

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

ARGAM NAZARIAN

Petitioner,

v.

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

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.

REPLY IN SUPPORT OF PETITION FOR HABEAS CORPUS

I. INTRODUCTION

Petitioner Argam Nazarian is a 27-year-old Iranian man who fled religious persecution in his home country and found refuge in Los Angeles, California with his wife, mother, and brother. For the past four years, he worked installing air conditioners and was the primary caregiver for his ailing mother. He timely filed an asylum application, expressing his fear to return to Iran due to the persecution he faced for his Christian faith. In June 2025, masked agents arrested Mr. Nazarian while he was on his way to work. Since his detention, his mother's health has deteriorated because she lost her primary caretaker.

Mr. Nazarian's detention serves no purpose. Twice now, the government has determined that he poses no flight risk or danger to the community and released him. The first time, in September 2021, the government released him on his own recognizance shortly after he entered without inspection. The second, in August 2025, an Immigration Judge in El Paso ordered his release upon payment of a \$1,500 bond. Now, some 104 days later, Mr. Nazarian is still detained. And, as demonstrated by Respondents' response to Mr. Nazarian's petition for writ of habeas corpus, the government cannot articulate a consistent answer as to why.

Petitioner submits this reply to the government's response to his petition for writ of habeas corpus. Response, Dkt. No. 11 ("Resp."). Strikingly, the government now disavows the argument that Mr. Nazarian is detained under 8 U.S.C. § 1225(b)(2)(A) pursuant to *Matter of Yajure Hurtado*, directly contradicting the Board of Immigration Appeals' ("BIA") October 22, 2025 explanation for his continued detention. *See* BIA Decision Notice, Ex., at 4, Dkt No. 6-1. Instead, Respondents assert for the first time that Mr. Nazarian is detained under the expedited removal provision, 8 U.S.C. § 1225(b)(1). Resp. 4. All the same, Respondents' contention fails because for the past four years the government has treated Mr. Nazarian as subject to 8 U.S.C. § 1226.

Accordingly, this court should grant Mr. Nazarian's petition for writ of habeas corpus and order his immediate release.

II. ARGUMENT

A. This Court has jurisdiction over Mr. Nazarian's Petition.

Jurisdiction is "always first." *Arulnanthy v. Garland*, 17 F.4th 586, 592 (5th Cir. 2021). Respondents assert that Mr. Nazarian's claims are barred by 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9). Resp. 12–15. Neither provision bars review. Section 1252(g) does not prohibit this Court's review because the provision does not apply to challenges to an ongoing detention. Likewise, § 1252(b)(9) is not a jurisdictional bar because challenges to an ongoing detention can be reviewed prior to a final order of removal. Finally, contrary to Respondents' claims, the court of appeals lacks jurisdiction to review bond decisions.

i. Section 1252(g) does not bar review of Mr. Nazarian's petition.

Section 1252(g) does not prohibit this Court from reviewing Mr. Nazarian's habeas claim because the provision does not apply to challenges to an ongoing detention. Section 1252(g) prohibits federal district courts from considering "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g).

However, the Supreme Court has repeatedly held that the provision's scope is "narrow" and neither includes "all claims arising from deportation proceedings" nor "imposes 'a general jurisdictional limitation.'" *Dept. of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)). Rather, § 1252(g) only bars review of claims arising from the "three specific actions" listed in the statute: decisions to "commence proceedings, adjudicate cases, or execute removal orders." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (citations omitted). Critically, the statute "does

not bar courts from reviewing an alien detention order” because a detention order “is not itself a decision to ‘execute removal orders.’” *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *3 (W.D. Tex. Oct. 21, 2025) (quoting *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000)).

Here, Mr. Nazarian does not challenge Respondents’ decision to commence proceedings, adjudicate cases, or execute a removal order. In fact, there is no removal order to execute, and removal proceedings commenced four years ago when Mr. Nazarian was issued his Notice to Appear in August 2021. *See* Habeas Pet. Ex. 1, Dkt. No. 1-3; 8 C.F.R. § 1003.13 (A Notice to Appear “initiates a proceeding before an Immigration Judge.”). Instead, Mr. Nazarian challenges his ongoing detention as unlawful. Such challenges are not barred by 8 U.S.C. § 1252(g). *See, e.g., Ozturk v. Hyde*, 136 F.4th 382, 397–98 (2d Cir. 2025); *Lopez-Arevalo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *5 (W.D. Tex. Sept. 22, 2025).

ii. Section 1252(b)(9) does not bar review of Mr. Nazarian’s petition.

Similarly, § 1252(b)(9) does not bar review because in *Jennings*, the Supreme Court declined to apply an expansive interpretation of the phrase “arising from” in that section. *Hernandez-Fernandez*, 2025 WL 2976923, at *4 (citing *Jennings*, 583 U.S. at 293); 8 U.S.C. § 1252(b)(9). Section 1252(b)(9) bars review of claims “arising from” actions or “proceeding[s] brought to remove” a noncitizen. 8 U.S.C. § 1252(b)(9). However, in *Jennings*, the court cabined an expansive interpretation of “arising from,” holding that § 1252(b)(9) does not bar the court from reviewing a habeas petitioner’s challenge to their mandatory immigration detention. *Jennings*, 583 U.S. at 293; *see also Hernandez-Fernandez*, 2025 WL 2976923, at *4. Accordingly, § 1252(b)(9) does not preclude Mr. Nazarian’s habeas challenge to his mandatory detention.

Relatedly, contrary to Respondents’ claims, the Fifth Circuit Court of Appeals has no jurisdiction to review the challenged bail determination, now or with a petition for review of a

final order of removal. “[T]here is no path from the denial of a bond appeal by the BIA to any appellate court.” *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *6 (D. Mass. Aug. 19, 2025); *see also 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”); *see also* Suppl. Br. 2–4, Dkt. No. 12.

For these reasons, this Court has jurisdiction over Mr. Nazarian’s habeas petition.

B. Mr. Nazarian is not subject to § 1225(b)(1) because the government cannot change on a whim the longstanding detention authority it has applied to him.

Respondents assert that Mr. Nazarian is detained under § 1225(b)(1), not § 1225(b)(2). Resp. 4–12. Oddly, this argument directly contradicts the justification that the BIA gave on October 22, 2025 when it vacated Immigration Judge Pleters’ bond determination. *See* BIA Decision Notice Ex., at 4. More perplexing, Respondents assert that Mr. Nazarian is detained “on a mandatory basis under § 1225(b)(1)(A)(iii)(II)” while simultaneously pursuing “‘full’ removal proceedings.” Resp. 10. In other words, Respondents claim that Mr. Nazarian is in expedited removal proceedings while at the same time pursuing his asylum claim in standard removal proceedings.

These arguments defy logic. First, an individual cannot be simultaneously in expedited removal proceedings and standard § 1229(a) removal proceedings. Second, the government has consistently maintained that Mr. Nazarian is subject to § 1226 since it first issued Mr. Nazarian’s Notice to Appear and ordered his release in 2021. Accordingly, Mr. Nazarian is not detained under § 1225(b)(1).

i. 1225(b)(1) mandatory detention is distinct from 1226(a) discretionary detention and the two provisions cannot apply simultaneously.

Mr. Nazarian is not detained under § 1225(b)(1) because § 1225(b)(1) differs from § 1226 and the provisions cannot operate simultaneously. Section 1225(b)(1) sets out the parameters for

expedited removal proceedings. Specifically, it mandates detention “for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii); *Jennings*, 583 U.S. at 299. If an applicant “indicates either an intention to apply for asylum” or “a fear of persecution,” the immigration officer must refer the noncitizen for an interview to evaluate whether the applicant has “credible fear.” 8 U.S.C. §§ 1225(b)(1)(A)(i)–(ii). Detention under § 1225(b)(1) is “mandatory” “*pending a final determination of credible fear of persecution and if found not to have such a fear, until removed.*” 8 U.S.C. § 1225(b)(1)(B)(iii) (emphasis added). Once the government decides that an immigrant should proceed with full removal proceedings, “detention under § 1225(b) must end as well.” *See Jennings*, 583 U.S. at 299.

In contrast, § 1226(a) sets out that the Attorney General “may release” a noncitizen detained under § 1226(a) “on ... bond” or “conditional parole.” 8 U.S.C. § 1226(a). Specifically, § 1226(a) grants Immigration Judges discretion to determine whether a noncitizen in § 1229(a) proceedings will be detained during the pendency of their proceedings or released on bond. *Texas v. United States*, 555 F. Supp. 3d 351, 366 (S.D. Tex. 2021). Section 1229(a) proceedings take place before an Immigration Judge. *See generally* 8 U.S.C. § 1229a; *Coalition for Humane Immigrant Rights, v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at *3 (D.D.C. Aug. 1, 2025).

Critically, “[s]ections 1226(a) and 1225(b) cannot be applied simultaneously.” *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *8 (N.D. Cal. Sept. 12, 2025). This is because the detention schemes are “facially inconsistent: one provides for discretionary release with procedural protections, while the other mandates detention without discretion.” *Id.* Accordingly, it is not possible for a noncitizen to be simultaneously subject to both detention regimes.

Respondents assert that Mr. Nazarian is detained under § 1225(b)(1)(A)(iii)(II) while he pursues his asylum case in standard removal proceedings. Resp. 10. However, an individual cannot be simultaneously in mandatory detention under § 1225(b) for expedited removal proceedings and in discretionary detention under § 1226(a) for standard removal proceedings. *See Aceros*, 2025 WL 2637503, at *8. Moreover, § 1225(b)(1) only permits detention until an individual is placed in full removal proceedings. *See Jennings*, 583 U.S. at 299 (clarifying that when credible fear proceedings end, “detention under § 1225(b) must end as well”). Mr. Nazarian is in full 1229(a) removal proceedings and is therefore detained under § 1226(a). Mr. Nazarian’s detention under § 1226(a) necessarily means that he is not detained under § 1225(b)(1). Thus, Respondents’ contention that Mr. Nazarian is detained under § 1225(b)(1) renders his current detention under that provision unlawful.

ii. *The government has consistently maintained that Mr. Nazarian is subject to § 1226(a).*

Since 2021, the government has asserted that Mr. Nazarian has been subject to § 1226 detention. *See Habeas Pet. Ex. 1*, at 2. It cannot now, four years after his entry, decide he is arriving in the U.S. and subject him to mandatory detention. *See Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at *5 (D.N.H. Sept. 8, 2025) (explaining that the government cannot ignore the statutory authority it relied on when releasing and arresting petitioner to now apply different statutory authority to his recent re-detention).

The government first indicated that Mr. Nazarian is detained under § 1226 when they marked on his Notice to Appear that he was “present” in the United States rather than an “arriving alien.” *See Habeas Pet. Ex. 1*, at 2. An “arriving alien” is “an applicant for admission coming or attempting to come into the United States.” 8 C.F.R. § 1.2. Multiple courts around the United States have found that failure to check the arriving alien box indicates that § 1226(a) applies rather

than § 1225(b). *See, e.g., Quispe v. Crawford*, 2025 WL 2783799, at *6 (E.D. Va. Sept. 29, 2025) (“[I]n the very document that charges him as removable, the Government checked the box stating that Petitioner is ‘an alien present in the United States who has not been admitted or paroled,’ ... rather than ‘an arriving alien,’ essentially acknowledging that Petitioner is not an ‘arriving alien.’”); *Sandoval v. Raycraft*, No. 2:25-CV-12987, 2025 WL 2977517, at *8 (E.D. Mich. Oct. 17, 2025).

Moreover, the government held that Mr. Nazarian is detained under § 1226 when the government decided to release Mr. Nazarian on his own recognizance. This is because Mr. Nazarian would not have been released on his own recognizance but for the fact that he was apprehended inside the United States and subject to § 1226. *See Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16 (9th Cir. 2007) (holding that a noncitizen released on an “Order of Release on Recognizance” necessarily must have been detained and released under § 1226 because he was not an “arriving alien” under the regulations governing § 1225 examinations).

In sum, four years after having initially released Mr. Nazarian on bond Respondents now claim his detention was under § 1225. “The Court cannot credit this new position that was adopted post-hac, despite clear indication that [Mr. Nazarian] was not detained under this provision when he was first apprehended, arrested and bonded in [2021].” *Sandoval*, 2025 WL 2977517, at *8. For these reasons, Mr. Nazarian is improperly detained under § 1225(b), and this Court should affirm that Mr. Nazarian has and continues to be detained under § 1226(a).

C. *Thuraissigiam* does not foreclose Mr. Nazarian’s as-applied constitutional challenge to his detention.

Respondents mistakenly rely on *Thuraissigiam* for the proposition that Mr. Nazarian is entitled to no more process than is provided by section 1225(b). Resp. 15–16; *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020). But *Thuraissigiam* is inapplicable here. First, the

petitioner in *Thurassisigiam* was put in expedited removal proceedings, whereas Mr. Nazarian is in standard removal proceedings before an Immigration Judge. *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *5 (W.D. Tex. Oct. 16, 2025). Second, while the petitioner in *Thurassisigiam* was “never released,” Mr. Nazarian was released on his own recognizance and built a life in the United States for four years prior to his redetention. *Lopez-Arevelo*, 2025 WL 2691828, at *9.

Moreover, even if Mr. Nazarian was in expedited removal proceedings, which he is not, Mr. Nazarian is not challenging the process he receives to challenge his *removal*, but rather the process he receives to challenge his *detention*. *See id.* (noting this distinction and finding that petitioner “challenges the decision to subject him to mandatory detention under § 1225(b)”). Accordingly, *Thurassisigiam* does not foreclose Mr. Nazarian’s as-applied constitutional challenge to his detention.

D. Mr. Nazarian’s automatic stay claims and Administrative Procedure Act claims are properly raised and should be preserved.

Respondents assert that Mr. Nazarian’s automatic stay claims (Counts I and II) are moot and that his Administrative Procedure Act (“APA”) claim should be severed or dismissed as a non-habeas claim. Resp. 3–4, 1 n.1. Mr. Nazarian’s automatic stay claims are not moot because they are capable of repetition yet evading review. Moreover, his APA claim is properly brought in a habeas petition.

The injury inflicted by the automatic stay provision is capable of repetition yet evading review. This exception applies where “(1) ‘the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration,’ and (2) ‘there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again.’” *Kingdomware Techs., Inc. v.*

United States, 579 U.S. 162, 170 (2016) (quoting *Spencer v. Kemna*, 523 U.S. 1, 17 (1998)) (alterations in original).

Both these requirements are met here. First, the automatic stay was only in place for seventy-seven days, a duration short enough to evade review in the current litigation. Ex., Dkt. No. 6-1. Second, there is a reasonable expectation that Mr. Nazarian would be subjected to the same action again. Should the Court order a new bond hearing, the Department of Homeland Security (“DHS”) could easily invoke the automatic stay again. And, Respondents have signaled an intent to re-detain Petitioner, stating he “would be subject to re-arrest” if the Court grants his petition. Resp. 3. Should that happen, DHS would likely invoke the automatic stay again. Therefore, Counts I and II are not moot because application of the automatic stay is capable of repetition, yet evading review.

Moreover, the APA claim is properly raised in a habeas petition because it bears on the lawfulness of the government’s authority to stay an Immigration Judge’s bond decision. Specifically, Mr. Nazarian asserts that DHS’ automatic stay provision is *ultra vires* because it improperly delegates authority to DHS to independently stay a custody determination by an agent of the Department of Justice (“DOJ”). *See* Habeas Pet. ¶¶ 75–80. District courts have affirmed that *ultra vires* APA claims are part and parcel of a noncitizen’s challenge to his detention. *See, e.g., Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3, 2025); *Campos Leon v. Forestal*, No. 1:25-CV-01774-SEB-MJD, 2025 WL 2694763, at *3–5 (S.D. Ind. Sept. 22, 2025). Accordingly, this Court too should consider Mr. Nazarian’s APA claim part of his challenge to his ongoing detention.

E. This Court should exercise its power to grant appropriate habeas relief.

Mr. Nazarian’s immediate release is appropriate because he challenges the fact of his detention where he presents neither a flight risk nor a danger to the community, and is detained

under a statute that does not apply to him. 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.”); *see also* Suppl. Br. 6–7.

Finally, the Court should resist the government’s argument that Mr. Nazarian receives “no net gain” from his liberty. Resp. 2. His net gain is rejoining his tight-knit Armenian Christian community of Los Angeles. It is being able to meet with his immigration attorneys freely and on his terms to plan his immigration case. It is reuniting with his sick mother to care for her and seeing his loving wife again. The government has chosen to take this, and much more, away from Mr. Nazarian in violation of his rights. This Court has both a mandate and an opportunity to correct that.

III. CONCLUSION

For these reasons, the Court should grant Mr. Nazarian’s writ of habeas corpus and order his immediate release.

Dated: November 18, 2025

Respectfully submitted,

/s/ Daniel Woodward

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

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

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

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that on November 18, 2025, I filed this document through CM/ECF.

/s/ Daniel Woodward
Daniel Woodward