkt. No. 1.

II. ARGUMENT

1. Habeas is the proper vehicle for challenging Mr. Nazarian’s unlawful detention.

Mr. Nazarian’s challenge to his bond denial and resulting detention is properly before this court. Circuit courts of appeals do not have jurisdiction to review bond decisions by the BIA. *Romero v. Hyde*, 2025 WL 2403827, at *6. Moreover, the Supreme Court has affirmed that habeas challenges in district courts are the proper vehicle for challenging agency bond determinations. *Demore*, 538 U.S. at 517–18; *Martinez*, 124 F.4th at 783–84.

a. **Mr. Nazarian cannot appeal the BIA’s bond determination to the Fifth Circuit because circuit courts do not have jurisdiction to review agency bond decisions.**

The Fifth Circuit Court of Appeals has no jurisdiction to review the BIA decision denying Mr. Nazarian bond, so he cannot obtain relief via appeal. “[T]here is no path from the denial of a bond appeal by the BIA to any appellate court.” *Romero v. Hyde*, 2025 WL 2403827, at *6; *see*,

e.g., Motion Order, Dkt No. 41 *Singh v. Barr*, No. 19-699 (2d Cir. July 17, 2019) (denying review of BIA bond decision on jurisdictional grounds).

First, under 8 U.S.C. § 1252(a)(1), the circuit court of appeals only has jurisdiction to review final orders of removal, not agency bond decisions. *See Gudiel Polanco v. Garland*, 839 F. App'x 804, 805 (4th Cir. 2021) (explaining that the appeals court has jurisdiction to review “final orders of removal or deportation,” not “request[s] for release on bond”); *Gomez De Chacon v. Barr*, 828 F. App'x 459, 460 (9th Cir. 2020). Here, Mr. Nazarian does not even have a final order of removal, so the Fifth Circuit, at this time, does not have jurisdiction over his removal case.

Second, even if Mr. Nazarian had a final removal order, which he does not, a district court still retains jurisdiction to review an agency bond decision through a habeas petition, even while a circuit court of appeals is considering a petition for review on a final order for removal. *See, e.g., Sales v. Johnson*, 323 F. Supp. 3d 1131, 1136, 1142 (N.D. Cal. 2017) (reviewing agency bond decision in habeas petition while circuit court of appeals reviewed petition challenging removal order); *Ben Halim v. Ashcroft*, 107 F. App'x 1, 6 (7th Cir. 2004) (reviewing petition for removal order and explaining that “to the extent [petitioner] is entitled to any form of judicial review of the bond determination, it would be through a habeas corpus petition”).

Finally, the Fifth Circuit does not have jurisdiction over Mr. Nazarian's bond decision because review of agency bond decisions is “separate and apart from” review of final orders of removal. *Ozturk v. Hyde*, 136 F.4th 382, 400 (2d Cir. 2025); *see also* 8 C.F.R. § 1003.19(d) (clarifying that custody or bond cases “shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding”). Moreover, combining a constitutional challenge to detention with a challenge to a final order of removal would lead to an “absurd” outcome. *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018) (opinion of Alito, J., joined by Roberts,

C.J., and Kennedy, J.). The detention claim would be “effectively unreviewable” because “[b]y the time a final order of removal was eventually entered, the allegedly excessive detention would have already taken place.” *Id.*; *see also Ozturk*, 136 F.4th at 401.

Thus, because the Fifth Circuit has no jurisdiction to review Mr. Nazarian’s detention, a habeas petition to this Court is the appropriate vehicle for relief from his unlawful detention.

b. A habeas action in federal district court is the proper mechanism for challenging his unlawful detention.

This Court has jurisdiction over Mr. Nazarian’s petition because federal habeas is the exclusive avenue for statutory and constitutional challenges to immigration bond determinations. First, the Supreme Court affirmed that under 8 U.S.C. § 1226(e), district courts retain jurisdiction to hear constitutional and statutory habeas challenges to immigration bond determinations. *See Demore*, 538 U.S. at 517–18. Second, under 8 U.S.C. § 1252(a)(2)(d), district courts have jurisdiction to review habeas petitions challenging bond determinations that present mixed questions of law and fact. *See Martinez*, 124 F.4th at 783–84. Finally, immigration courts do not have jurisdiction to consider constitutional claims, such as Mr. Nazarian’s Fifth Amendment procedural due process claim. *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 [Immigration and Nationality Act] and the regulations.”). Accordingly, this Court is the only venue where Mr. Nazarian can challenge his unconstitutional detention.

2. Mr. Nazarian’s detention under 8 U.S.C. § 1225(b)(2)(A) is unlawful because he is not “seeking admission” into the United States.

Applying for asylum does not constitute “seeking admission” because asylum status is not an admission under the Immigration and Nationality Act (INA). The issue is salient because

section 1225(b)(2)(A) applies to a noncitizen “who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Under this plain language, a person must be both an “applicant for admission” *and* “seeking admission” for the statute to apply. An “applicant for admission” includes a noncitizen “present in the United States who has not been admitted.” *Id.* § 1225(a)(1).

Mr. Nazarian’s pending asylum application does not render him an individual “seeking admission” because asylum status is not generally considered an admission under the INA. In *Matter of V-X-*, for instance, the BIA held that a grant of asylum does not constitute an “admission” into the United States because “nothing in the language” of the INA indicates that “Congress understood a grant of asylum to be a form of ‘admission’ into the United States.” 26 I. & N. Dec. at 150–52; *see Sanchez v. Sec’y United States Dep’t of Homeland Sec.*, 967 F.3d 242, 246 (3d Cir. 2020), *aff’d sub nom. Sanchez v. Mayorkas*, 593 U.S. 409 (2021) (citations omitted).

That is because “[a]dmission and status are fundamentally distinct concepts. Admission is an occurrence, defined in wholly factual and procedural terms” while status “usually describes the type of permission to be present in the United States that an individual has.” *Gomez v. Lynch*, 831 F.3d 652, 658 (5th Cir. 2016). Because a grant of asylum does not constitute an admission, Mr. Nazarian’s application for asylum as a defense in his removal proceedings does not mean that he is “seeking admission” under section 1225(b)(2)(A).

Moreover, 8 U.S.C. § 1225(b)(2)(A)’s use of “applicant for admission” and “seeking admission” does not render the terms coextensive. That is because “[e]quating the terms ‘applicant for admission’ and ‘seeking admission’ ignores the plain meaning of the latter phrase, which again implies some present action.” *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL

2809996, at *7 (D. Mass. Oct. 3, 2025); see *Pulsifer v. United States*, 601 U.S. 124, 149, 144 (2024) (“In a given statute, ... different terms usually have different meanings.”). Because Mr. Nazarian is not “seeking admission,” 8 U.S.C. § 1225(b)(2)(A) does not apply to him and his ongoing detention under that statute is unlawful.

3. Release is the proper remedy for Mr. Nazarian’s habeas petition.

Finally, the Court raised the question of whether a bond hearing is an appropriate remedy under 28 U.S.C. § 2241 habeas, as opposed to release. The proper remedy in this case is immediate release because, at its core, Mr. Nazarian’s challenge is a challenge to the fact of his detention because he is being unconstitutionally detained under a statute that does not apply to him. See Habeas Pet. ¶¶ 81–92. Where there is “no legal basis” for a detention, courts can always order release pursuant to a writ of habeas corpus. See e.g., *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *13–14 (W.D. Tex. Oct. 2, 2025); see also *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“[T]he traditional function of the writ is to secure release from illegal custody.”).

Relatedly, a district judge reviewing a habeas petition can also condition release on the posting of the bond previously ordered by an immigration judge. *Martinez-Elvir v. Olson*, No. 3:25-CV-589-CHB, 2025 WL 3006772, at *2, *13 (W.D. Ky. Oct. 27, 2025) (ordering release on habeas petition upon posting of \$5,000 bond initially ordered by immigration judge); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at *5, *12 (D. Mass. Sept. 9, 2025). This is because the Supreme Court has affirmed that habeas is the proper vehicle for a challenge where the relief sought is either immediate release or an order compelling an executive officer to restore a prior decision. See *Preiser*, 411 U.S. at 500 (holding that a habeas petition and not a claim under 42 U.S.C. § 1983 was the proper vehicle for prisoners requesting restoration of “good time” credits that would speed their release).

Some courts reviewing similar cases have ordered the government to conduct new bond hearings, but that relief is not appropriate here. “Habeas has traditionally been a means to secure release from unlawful detention . . .”. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020). Yet, federal courts retain a fair amount of “flexibility” in formulating specific habeas relief. *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005). For this reason, some district courts reviewing *Yajure Hurtado* challenges have given the government a measure of deference to correct its unlawful detention by ordering an agency bond hearing. *See, e.g., Erazo Rojas v. Noem*, No. EP-25-CV-443-KC, 2025 WL 3038262, at *1, *5 (W.D. Tex. Oct. 30, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *11 (W.D. Tex. Oct. 21, 2025).

However, the facts of Mr. Nazarian’s case are distinguishable from these cases and support immediate release. Specifically, El Paso Immigration Judge Michael Pleters already conducted a bond hearing and granted release on bond, finding that Mr. Nazarian presented neither a flight risk nor a danger to the community. Ex. 4, Dkt. No. 1–6. Accordingly, Mr. Nazarian’s ongoing detention is unlawful and he should be ordered released. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For this reason, this Court could alternatively order the government to honor Mr. Nazarian’s prior bond hearing and release him on payment of \$1,500 bond.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court grant Petitioner a writ of habeas corpus ordering his immediate release from detention, as well as all other relief requested in this petition. *See Habeas Pet.* 26–27.

Dated: November 10, 2025

Respectfully submitted,

/s/ Daniel Hatoum

Daniel Hatoum
Texas Bar No. 24099136
TEXAS CIVIL RIGHTS PROJECT
P.O. Box 219
Alamo, Texas 78516
(956) 787-8171 ext. 208
(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*
Evan Brown (MN Bar #0401171)
Contreras Edin Law, PA
663 University Ave. West 200
St. Paul, MN 55104
(651) 771-0019
EvanB@contrerasedinlaw.com

**Admitted Pro Hac Vice*

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that on November 10, 2025, I filed this document through CM/ECF.

/s/Daniel Hatoum

CERTIFICATE OF CONFERENCE

I certify that on November 7, 2025, Counsel for Petitioner conferred with Counsel for Respondents via email. Counsel for Respondents indicated that they are unopposed to the filing of Petitioner's Supplemental Briefing.

/s/Daniel Hatoum