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UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
BOARD OF IMMIGRATION APPEALS  
FALLS CHURCH, VIRGINIA

In the Matter of:  
  
Mahmoud KHALIL,  
  
Respondent,  
  
In Removal Proceedings.

██████████

**MOTION TO REOPEN REMOVAL PROCEEDINGS AND WITHDRAW THE  
BOARD'S APRIL 9, 2026 DECISION DUE TO DISCLOSURES DEMONSTRATING  
MR. KHALIL WAS DENIED HIS RIGHTS TO A NEUTRAL ADJUDICATOR AND A  
FULL AND FAIR HEARING**

On May 14, 2026, I, Johnny Sinodis, caused the enclosed document to be served on the U.S. Department of Homeland Security via the EOIR Courts and Appeals System (ECAS). This document was electronically filed through ECAS and both parties are participating in ECAS. Therefore, there is no separate service completed.

Executed this 14th day of May 2026

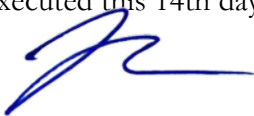


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Respondent, **Mr. Mahmoud KHALIL**, [REDACTED] through undersigned Counsel, respectfully submits this Motion to Reopen Removal Proceedings and Withdraw the Board’s Decision, dated April 9, 2026. Since the Board issued its decision, new evidence has come to light that (1) several current members of the Board, and potentially other federal agencies or officials, influenced the underlying removal proceedings and orders by the Immigration Judge (“IJ”), in violation of Mr. Khalil’s constitutional right to due process and the IJ’s duty of impartiality, and (2) the Board targeted Mr. Khalil and treated his case abnormally, including by hand-picking Chief Appellate Immigration Judge Garry D. Malphrus to adjudicate his appeal, labelling his case “high profile” and improperly directing that it be expedited even before Mr. Khalil had filed an appeal, marking and treating his case as detained even though Mr. Khalil had been released from custody several months prior to the IJ’s September 12, 2025 removal order and his appeal, and otherwise treating his proceedings differently than other similarly situated cases. *See Attachment (“Att.”) A (New York Times Article); Att. B (Declaration of Andrea Sáenz, former member of the Board); Att. C (Declaration of Dana Leigh Marks, former president of the National Association of Immigration Judges); Att. D (Declaration of Ryan R. Wood, former Assistant Chief Immigration Judge).*<sup>1</sup> This new evidence of misconduct in Mr. Khalil’s case is corroborated by growing evidence of pressure from Executive Office of Immigration Review (“EOIR”) leadership and other top government officials to issue preordained decisions and expedite deportations—particularly in high-profile cases like Mr. Khalil’s—despite the agency being legally obligated to provide noncitizens a full and fair hearing on their claims.

The *New York Times* Article dated May 8, 2026 (“Article”), references internal Board documents, among other sources. Mr. Khalil has filed a Freedom of Information Act (“FOIA”) request seeking additional information and documentation regarding the influence by EOIR

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<sup>1</sup> Also available at Jonah E. Bromwich & Nicholas Nehamas, *Mahmoud Khalil Hurtles Toward Potential Deportation as U.S. Speeds Case*, *New York Times* (May 8, 2026), <https://www.nytimes.com/2026/05/08/nyregion/mahmoud-khalil-deportation-case.html?smid=nytcore-ios-share> [https://perma.cc/GX3S-9MWS].

employees and other government agencies on the decisions ostensibly issued by the IJ in his case, and regarding actions of the Board. Att. E (FOIA Request).

Due to the evidence of partiality and egregious government misconduct at both the Board and IJ level, the Board must reopen proceedings and terminate them. If the Board believes that more evidence is necessary to support the remedy of termination, it should remand with instructions to a new IJ to permit discovery on EOIR's outrageous discrimination

In the alternative, the Board should, at a minimum, reopen and remand proceedings to a new IJ (in New York where Mr. Khalil resides, as is proper under *Matter of Rahman*, 20 I&N Dec. 480, 482 (BIA 1992)) and direct the new IJ, and the Board if an appeal is taken, to engage in an impartial and independent adjudication of all claims and applications for relief pursuant to constitutional, statutory, regulatory, and ethical obligations. The Board's refusal to do so would continue to deprive Mr. Khalil of an independent and neutral adjudicator and the full and fair hearing on his claims to which he is entitled by law. *Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954).

## **FACTUAL AND PROCEDURAL HISTORY**

Mahmoud Khalil is a thirty-one-year-old Palestinian who is married to a U.S. citizen, with whom he shares a one-year-old U.S. citizen son. Exhibit 27, Tab A, Tab C.

### **I. In March 2025, federal officials place Mr. Khalil on a list of noncitizens to be targeted for deportation on the basis of protected First Amendment activity.**

In March 2025, high-level federal government officials compiled a list of people to be deported, including Mr. Khalil. That month, the White House's Homeland Security Council, chaired by senior officials including Stephen Miller, held interagency meetings with DHS, the U.S. Department of State ("State Department"), and the Department of Defense to discuss "campus protesters." *American Association of University Professors ("AAUP") v. Rubio*, 802 F. Supp. 3d 120, 138 (D. Mass. 2025).

Soon thereafter, ICE's Homeland Security Investigations' ("HSI") Office of Intelligence

launched a specialized “Tiger Team” tasked with investigating a large list of protesters, using names provided by HSI Headquarters. The list came from multiple sources: primarily the Canary Mission website, along with additional (and sometimes duplicate) names from the Betar USA website.<sup>2</sup> HSI’s top leadership also provided the Tiger Team with names on a rolling basis. *Id.* at 139-140. Further leads came from civilians via the ICE tip form, tip line, other public-facing phone numbers, email boxes, and other HSI connection points. Att. K.1, *AAUP* July 9, Tr., Vol. 2, 117:13–119:12.<sup>3</sup> The Tiger Team then produced “Reports of Analysis” (ROAs) on individual protesters, attaching unverified third-party claims, including baseless allegations of antisemitism based on criticism of Israel, denouncing Zionism, or calls for institutional divestment from Israel. *Id.*; Att. K.2, *AAUP* July 10, Tr., Vol. 1, 22:3–11, 23:16–24:13;<sup>4</sup> Att. L.6 (HSI Profiles).<sup>5</sup>

These ROAs served as the basis for referral letters sent from HSI’s National Security Division (“NSD”) to the State Department, summarizing noncitizen protestors’ protected expression as actions that “violate President Trump’s executive orders on anti-Semitism.” Att. L.7 (DHS/HSI letters to DOS).<sup>6</sup> The referral letters, with ROAs attached, triggered the State Department’s creation of internal action memos that were sent to Secretary of State Rubio, recommending visa revocation or other findings of removability. *Id.* at 134; Att. L.8 (Action Memos).<sup>7</sup> In most cases, Rubio approved the recommendations almost immediately, including some the very same day. The Department of State would then notify DHS’s HSI of the decision, and there would be a memorandum to DHS Secretary

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<sup>2</sup> Canary Mission is an anonymously-run blacklisting website launched in 2015 to ensure, in the group’s own words, that “today’s radicals are not tomorrow’s employees.” Exhibit 19a, Tab N.13. It has published profiles with the personal information of thousands of pro-Palestinian students, including Mr. Khalil, as well as professors, and organizations critical of Israel and its policies (including many Jewish students and faculty). *Id.* at Tab N.4.

Betar USA is the U.S. chapter of Betar, a self-described “militant Zionist group” that even the Anti-Defamation League has labeled an extremist group, and which has identified Pro-Palestinian activists and called for violence and their deportation. *Id.* at Tab N.9; Tab N.10; Tab N.12. The organization has stated that it submitted names of pro-Palestinian activists it wants deported, including Mr. Khalil, to the Trump administration. *Id.* at Tab N.12.

<sup>3</sup> Previously submitted as Motion to Remand, Att. 2.a.

<sup>4</sup> Previously submitted as Motion to Remand, Att. 2.b.

<sup>5</sup> Previously submitted as Motion to Remand, Att. 6.f.

<sup>6</sup> Previously submitted as Motion to Remand, Att. 6.g.

<sup>7</sup> Previously submitted as Motion to Remand, Att. 6.h.

Kristi Noem under Rubio’s name notifying her of his asserted determination. *Id.* at 134-173 (describing each step of the challenged implementation, including as applied to Mr. Khalil and other targeted noncitizens). John Armstrong, the seniormost official in the State Department’s Bureau of Consular Affairs who signed several action memos, including Mr. Khalil’s, testified that “views” contrary to Israel, statements calling for limiting military aid to Israel, and statements describing Israel as an “apartheid state,” among others, are all antisemitic and grounds for targeting for punishment and removal. *Id.* at 142; Att. K.4, *AAUP* July 18 Tr., Vol. I, 25:15–25-28:23.<sup>8</sup>

On March 7, 2025,<sup>9</sup> the Tiger Team completed Mr. Khalil’s ROA—which included biographical information, purported findings, “news articles,” including the Canary Mission profile about him, and social media posts. *Id.* at 141; Att. L.6 at ECF 14-18 (HSI Profile of Mr. Khalil); Att. L.5 (Mr. Khalil’s Canary Mission Profile).<sup>10</sup> All of the news articles in Mr. Khalil’s ROA related to Palestine and protests of Israel, and Mr. Khalil’s constitutionally protected expression. *Id.* On March 8, Andre Watson submitted a referral letter to the State Department purportedly summarizing Mr. Khalil’s actions that violate the White House’s recent executive orders and asserting that Mr. Khalil’s actions “may be sufficient for the Secretary of State to determine there are compelling adverse foreign policy consequences” for the U.S. from Mr. Khalil’s presence here. *AAUP*, 802 F. Supp. 3d at 142; Att. L.8, at ECF 1-5 (Action Memo for the Secretary, dated March 8, 2025). The referral letter also identified Mr. Khalil’s alleged participation in a protest that took place on March 6, 2025, and noted that this involvement aligns with executive orders allegedly focused on combating antisemitism. *Id.*; Att. K.3, *AAUP* July 17, Tr., 88:14–90:13;<sup>11</sup> *see also* Att. L.4 (*AAUP* Trial Exhibits 205-218: Government Policies and Statements Relevant to the Targeting of Noncitizen Students on

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<sup>8</sup> Previously submitted as Motion to Remand, Att. 2.g.

<sup>9</sup> The ROA is dated March 6, 2025, but includes an article dated March 7, 2025.

<sup>10</sup> Previously submitted as Motion to Remand, Att. 6.e.

<sup>11</sup> Previously submitted as Motion to Remand, Att. 2.f.

Ideological Grounds).<sup>12</sup> Rubio allegedly signed the determination regarding Mr. Khalil on March 8, 2025, the same day he received the Action Memo. Exhibit 7.

## **II. Mr. Khalil is arrested and detained, and his arrest is publicized by top government officials.**

On March 8, 2025, federal immigration officials arrested Mr. Khalil. In the hours and days that followed, people at the highest levels of government—including President Trump and the White House—marked Mr. Khalil for deportation in public statements. After Mr. Khalil was arrested, President Trump issued a statement applauding the arrest, warning that it was “the first of many to come,” and promising to “find, apprehend, and deport” other students engaged in “pro-terrorist, anti-Semitic, anti-American activity.” Att. M (Verified Fourth Amended Complaint) ¶ 90.<sup>13</sup> DHS confirmed that Mr. Khalil’s arrest was carried out in support of Trump’s executive orders and “in coordination with the Department of State,” and (without providing evidence) accused Mr. Khalil of leading “activities aligned to Hamas.” *Id.* ¶ 93. Marco Rubio, now Secretary of State, stated he would be “revoking the visas and/or green cards of Hamas supporters in America so they can be deported,” *id.* ¶ 92, and along with other federal officials, has continued to make statements conflating all pro-Palestinian advocacy or protest against Israel with being “pro-jihadist,” “pro-Hamas,” and antisemitic and publicizing Mr. Khalil’s arrest as a warning to other noncitizens. *See Att. N* (collecting interviews, public statements, and reporting);<sup>14</sup> *AAUP*, 802 F. Supp. 3d at 134-171 (collecting statements); *Id.* at 187 (trial evidence “showed that the Public Officials consistently referred to campus protests related to Palestine as per se “pro-Hamas” and targeted such speech). Asked on March 28, 2025, about, *inter alia*, Mr. Khalil’s arrest and what it means

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<sup>12</sup> Previously submitted as Motion to Remand, Att. 6.d.

<sup>13</sup> Previously submitted as Motion to Remand, Att. 9; *see also* Exhibit 27, Tab N (Instagram post from the official White House and President of the United States Instagram accounts, with a photo of Mr. Khalil with the caption “LED ACTIVITIES ALIGNED TO HAMAS,” a photo of Mr. Khalil and the caption “SHALOM MAHMOUD,” and a statement by President Trump).

<sup>14</sup> Previously submitted as Motion to Remand, Att. 7.

to be “against the foreign policy of the United States,” Rubio stated that noncitizen students are “not here to lead activist movements that are disruptive and undermine... our universities.” He added: “I’ve been saying that since I was in the Senate. Now I’m just in a position to do something about it.” *Id.* at 166; Att. N.9.<sup>15</sup>

FOIA disclosures have since revealed that, during this exact same time frame, federal law enforcement officers closed an investigation into claims that Mr. Khalil “called for violence on behalf of Hamas” because the allegation did “not warrant further FBI investigation.” Att. F (FBI FOIA Disclosures); Att. G (*Intercept* Article). This new evidence reveals that on March 6, 2025, two days before Mr. Khalil was arrested, the FBI received an anonymous tip claiming that Mr. Khalil had called for “violence on behalf of Hamas.” By March 19, 2025, however, the FBI had closed its investigation into the tip and determined that Mr. Khalil “does not warrant further FBI investigation.” Nevertheless, federal officials continued to pursue Mr. Khalil’s deportation on the false premise that he “led activities aligned to Hamas.”

**III. Mr. Khalil’s removal proceedings are marked with procedural irregularities and abnormalities from the outset, including the IJ violating several rules and standard procedures in the course of his case.**

Several irregularities occurred from the start of removal proceedings against Mr. Khalil, beginning with his Notice to Appear, which was prepared after Mr. Khalil’s arrest while he was being processed at 26 Federal Plaza in New York, listing the LaSalle Immigration Court in Jena, Louisiana, over a thousand miles from where Mr. Khalil resided with his eight-months pregnant wife in New York. Exhibit 1. Mr. Khalil was then repeatedly transferred across state lines, first from 26 Federal Plaza in New York to the Elizabeth Contract Detention Facility in Elizabeth, New Jersey, then to Dallas, Texas, and finally to Louisiana, where he was taken first to Alexandria, Louisiana and then eventually to the Central Louisiana ICE Processing Center (“CLIPC”). *See* Att. M (Verified Fourth

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<sup>15</sup> Previously submitted as Motion to Remand, Att. 7.h.

Amended Complaint) ¶¶ 75-84. At LaSalle, his case was assigned to Acting Chief Immigration Judge (“ACIJ”) Jamee E. Comans. On information and belief, IJ Comans, who as ACIJ maintains direct communications with superiors, including political appointees, within the Department of Justice, was hand-picked to adjudicate Mr. Khalil’s case.

In his removal proceedings, the U.S. Department of Homeland Security (“DHS”) asserted that Mr. Khalil is removable because of a determination by Secretary of State Marco Rubio (the “Rubio Determination”) that he has “reasonable grounds to believe that Khalil’s presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States,” purporting that the Determination satisfied INA § 237(a)(4)(C) (hereinafter referred to as the “foreign policy ground” or “FPG”). Exhibit 1. After Mr. Khalil filed a lawsuit in federal court challenging that determination, DHS added a second charge (“the post-hoc charge”) asserting that Mr. Khalil had misrepresented material information on his application for lawful permanent resident status, *see* INA § 237(a)(1)(A), a charge which he maintains has no basis in fact or law and, like the FPG, was brought in retaliation for his First Amendment protected activity. Exhibit 2; *see also* Motion to Remand, dated February 13, 2026; Opening Brief on Appeal, dated March 2, 2026, Section II.

Throughout the course of Mr. Khalil’s removal proceedings, IJ Comans issued several oral and written decisions regarding removability and relief. The speed and nature of several of these decisions were extremely unusual, deviated from several rules and policies, and strongly suggested a pattern of predeterminations regarding both removability and relief.

On April 11, 2025, approximately forty-eight hours after DHS filed the Rubio Determination in immigration court, Exhibit 7, the IJ orally delivered a pre-written decision (reading her decision from the bench without any adjournment following the close of the hearing) finding Mr. Khalil removable as a result of the determination. Transcript of April 11, 2025 (“Tr.”) at 102:15-104:18. *See* Att. C (Declaration of Dana Leigh Marks) (“the IJ’s issuance of a removability decision on April 11

during the hearing, rather than reserving decision to thoroughly examine the facts presented at the hearing and craft a detailed written decision, is also highly unusual, particularly in such a complicated case.”). The IJ also denied without analysis several pre-decisional motions challenging DHS’s regulatory violations and seeking additional information necessary to develop the factual record and obtain a full and fair hearing. *See, e.g.*, Exhibit 9a; Exhibit 10a.

On May 22, 2025, while still detained, Mr. Khalil appeared at his Individual Calendar Hearing before IJ Comans. The manner in which the IJ conducted the May 22 hearing was once again highly unusual. Although Mr. Khalil’s hearing was scheduled on the EOIR Courts & Appeals System (“ECAS”) to last only two hours (meaning it would typically be reset for a future date if the hearing went over), the IJ insisted that the hearing would be finished that day. After counsel for Mr. Khalil informed the IJ that they had a client meeting with Mr. Khalil that the District Court in Mr. Khalil’s habeas case had ordered for that afternoon, the IJ refused to recognize the court-ordered meeting and told counsel for Mr. Khalil, “I’m finishing this case today.” *Id.* at 225-228. The IJ proceeded to conduct a full-day hearing that lasted well past the Immigration Court’s standard closing time of 5:00 p.m.

On June 11, 2025, Judge Michael Farbiarz, the District Court judge in Mr. Khalil’s habeas case, issued a preliminary injunction in *Khalil v. Trump*, Case No. 2:25-cv-01963-MEF, Dkt. 299, *as clarified by* Dkt. 350, 355 (D.N.J.),<sup>16</sup> barring DHS and EOIR from seeking to detain or remove Mr. Khalil based on the Rubio Determination. Nevertheless, nine days later, on June 20, the IJ issued a written decision (1) memorializing her April 11 oral finding of removability on the FPG charge, relying on the

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<sup>16</sup> On January 15, 2026, the U.S. Court of Appeals for the Third Circuit overruled the district court’s order in a split panel decision on jurisdictional grounds. *Khalil v. President, United States*, 164 F.4th 259 (3d Cir. 2026). On March 31, 2026, Mr. Khalil filed a petition for rehearing en banc, which remains pending before the Third Circuit. *Khalil v. Trump*, Case No. 25-2162, Dkt. 138 (3d Cir. Mar. 31, 2026). Accordingly, the mandate for the Third Circuit has not issued and the district court’s orders remain in effect. *See, e.g.*, Fed. R. App. P. 41(b) (“The court’s mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later.”); Fed. R. App. P. 41(c) (“[t]he mandate is effective when issued”); *Mary Ann Pensiero, Inc. v. Lingle*, 847 F.2d 90, 97 (3d Cir. 1988) (“[a]n appellate court’s decision is not final until its mandate issues.”); *see also* Motion to Reconsider, dated April 15, 2026.

enjoined Rubio determination; (2) finding Mr. Khalil removable under the post hoc charge that he misrepresented information on his adjustment of status application;<sup>17</sup> and (3) denying Mr. Khalil asylum, withholding of removal, and protection under the Convention Against Torture.<sup>18</sup> *See* IJ Order of June 20, 2025. The IJ did not address Mr. Khalil’s request for an INA § 237(a)(1)(H) waiver of the alleged misrepresentation charge, which, by statute, she had to adjudicate before ruling on whether he should be removed on that ground. *Id.*; *see, e.g.*, INA § 240(c). The IJ also issued an order denying Mr. Khalil a bond hearing on the basis of the enjoined Rubio Determination. *See* IJ Bond Order of June 20, 2025. Mr. Khalil submitted a motion to reconsider the IJ’s June 20 written decision on removability and relief, as it directly violated the District Court’s injunction, Exhibit 40, but the IJ denied this motion without analysis on July 3. Exhibit 44.

On July 17, the District Court issued another decision, making clear exactly what the June 11 injunction meant—that the IJ could not rely on the Rubio Determination in any way because it had been enjoined. *See Khalil v. Joyce*, No. 2:25-cv-01963-MEF, Dkt. 355. The IJ then reopened proceedings on July 18. Exhibit 45. In light of the District Court’s clarification order, the IJ issued an order on July 31 vacating her finding of removability under the FPG. Exhibit 51. This July 31 decision also contained a highly unusual footnote criticizing the federal District Court order. *Id.* The IJ further issued a scheduling order on July 30 providing Mr. Khalil only eight business days to submit evidence on his INA § 237(a)(1)(H) waiver request. Exhibit 50. Although Mr. Khalil requested additional time to

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<sup>17</sup> Mr. Khalil has submitted extensive evidence, including numerous expert affidavits, demonstrating that the IJ’s decision to sustain the post hoc misrepresentation charge was highly unusual and without basis in fact and law. Exhibit 47, Tab B-D; (declarations explaining highly unusual nature of post hoc charge); Motion to Remand, Att. 8.

<sup>18</sup> In her written decision, the IJ found Mr. Khalil statutorily barred from asylum and withholding of removal on the basis of the Rubio Determination. But this decision was inconsistent with the IJ’s oral holding at the May 22 hearing. At the outset of that hearing, the IJ denied DHS’s motion to pretermitt Mr. Khalil’s relief application, in which DHS asserted he is a threat to national security on the basis of the Rubio Determination, and therefore denied Mr. Khalil’s request for a continuance to gather evidence as to why the bar did not apply. May 22 Tr. at 129-130; 134-35. In her June 20 decision, the IJ did not provide any explanation for this sudden reversal or her decision to deny Mr. Khalil the opportunity to present rebuttal evidence to the bar, which the law permits him to do. INA § 240(b)(4)(B); INA § 240(c)(4); 8 CFR § 1240.8.

submit evidence and specifically stated what evidence he would submit, Exhibits 53-56, the IJ ignored those requests.

Then, on September 12, the IJ issued an amended decision denying Mr. Khalil's waiver request,<sup>19</sup> without providing him an evidentiary hearing on that application (despite a hearing being both legally required and the normal course of events),<sup>20</sup> and again ordering him removed. *See* IJ Order of Sept. 12, 2025. The IJ also refused to transfer Mr. Khalil's case to the non-detained docket of the New York Immigration Court—which would normally have happened as a matter of course after his release from detention in June. *See, e.g.*, Exhibit 46 (Motion to Change Venue); Exhibit 49, Tab A (Declaration of Dana Leigh Marks, former President of the National Association of Immigration Judges, who rendered oral and written decisions in more than 24,000 cases, in non-detained and detained removal, deportation, exclusion and bond proceedings throughout her career) (“Typically, once someone is released from detention, venue for their case is transferred to the non-detained court having jurisdiction over the place where their home address is. For years when I was on the bench, this was the established process, even if some testimony had already been taken.”).

Astoundingly, in her September 12 decision, the IJ declined to follow binding Board caselaw holding that Mr. Khalil was eligible for the waiver he sought, *see Matter of Agour*, 26 I&N Dec. 566 (BIA 2015), instead writing a decision that acknowledged, but chose to ignore this binding precedent. IJ Order of Sept. 12, 2025 at 4-5. This is highly unusual, given that IJs are bound by regulation to follow Board precedent.<sup>21</sup> On February 26, 2026—four days before Mr. Khalil's opening brief on

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<sup>19</sup> The decision to deny Mr. Khalil a waiver was similarly abnormal, according to extensive expert testimony that the agency has never addressed. Exhibit 56, Tab AA-CC (declarations explaining that a waiver would normally be granted to Mr. Khalil, and that denial would appear to be First Amendment retaliation); Motion to Remand, Att. 8.

<sup>20</sup> *See* INA § 240(b)(4)(B); 8 C.F.R. § 1240.11; Exhibit 47, Tab A-B (declarations establishing that the normal course of events is for an IJ to decide a waiver application following an evidentiary hearing).

<sup>21</sup> *See* 8 CFR § 1003.1(g) (“Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.”); *see also* Att. C (Declaration of Dana Leigh Marks) (describing how unusual it is for an IJ to decline to follow Board precedent).

appeal was due—the Board issued a published decision overruling its prior precedent on eligibility for the INA § 237(a)(1)(H) waiver and mirroring the reasoning in IJ Comans’ decision. *See Matter of Forjoe*, 29 I&N Dec. 463 (BIA 2026). This sequence of events supports the conclusion that Board members were involved in deciding and/or drafting or advising on the IJ’s September 12 Order in this matter.

IJ Comans was then promoted to Acting Assistant Director of the Office of Policy at EOIR just two months after ordering Mr. Khalil removed.<sup>22</sup>

Mr. Khalil appealed the IJ’s decisions to the Board on October 14, 2025. On appeal, the Board also violated its own rules and policies in its adjudication of Mr. Khalil’s appeal. Significantly, the Board addressed his appeal on an extraordinarily expedited schedule for a non-detained case. *See Att. I* (Declaration of Zabdi J. Salazar) (showing that, as of February 2026, the average processing time at the Board for a non-detained case like Mr. Khalil’s was 795 days). The Board first issued a briefing schedule on October 22, 2025, eight business days after Mr. Khalil filed his appeal. The speed in which this briefing schedule was issued was extraordinarily fast, particularly for a non-detained case like Mr. Khalil’s.<sup>23</sup> Mr. Khalil subsequently jointly agreed with the federal respondents in his habeas proceedings to stay both proceedings before the Board and discovery before the District Court until the Third Circuit panel issued its decision on the government’s appeal of the District Court’s preliminary injunction. The parties further agreed that Mr. Khalil’s opening brief at the Board be due forty-five days after the Third Circuit panel’s decision.

Only hours after the Third Circuit’s January 15, 2026, panel decision, the Board issued a notice stating that a briefing schedule would be set “forthwith.”<sup>24</sup> *See* Interim Order of January 15, 2026.

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<sup>22</sup> *See Att. O*, EOIR, Assistant Director, <https://www.justice.gov/eoir/staff-profile/office-policy-acting-assistant-director> (“Jamee E. Comans was appointed as the Acting Assistant Director of the Office of Policy in December 2025.”)

<sup>23</sup> *See, e.g., Att. H* (Declaration of Benjamin R. Winograd). As explained herein, per the *New York Times*, there is now new evidence showing that the Board specifically expedited the processing and handling of Mr. Khalil’s case, even before the IJ had issued her removal order.

<sup>24</sup> The Board had previously instructed the parties to notify it “when the Third Circuit decides the appeal,” and indicated that a briefing schedule would be issued thereafter. *See* Order of November 14, 2025. The Board’s January 15 interim order issued before the parties had provided the Board with any such notice, showing that the Board was closely following the

Shortly thereafter, Mr. Khalil filed a notice requesting that the Board defer setting a briefing schedule until January 20 to allow the parties an opportunity to meet and confer. *See* Notice Following Third Circuit’s Panel Decision, dated Jan. 15, 2026. One day later, on January 16, the Board issued two briefing schedules, without acknowledging Mr. Khalil’s notice. *See* Orders of Jan. 16, 2026. The first ordered sequential briefing, allotting twenty-one days for Mr. Khalil’s opening brief and twenty-one days for DHS’s opposition. Later that day, the Board issued a second revised schedule requiring simultaneous briefing by both parties—due within twenty-one days of the Third Circuit’s panel decision—by February 6, 2026. The Board’s simultaneous briefing schedule conflicted with the regulation governing the timing of appeal briefs in non-detained cases such as Mr. Khalil’s. *See* 8 C.F.R. § 1003.3(c)(1); BIA Practice Manual Ch. 3.7(a)(1). Mr. Khalil and DHS subsequently conferred and filed a joint motion seeking a revised briefing schedule consistent with their agreement in federal court. *See* Joint Motion for Revised Briefing Schedule, dated Jan. 28, 2026.

In stark contrast to the typical timeline of over two years for adjudication a non-detained case, the Board issued its decision in Mr. Khalil’s case *nine* days after the close of briefing,<sup>25</sup> This expedited timeline is even more shocking in the specific context of Mr. Khalil’s case—which was far more complex than the vast majority of appeals adjudicated by the Board, involving two IJ orders totaling forty-one (41) single-spaced pages, a rarely used provision of the INA, two alleged charges of removability, a complicated and involved procedural history, and multiple applications for relief.<sup>26</sup>

The *New York Times* reported on May 8, 2026, that “[i]nternal [B]oard documents obtained by the New York Times show that the case was considered high priority even before the [B]oard officially

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Third Circuit case.

<sup>25</sup> The decision was issued 177 days after the notice of appeal was filed—a period that included a two-month stay of proceedings upon the joint request of the parties until the Third Circuit issued its panel decision in that case. *Compare* Att. I, (Declaration of Zabdi J. Salazar) (average processing time of 795 days).

<sup>26</sup> The Board itself recognized the complexity of the appeal by granting the parties’ joint motion to file oversized briefs. *See* Order of March 3, 2026.

received it.” See Att. A, (*New York Times* Article). “A note from an internal case-tracking file from June [2025] said that, even though Mr. Khalil had been released several days earlier, the case was to be handled as if he were still in detention, which would speed it along.” *Id.*<sup>27</sup> Later notes reflect that Board personnel were instructed to “Please process as quickly as possible.” *Id.*

On April 9, 2026, the Board issued its decision dismissing Mr. Khalil’s appeal and denying his motion to remand proceedings to the immigration court to present highly relevant evidence of First Amendment retaliation that came to light after Mr. Khalil’s removal proceedings before the IJ concluded, through discovery in *American Association of University Professors v. Rubio*, Case No. 1:25-cv-10685-WGY (D. Mass.). See Order of April 9, 2026. As explained further below, in addition to the irregular and expedited timing of this decision, the content of the April 9 order is consistent with the pattern of prejudgment, procedural irregularities, and retaliation revealed by the *New York Times*’ recent reporting and confirmed by how Mr. Khalil’s removal proceedings unfolded.

The Board’s decision was authored by Chief Appellate Immigration Judge Garry Malphrus, along with Appellate Immigration Judges (“AIJ”) Marcos Gemoets and Keith E. Hunsucker. Reporting has since revealed that the Board specifically routed the case to Chief AIJ Malphrus, rather than randomly assigning it to a member of the Board (as would be typical procedure). See Att. A (*New York Times* Article) (reporting that Mr. Khalil’s appeal was overseen by the Board’s “highest ranking member”<sup>28</sup> from early on, even though, on information and belief, appeals are supposed to be randomly assigned).<sup>29</sup>

Events following the issuance of the Board’s final order of removal further reflect procedural

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<sup>27</sup> As the Board is aware, Mr. Khalil was not detained at any point during the pendency of his appeal, and in fact had been released from detention several months before the IJ issued her September 12 removal order.

<sup>28</sup> Garry D. Malphrus is currently the Chief Appellate Immigration Judge, i.e. the Board’s “highest ranking member” and he is the AIJ who authored the decision in Mr. Khalil’s case.

<sup>29</sup> See also 8 C.F.R. § 1003.1(e)(3) (“A single Board member *assigned under the case management system* shall determine the appeal on the merits as provided in paragraph (e)(4) or (5) of this section, unless the Board member determines that the case is appropriate for review and decision by a three-member panel under the standards of paragraph (e)(6) of this section.”) (emphasis added).

irregularities and confirm that the agency engaged in retaliatory and discriminatory targeting of Mr. Khalil. The Board issued the April 9 decision as unpublished, meaning it was not public and lacked precedential value. Then, six days later, on April 15, the Board made the determination to publish the decision. *See Matter of M-K-*, 29 I&N Dec. 556 (BIA 2026). The publication process the Board used in this instance is unusual. A review of published decisions by the Board demonstrates that decisions are typically either published on the date the decision is issued, or, if they are published at a later date, are designated as precedent pursuant to an order by the Attorney General, not at that point by the Board panel that issued the decision. *See* 8 C.F.R. § 1003.1(g)(3) (2026); AG/BIA Precedent Decisions, <https://www.justice.gov/eoir/ag-bia-decisions>. In Mr. Khalil’s case, however, the Board itself designated the decision as precedent a week after publication. *See* 8 C.F.R. § 1003.1(g)(3) (providing for designation of precedent by the Board upon the vote of a majority of permanent members). *See* 29 I&N Dec. 556 at n.1.

Reporting has since revealed that, in the process undertaken to determine whether to publish the decision, “at least three” current members of the Board recused themselves from Mr. Khalil’s case—a first judge before the initial decision was made, and others during the publication vote.<sup>30</sup> *See* Att. A (*New York Times* Article). The Ethics and Professionalism Guide for Members of the Board of Immigration Appeals provides that “[a] Board Member is banned from adjudicating any cases in which he/she participated personally and substantially prior to becoming a Board Member. A Board Member may not adjudicate a case if he/she: has personal knowledge of the disputed facts; participated as counselor or advisor in the case; or expressed an opinion concerning the merits of the particular case in controversy.”<sup>31</sup> *See also Matter of Exame*, 18 I&N Dec. 303, 305 (BIA 1982) (recognizing that a judge

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<sup>30</sup> The reporting leaves open whether other judges—beyond the three confirmed recusals—also recused themselves or considered recusing but decided not to. As noted above, Mr. Khalil has filed a FOIA request seeking further information about the basis for recusals, among other relevant information.

<sup>31</sup> *See* Ethics and Professionalism Guide for Members of the Board of Immigration Appeals, Section XI, May 4, 2011, available at

who has been previously involved in a case in an adversarial or conflicted capacity must be recused). Based on this ethical guidance, and the documented fact of the recusals, the Board members who recused likely did so because they had been involved in the decision-making and/or drafting or advising process of the underlying IJ decisions. This is further confirmed by a review of the membership of the Board at the time of the issuance of the April 9 decision, which shows only one individual who could possibly have had a legitimate reason to recuse—Kathleen K. Volkert, who “served as a senior advisor at the Office of the Associate Attorney General, Department of Justice.” See Att. R (Current Members of the Board). The rest of the current Board members were either members of the Board throughout the pendency of Mr. Khalil’s case or held other positions in DOJ which would not have provided any appropriate basis for them to significantly participate in the IJ’s handling and adjudication of Mr. Khalil’s proceedings, such that recusal would be warranted. See *id.*; see also Att. B (Declaration of Andrea Sáenz).

As explained above, on May 8, 2026, reporting from the *New York Times* revealed that “at least three” (and potentially more) current Board members recused from the publication vote, in addition to explaining that the Board improperly rushed adjudication of Mr. Khalil’s case. Att. A (*New York Times* Article). That same day, Mr. Khalil filed a FOIA request seeking additional information about and documentation of the undue influence on his removal proceedings and appeal. See Att. E (FOIA Request).

This motion follows.

## ARGUMENT

Pursuant to 8 C.F.R. § 1003.2(a), the Board may, upon written motion, reopen or reconsider any case in which it has rendered a decision. A motion to reopen must be filed within ninety (90) days

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[https://www.justice.gov/d9/pages/attachments/2017/08/24/bia\\_ethics\\_and\\_professionalism\\_guide\\_for\\_board\\_members.pdf](https://www.justice.gov/d9/pages/attachments/2017/08/24/bia_ethics_and_professionalism_guide_for_board_members.pdf).

of the Board’s final administrative decision. 8 C.F.R. § 1003.2(c)(2). This motion is timely filed, as the Board’s final order finding Mr. Khalil removable under INA § 237(a)(4)(C)(i) and INA § 237(a)(1)(A), and denying his applications for relief, was entered on April 9, 2026. This is Mr. Khalil’s first motion to reopen removal proceedings<sup>32</sup> and is filed within ninety (90) days of that decision.

The Board has the authority to terminate removal proceedings pursuant to 8 C.F.R. § 1003.1(m). In cases where termination is required by law, the Board “shall terminate the case.” 8 C.F.R. § 1003.1(m)(1)(i)(F).

Since the Board issued its decision, new information has come to light indicating that (1) the underlying removal order issued by the IJ was influenced by current members of the Board, and potentially other federal agencies or officials, in a clear violation of the IJ’s constitutional, statutory, and regulatory duty to impartially decide cases, *see* 8 C.F.R. § 1003.10(b), and (2) the Board targeted Mr. Khalil’s case and treated it abnormally in an effort to secure a swift and predetermined outcome in Mr. Khalil’s case that aligned with the stated goals of the administration, including by hand-picking Chief Appellate Immigration Judge Garry D. Malphrus to adjudicate his case and improperly treating his case as detained, even though Mr. Khalil was not detained at any point during his appeal. *See Att. A*, (*New York Times* Article). Given that this new evidence of improper conduct by EOIR invalidates the legitimacy and basis for the IJ’s and the Board’s orders, the Board must reopen Mr. Khalil’s removal proceedings and terminate them, or at a minimum—to the extent the Board believes additional evidence is required to support the request for termination—remand to an IJ in New York and instruct the IJ that, on remand, Mr. Khalil must be permitted to obtain discovery into the agency’s misconduct so that he can fully investigate the agency’s outrageous discrimination and improper conduct against him throughout the course of his removal proceedings and appeal.

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<sup>32</sup> Mr. Khalil’s pending Motion to Reconsider is governed by separate statutory and regulatory provisions and does not qualify as a Motion to Reopen. *Compare* INA § 240(c)(6) and 8 CFR § 1003.2(b) (governing motions to reconsider) *with* INA § 240(c)(7) and 8 C.F.R. § 1003.2(c) (governing motions to reopen).

In the alternative, proceedings must be remanded to a new IJ so that he can receive a full and fair hearing before a neutral, impartial adjudicator, which to date he has been denied. Such relief is required given that the evidence has, at a minimum, created an appearance of impartiality. *See, e.g., Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (“Not only is a biased decisionmaker [in administrative agencies as well as courts] constitutionally unacceptable but our system of law has always endeavored to prevent even the probability of unfairness.”); *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1111 (5th Cir. 1980) (“Any question of a judge’s impartiality threatens the purity of the judicial process and its institutions.”).

**I. The Agency Deprived Mr. Khalil of his Right to an Impartial Hearing before a Neutral Adjudicator.**

**a. Mr. Khalil has constitutional, statutory, and regulatory rights to an impartial hearing before a neutral adjudicator**

Mr. Khalil is entitled to a neutral arbiter in his removal proceedings. IJs are required by law to exercise their independent and impartial judgment in adjudicating removal proceedings. *See* 8 C.F.R. § 1003.10(b) (“In deciding the individual cases before them, and subject to the applicable governing standards set forth in paragraph (d) of this section, immigration judges *shall* exercise their independent judgment and discretion[.]...In all cases, immigration judges shall seek to resolve the questions before them in a timely and *impartial* manner consistent with the Act and regulations.”) (emphasis added); 8 C.F.R. § 1003.9(c) (“The Chief Immigration Judge shall have no authority to direct the result of an adjudication assigned to another immigration judge[.]”). As former IJ Marks attests, “[i]t is heavily emphasized during training of an IJ that they are obligated to decide cases independently and without external influence. It is also emphasized that it is important to avoid even the appearance of bias or a lack of impartiality when acting as an IJ.” Att. C (Declaration of Dana Leigh Marks). Former ACIJ Ryan Wood, who delivered training on ethics and professionalism to hundreds of IJs and Board members during his tenure at EOIR, confirms that “the duty of impartiality is foundational to the

work of every Immigration Judge and Board member.” Att. D (Declaration of Ryan Wood).

Furthermore, the INA and due process entitle noncitizens in removal proceedings to a full and fair adjudication of their defenses to removability and applications for relief from removal in immigration court, without outside interference or influence in decision-making. INA § 240(b)(4); INA § 240(c)(1)(A); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993) (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.”). A neutral judge is one of the most basic due process protections. *Marincas v. Lewis*, 92 F.3d 195, 203 (3d Cir. 1996); *see also Wang v. Att’y Gen.*, 423 F.3d 260, 267–68 (3d Cir. 2005) (noting the duty of IJs to remain neutral and impartial when they conduct immigration hearings). “[A] due process violation can be premised upon the absence of a neutral arbiter.” *Wang v. Holder*, 569 F.3d 531, 540 (5th Cir. 2009). The Board is similarly obligated to afford noncitizens a neutral adjudication of their appeals. *Accardi*, 347 U.S. at 267-68 (“the Board must . . . exercise its own independent discretion, after a fair hearing, which is nothing more than what the regulations accord petitioner as a right.”); 8 C.F.R. § 1003.1(d)(1)(ii) (“Board members shall exercise their independent judgment and discretion in considering and determining the cases coming before the Board”).

Any exercise of control by the individual Board members over the IJ’s handling of and decision-making process in Mr. Khalil’s proceedings would also be a violation of the members’ ethical and regulatory obligations in their prior roles. As just a few examples, Board member Sirce Owen was Acting Director of EOIR during the entire pendency of Mr. Khalil’s removal proceedings before IJ Comans.<sup>33</sup> The Director of EOIR “shall have no authority to adjudicate cases arising under the Act or regulations or to direct the result of an adjudication assigned to the Board, an immigration judge, the Chief Administrative Hearing Officer, or an Administrative Law Judge.”<sup>34</sup> Board member

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<sup>33</sup> *See* EOIR, *Board of Immigration Appeals*, available at <https://www.justice.gov/eoir/board-of-immigration-appeals#board>.

<sup>34</sup> 8 C.F.R. § 1003.0(c).

Stephanie Gorman, meanwhile, served on detail as the Acting Assistant Director of the Office of Policy of EOIR during that time, between February 2025 and October 2025. Pursuant to regulation, the Assistant Director for Policy “shall not direct the result of an adjudication assigned to the Board, an immigration judge, the Chief Administrative Hearing Officer, or an Administrative Law Judge.”<sup>35</sup> Board member Gregory Radics, who was appointed to the Board in January 2026, was in the EOIR General Counsel’s office during the pendency of Mr. Khalil’s removal proceedings. Pursuant to regulation, “the General Counsel shall have no authority, directly or indirectly, to direct or influence the adjudication of any cases under the Act.”<sup>36</sup>

**b. The evidence demonstrates that Mr. Khalil was deprived of his rights, or at minimum, demonstrates prima facie evidence of a violation of his rights.**

For the reasons explained above, no other entity outside of or within the DOJ (or any other agency or entity) should be secretly advising, reviewing, revising, or otherwise influencing the decision-making of an IJ in an individual case in order to achieve a preferred or predetermined outcome. But the emerging evidence of government misconduct, as reported by the *New York Times*, indicates that this is exactly what happened. See Att. A (*New York Times* Article); Att. B (Declaration of Andrea Sáenz); Att. C (Declaration of Dana Leigh Marks); Att. D (Declaration of Ryan Wood). This evidence indicates that—given the documented fact of multiple Board members recusing themselves from the case, as well as notes from within EOIR’s database—the underlying removal order issued by IJ Comans (and potentially numerous other oral and written decisions, including how IJ Comans managed the progression of Mr. Khalil’s removal proceedings) was likely influenced by current members of the Board, and potentially other federal agencies or officials.

The fact that *at least three* members of the Board determined they needed to recuse is extremely unusual, and likely unprecedented. Multiple experts attest that none of the typical reasons for recusal

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<sup>35</sup> 8 C.F.R. § 1003.0(e)(2).

<sup>36</sup> 8 C.F.R. § 1003.0(f).

would seem to apply here—and certainly not to three current members of the Board. Former Board Member Sáenz confirms:

I remember a small handful of cases that went to an en banc conference to be considered for publication where a single AIJ recused from the vote. I do not recall seeing any en banc conference where three or more AIJs recused. As I told the Times, this is extremely strange and raises serious questions about why that would happen, as the major common reasons for recusals would not seem to apply.

As far as I know, and based on the public biographies of AIJs, no AIJs did act as the trial-level immigration judge in this case or were working as DHS prosecutors during the IJ proceedings.

Att. B (Declaration of Andrea Sáenz).

It is significant that EOIR as an agency consistently emphasizes that “Recusal is not a tool which parties and judges can arbitrarily invoke to rid themselves of unpleasant or difficult cases. ...Indeed, judges have *an obligation not to recuse themselves* in certain circumstances.”<sup>37</sup> Former ACIJ and expert in EOIR ethics training Ryan Wood explains:

Even under the discretionary “circumstances considered sufficient” standard that governs Board members, recusal is the exception, not the rule. In my experience training and observing Board members, recusal decisions are made carefully and sparingly; mere prior service at EOIR, prior service at OCIJ during a period that overlapped with the Immigration Judge who heard the underlying case, or general familiarity with the legal issues presented in a case is not, in ordinary practice, treated as a sufficient circumstance. If such overlap or familiarity were routinely treated as sufficient, recusals would be commonplace across the Board's docket; they are not. Many Board members previously served as Immigration Judges, as OCIJ leadership, as DHS attorneys, or in other EOIR or DOJ roles, and they regularly adjudicate appeals from courts and cases with which they have institutional familiarity.

Att. D (Declaration of Ryan Wood).

Furthermore, “general legal discussions—such as a discussion about general legal principles or novel legal questions in the abstract—would not be a basis for recusal. Having a personal relationship with the IJ would also not be a basis for recusal.” Att. C (Declaration of Dana Leigh

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<sup>37</sup> Att. SS (EOIR, “Operating Policies and Procedures Memorandum 05-02: Procedures For Issuing Recusal Orders In Immigration Proceedings) (May 21, 2005), available at: <https://www.justice.gov/sites/default/files/eoir/legacy/2005/03/22/05-02.pdf>.

Marks). EOIR's consistent emphasis to its staff that recusal is disfavored strongly suggests that the Board members who recused in Mr. Khalil's case had some significant involvement in the underlying decisions issued by the IJ.

Indeed, experts with extensive experience at EOIR conclude that the recusals "raised serious questions for me about whether multiple AIJs had less formal contact or involvement with this high-profile case at an earlier stage such that they were aware they had a conflict of interest, or the strong appearance of one, voting on the appeal. If that occurred, it would cast doubt on whether the immigration judge's trial-level decision was made independently and impartially." Att. B (Declaration of Andrea Sáenz); *see also* Att. C (Declaration of Dana Leigh Marks) ("I have never heard of such a high number of recusals in one single case. This strongly suggests to me that multiple members of the BIA were significantly involved in the IJ's underlying decisions."); Att. D (Declaration of Ryan Wood) ("Three concurrent recusals are not consistent with routine institutional familiarity or with the ordinary, sparing exercise of Board recusal discretion. They are consistent with each recusing member's independent conclusion that his or her involvement with the matter, or with the parties or issues in the matter, rose to a level sufficient to require recusal under the standard set forth in the BIA Practice Manual. In my professional opinion, three recusals from a single Board case strongly suggests significant prior involvement of those members with the case before it reached the Board.").

The conclusion that members of the Board played a significant role in the IJ's decision-making and that the agency otherwise violated its own regulations and policies is bolstered by the pattern of unusual decisions issued both by the IJ and the Board during Mr. Khalil's proceedings. For example, the reporting and expert statements indicating that multiple members of the Board were likely involved in the IJ's decision-making supports an inference that the IJ's unusual decision to refuse to transfer venue following Mr. Khalil's release from custody—which, as explained above, would normally have happened as a matter of course when Mr. Khalil was released—was motivated by EOIR and the

federal government’s animus towards Mr. Khalil and their desire to keep his case with an IJ who would issue a pre-determined, pretextual, and pre-approved removal order. The IJ’s unusual written decisions, such as her September 12 written decision laying out a legal theory regarding eligibility for an INA § 237(a)(1)(H) waiver—contrary to the Board’s controlling precedent at that time—which the Board later adopted in a decision published four days before Mr. Khalil’s appeal brief was due, further support the conclusion that members of the Board were involved in the IJ’s decision-making. *See, e.g., Att. C* (Declaration of Dana Leigh Marks) (“It is highly abnormal in my experience for an IJ to issue a decision declining to follow Board precedent as it would normally be found to constitute clear error on the IJ’s part.”).

The evidence further indicates that the IJ’s failure to provide Mr. Khalil any semblance of a real hearing on his claims was compounded by the Board, which targeted Mr. Khalil’s case and treated it abnormally, including by hand-picking Chief AIJ Garry D. Malphrus to adjudicate his case, treating it far differently from any other similarly situated cases, and deciding it on an abnormally expedited timeline after improperly directing that it be expedited before Mr. Khalil’s case even reached the Board:

Internal board documents obtained by The New York Times show that the case was considered high priority even before the board officially received it. A note from an internal case-tracking file from June [three months before the IJ’s September removal order and four months before Mr. Khalil filed an appeal] said that, even though Mr. Khalil had been released several days earlier, the case was to be handled as if he were still in detention, which would speed it along.

Att. A, (*New York Times* Article).

Former Board member Andrea Sáenz attests that she has “never seen notations tracking an appeal that started even before it was filed.” Att. B (Declaration of Andrea Sáenz). Notably, “[t]he clerk’s office staff would not have any reason to depart from usual practice unless directed to do so by senior Board staff.” *Id.* Ms. Sáenz has also “never seen a notation that a case should be treated as detained even though the BIA itself recognized the person was living in the community when the

appeal was filed.” *Id.* See also Att. C (Declaration of Dana Leigh Marks) (“Importantly, whether a respondent was detained at one point during removal proceedings has no bearing on if their appeal is processed as detained or non-detained. Supervisors made it known to immigration judges that if a non-citizen’s detention status was changed, they were to treat the case under the current status regardless of the past history of the matter.”).

Mr. Khalil’s case was processed significantly more quickly than even a detained case would be. *See id.* (“[B]ased on my experience, it is unprecedented for the BIA to issue a decision within nine days of briefing concluding. I have never in my entire career seen a case—detained or non-detained—in which a decision was issued so quickly.”). This timeline is “particularly shocking” in “an unusually complicated case, and one that is far more complex than the typical removal case that the BIA reviews on appeal.” *Id.* Former Board Member Sáenz confirms that “[h]aving a case drafted, reviewed, adjudicated by a 3-judge panel, and issued nine days after briefing is complete is just unheard of. I do not know how a case could move that fast unless it was essentially in its own category and expedited well beyond the Board’s existing categories to expedite cases.” Att. B (Declaration of Andrea Sáenz).

The substance of the Board’s decision, issued nine days after Mr. Khalil filed his petition for rehearing en banc in the government’s Third Circuit appeal of his habeas proceedings, and only nine days after the completion of briefing to the Board, further evidences the retaliatory animus of the agency and its determination to issue a final order of removal no matter the merits of the arguments. For example, in its decision, the Board asserted it was unaware of whether a petition for rehearing en banc had actually been filed, thereby concluding that the mandate in Mr. Khalil’s Third Circuit case had issued, and that the Board was no longer bound by the District Court’s injunction. *See* April 9 Decision and Order at 2 (“While the respondent asserts that he is pursuing a petition for rehearing or rehearing en banc...he presents no evidence that such a petition has been filed, much less granted.”). But Mr. Khalil did file his petition for rehearing en banc on March 31, and on April 9, the Third

Circuit had not (and still has not) ruled on the rehearing petition. Accordingly, the Third Circuit's mandate had not issued (and may never issue) and the District Court's injunction remained in effect at the time the Board issued its decision, despite its false conclusion to the contrary.

As explained in prior filings, Mr. Khalil did inform the Board of the continuing injunction. Opening Brief at 1-2; Reply Brief at 3. Following the Board's decision, Mr. Khalil further provided a copy of his filed Petition for Rehearing En Banc, the subsequent orders of the Third Circuit, and the publicly available docket for the Third Circuit case. *See* Motion to Reconsider, Tab A, Petition for Rehearing En Banc; Tab B, Court Orders Requesting Response from the Government and Granting Extension of Time to Respond; Tab C, Public Docket for *Khalil v. Trump*.

The apparent legal and factual error by the Board is impossible to square with reality, given that the Board is a party to Mr. Khalil's extremely high-profile Third Circuit proceedings, *see Khalil v. Trump*, Case Nos. Nos. 25-2162 & 25-2357 (3d Cir. 2025), and had previously made clear it was immediately updated on developments in the case. Indeed, when previously granting a joint motion to hold proceedings in abeyance pending the outcome of proceedings in the Third Circuit, the Board stated that: "The parties should inform the Board when the Third Circuit decides the appeal." Order of November 13, 2025. Nevertheless, six hours after the Third Circuit panel issued its split decision, and before the parties had submitted anything to the Board, the Board issued a notice stating: "The Third Circuit has issued a decision in this matter. Accordingly, the Board will issue a briefing schedule forthwith." Order of January 15, 2026. Reporting now confirms that the Board was tracking Mr. Khalil's case and "considered [it] high priority even before the board officially received it," *see Att. A*, further evidencing that the Board would have been aware of major developments in parallel litigation, particularly given that it is a party to that litigation.

That the Board willfully ignored a federal court order is further evidence that, instead of "exercis[ing] its own independent discretion, after a fair hearing," *Accardi*, 347 U.S. at 267-68; 8 C.F.R.

§ 1003.1(d)(1)(ii), as it was obligated to do, the Board instead rushed Mr. Khalil's case through as quickly as possible with the goal of issuing a pre-determined final order of removal (and affirming the IJ's pre-determined removal order issued below) as quickly as possible.

The published decision issued on April 15 continued to maintain that there was no evidence that the mandate in the Third Circuit case had not yet issued, even though Mr. Khalil had filed a Motion to Reconsider earlier that day correcting the Board's clear error *prior* to the Board issuing its published decision. *See* Motion to Reconsider, filed April 15, 2026. That Motion to Reconsider, of course, provided evidence to the Board that the Third Circuit's mandate had not issued and that the Third Circuit's split panel decision issued on January 15, 2026, did not disturb the District Court's binding injunction and prevented the Board from relying on the Rubio Determination in its decision. *Id.* Nonetheless, the Board chose to violate a lawful federal court order, publishing its decision knowing full well the mandate had not issued and that the Board was enjoined from considering and relying on the Rubio Determination to support the FPG finding of removability. This too supports the conclusion that the Board rushed to a predetermined decision—in which its members likely played a role in before the case even reached the Board—violating its clear duty to decide cases independently and impartially. *See also* Att. C (Declaration of Dana Leigh Marks) (“Given the complexity of the case and extensiveness of the record, I would expect that a decision would take significant legal research and internal review. The speed in which the decision was issued leads me to conclude that the BIA had predetermined the decision in Mr. Khalil's case.”).

**II. Termination is the Appropriate Remedy or, at Minimum, Remand to a Different IJ for Additional Factfinding on the Violations of Mr. Khalil's Rights.**

Any influence by sitting members of the Board, or other federal agencies or officials, on the decisions issued in Mr. Khalil's immigration court proceedings would be a clear violation of the IJ's regulatory duty to impartially decide cases, 8 C.F.R. § 1003.10(b), and Mr. Khalil's statutory and due process rights to a full and fair hearing before a neutral adjudicator and a decision free from external

influence. INA § 240(c)(1)(A) (“At the conclusion of the proceeding the immigration judge shall decide whether an alien is removable from the United States. The determination of the immigration judge shall be based *only on the evidence produced at the hearing.*”) (emphasis added). “It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid.” *Gulf States Mfrs., Inc. v. N. L. R. B.*, 579 F.2d 1298, 1308 (5th Cir. 1978), *on reh’g*, 598 F.2d 896 (5th Cir. 1979). Existing evidence already indicates that high-ranking officials within DOJ and EOIR (and possibly other agencies or entities) were involved in the decision-making process of the IJ, meaning “fair judgment” by the IJ would have been “impossible.” *Liteky v. United States*, 510 U.S. 540, 555 (1994); *Wang*, 569 F.3d at 540-41. Reopening is therefore required.

- a. Mr. Khalil’s fundamental rights were violated such that no showing of prejudice is required, but even if it were, he clearly suffered prejudice by being deprived of a fair hearing and being issued a predetermined removal order.**

Supreme Court caselaw makes clear that federal agencies are bound to follow their own regulations and that agency action taken in violation of those regulations must be set aside. *Accardi*, 347 U.S. at 260; *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures[.]”). In *Accardi*, the Attorney General compiled and circulated a confidential list of persons targeted for deportation—including the petitioner—before the Board had ruled on his case. 347 U.S. at 264. The Supreme Court held that this interference violated the regulations requiring the Board to exercise its own independent judgment, and that the petitioner was therefore entitled to a new hearing before a tribunal free from the Attorney General’s influence. *Id.* at 268.

As explained above, EOIR’s regulations required the IJ and the Board to adjudicate Mr. Khalil’s case independently and impartially. 8 C.F.R. § 1003.10(b); 8 C.F.R. § 1003.1(d)(1)(ii). Violation of an agency’s own regulations that are designed to safeguard individual rights is a per se denial of due

process. *Gov't of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970) (“It is equally well established that it is a denial of due process for any government agency to fail to follow its own regulations providing for procedural safeguards to persons involved in adjudicative processes before it.”). Similarly, due process requires a ‘neutral and detached judge *in the first instance.*’” *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 617 (1993) (emphasis added) (quoting *Ward v. Village of Monroeville*, 409 U.S. 57, 61–62 (1972)). The reporting from the *New York Times* supports the conclusion that Mr. Khalil was deprived of a neutral judge throughout his removal proceedings and appeal, and instead was subjected to interference by top agency officials (and potentially other members of the government) who may have directed the outcome of his removal proceedings.

Pursuant to *Accardi*, Mr. Khalil is entitled to relief in the form of the removal order being reopened and set aside because the agency appears to have repeatedly violated the most fundamental of its own regulations—those that are intended to ensure a noncitizen receives a fair hearing on his claims. The Fifth Amendment entitles noncitizens to due process of law in removal proceedings, and those proceedings “must be conducted according to standards of fundamental fairness.” *Vetcher v. Barr*, 953 F.3d 361, 370 (5th Cir. 2020) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Olabanji v. INS*, 973 F.2d 1232, 1234 (5th Cir. 1992). Central to that guarantee is the right to a neutral adjudicator. *Matter of M-A-M-*, 25 I&N Dec. 474, 479 (BIA 2011) (“Included in the rights that the Due Process Clause requires in removal proceedings is the right to a full and fair hearing.”); *see also Withrow*, 421 U.S. at 35 (“A fair trial in a fair tribunal is a basic requirement of due process.”) The regulations that the agency appears to have violated here are structural protections designed to ensure that noncitizens receive adjudication by a neutral, independent decision-maker, rather than a predetermined outcome dictated by external influence. IJ Comans’ (and the Board’s) apparent failure to exercise independent judgment and instead defer to pressure from EOIR leadership, sitting members of the Board, and potentially other high-ranking government officials demonstrate that Mr. Khalil’s proceedings were

constitutionally and regulatorily defective in precisely the manner *Accardi* forbids.<sup>38</sup>

Because the agency likely violated regulations designed to protect Mr. Khalil’s fundamental rights, no showing of prejudice is required. Under the Board’s framework established in *Matter of Garcia-Flores*, 17 I&N Dec. 325, 328–29 (BIA 1980), a regulatory violation by a government officer warrants invalidation of proceedings where “the regulation serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation.” Critically, the Board held that, “[w]here compliance with the regulation is mandated by the Constitution, prejudice may be presumed. Similarly, where an entire procedural framework, designed to insure the fair processing of an action affecting an individual is created but then not followed by an agency, it can be deemed prejudicial.” *Id.* Here, 8 C.F.R. § 1003.10(b) and 8 C.F.R. § 1003.1(d)(1)(ii) exist entirely to protect noncitizen’s right to a neutral adjudicator, not for administrative convenience, and prejudice is presumed—without requiring specific demonstration—where the violation does not concern a discrete procedural step but instead dismantles “an entire procedural framework, designed to insure the fair processing of an action affecting an individual.” *Id.* at 329.

Similarly, although the Fifth Circuit generally requires a showing of prejudice when a noncitizen challenges a violation of an agency’s internal rules (despite the Supreme Court’s decision in *Accardi* imposing no such requirement), that prejudice requirement cannot apply where, as here, the respondent alleges a violation of the *structural integrity of the decision-making process*, rather than a mere procedural irregularity. *See, e.g., United States v. Gonzalez-Lopez*, 548 U.S. 140, 148 (2006) (structural errors that “affec[t] the framework within which the trial proceeds,” and are not “simply an error in the trial process itself,” evade harmless error analysis). In other words, the proceedings in Mr. Khalil’s case were structurally void from the outset because he was never provided a neutral adjudicator in the

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<sup>38</sup> *See also Cinderella Career & Finishing Schs., Inc. v. F.T.C.*, 425 F.2d 583, 591 (D.C. Cir. 1970) (“The test for disqualification has been succinctly stated as being whether a disinterested observer may conclude that (the agency) has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.”) (citation omitted).

first place. This deprivation of a fundamental right is itself an injury and renders the underlying agency decision invalid, so no showing of prejudice could be required. *See, e.g., MCR Oil Tools, L.L.C. v. United States Dep't of Transportation*, No. 24-60230, 2024 WL 2954416, at \*4 (5th Cir. June 12, 2024) (“An agency is obligated to comply with the regulations that it promulgates with the force and effect of law....That is a bedrock, foundational principle of administrative law. So it comes as no surprise that “[t]he failure of an agency to follow its regulations renders its decision invalid.”) (quoting *Gulf States Mfrs. Inc.*, 579 F.2d at 1308); *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993) (“when a regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, and the [government] fails to adhere to it, the challenged deportation proceeding is invalid”). In *Accardi*, the Court held that the violation of the regulation requiring independent judgment was *itself* the constitutional and regulatory injury. *See Accardi*, 347 U.S. at 268 (Board’s error was “failure to exercise its own discretion”).

Even if a showing of prejudice were required however, Mr. Khalil was substantially prejudiced by the lack of a neutral adjudicator, because the IJ’s failure to exercise independent judgment not only deprived him of the neutral, individualized hearing to which he was entitled but resulted in adverse decisions on removability despite myriad constitutional issues with both charges that the agency refused to consider and a robust factual record demonstrating neither charge could be sustained on the merits. *See, e.g.*, Opening Brief at Section II; Motion to Remand; Reply Brief. It similarly resulted in the denial of relief, despite Mr. Khalil being statutorily eligible for all forms of relief sought and having overwhelming equities. *See, e.g.*, Opening Brief at Section III-IX. The agency’s bias similarly resulted in adverse decisions on pre-decisional orders that inhibited Mr. Khalil from building a full record on his constitutional challenges for a reviewing court. *Id.* at Section I. In similarly situated cases, where the government’s attempts to transfer respondents far from their jurisdictions were thwarted, the respondents’ cases were assigned to IJs in the normal course, and those IJs appropriately

terminated proceedings against respondents. Att. YY (IJ Order in Mohsen Mahdawi's case); Att. XX (IJ Order in Rumeysa Ozturk's case). This further demonstrates that Mr. Khalil was prejudiced by the lack of neutral adjudicator in this case. Even if prejudice were required, which it is not, Mr. Khalil has made a prima facie showing of it here. *Francois v. Garland*, 120 F.4th 459, 466 (5th Cir. 2024) (finding substantial prejudice where noncitizen made a prima facie showing that the alleged violation affected the outcome of the proceedings). Termination is therefore required.

**b. A growing consensus of bias within EOIR, in conjunction with the documented manipulation of Mr. Khalil's removal proceedings, supports his request for termination because the agency has demonstrated an inability and unwillingness to provide him a fair hearing.**

It is not a surprise that in one of the most high-profile immigration cases in the country, where the respondent has been specifically and publicly targeted by top government officials including President Trump and Secretary Rubio, the weaponization of the immigration court system has reached a fever pitch. The IJ and Board's individualized targeting of Mr. Khalil must also be viewed in the context of significant and growing evidence that EOIR—as a whole—has abandoned any pretense of impartiality. This body of evidence further supports Mr. Khalil's request for termination because it demonstrates that the agency is unable to provide him with the neutral adjudicator to which he is entitled.

Under the current administration, the immigration court system has been transformed into a body that is structurally incapable of upholding Mr. Khalil's statutory and constitutional rights. It is not an independent adjudicative body. In the last year the DOJ and its sub-agencies, EOIR and the Board, in apparent coordination with DHS, have systematically dismantled the integrity of the immigration court system to turn it into an extension of DHS's deportation and detention operations. The evidence of EOIR's institutional capture falls into five categories, each independently sufficient to establish bias, but together demonstrating systematic destruction of judicial independence: (1) the ongoing mass-scale purge of IJs perceived as obstacles to DHS' enforcement agenda—most relevant

here, in cases brought against noncitizens on the basis of First Amendment protected activity; (2) the parallel purge and reconstitution of the Board, resulting in a 98% pro-government decision rate; (3) the recruitment and installation of explicitly enforcement-aligned “deportation judges” with dramatically reduced qualifications; (4) EOIR policy directives establishing expectations that adjudications favor the government over noncitizens; and (5) explicit instructions to defy district court rulings that impede DHS’s enforcement goals. Each category is addressed in turn below.

**i. The ongoing, mass-scale purge of IJs perceived as obstacles to the Administration’s enforcement agenda.**

As of September 26, 2025, the administration had fired 128 IJs.<sup>39</sup> The terminated and resigned IJs report three consistent themes.

First, explicit pressure to serve as instruments of mass deportation rather than neutral adjudicators.<sup>40</sup> Former Baltimore IJ Emmett Soper stated: “I think the current administration of the immigration courts does not fundamentally see the immigration courts as neutral decision-makers. I think that they see the immigration courts as a tool for this administration to advance its policy objectives.”<sup>41</sup> Former San Francisco IJ Jeremiah Johnson similarly understood “the hint that they should be hearing cases a certain way, deciding cases a certain way. Move faster. Less due process, essentially.”<sup>42</sup> Former San Francisco IJ George Pappas was even more direct: “We were told to

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<sup>39</sup> Att. S (*Trump Administration Continues Firing Immigration Judges -- IFPTE responds*) IFPTE (Sept. 26, 2025), <https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-responds>.

<sup>40</sup> *See, e.g., Att. T*, Nicholas Nehamas et al., *How Trump Purged Immigration Judges to Speed Up Deportations*, NY Times (Apr. 9, 2026), [https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html?unlocked\\_article\\_code=1.a1A.s3Hs.sqD3-VVgPTof&smid=url-share](https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html?unlocked_article_code=1.a1A.s3Hs.sqD3-VVgPTof&smid=url-share); Att. U, Joshua Goodman, *Military Lawyer Swiftly Fired from Immigration Bench After Defying Trump Deportation Push*, Associated Press, Military.com, Dec. 19, 2025, <https://www.military.com/daily-news/2025/12/19/military-lawyer-swiftly-fired-immigration-bench-after-defying-trump-deportation-push.html>; *Singh v. Valdez*, No. 26-CV-1109-WJM, 2026 WL 890240, at \*5 (D. Colo. Apr. 1, 2026) (“the mounting evidence that bond determination hearings conducted in Immigration Court ... have preordained outcomes has become impossible to ignore”).

<sup>41</sup> Att. V, Geoff Bennett & Ali Schmitz, *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour (Nov. 12, 2025), <https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog>.

<sup>42</sup> Att. W, Hilda Gutierrez, Michael Bott & Son Vo, *‘An all-out attack on immigration court.’ SF immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025), <https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/>.

facilitate deportation... Due process is dead in immigration courts.”<sup>43</sup>

Second, a pervasive climate of fear designed to ensure compliance.<sup>44</sup> Former Annandale IJ Anam Petit observed: “There’s a climate of fear...Judges feel like, if they step a toe out of line right now...or they’re one [asylum] grant away from being fired because of the arbitrary nature of the firings.”<sup>45</sup> Former New York IJ Carmen Maria Rey Caldas similarly described judges working “under ‘constant threat’ of getting fired if they don’t follow certain rules from leadership.”<sup>46</sup>

Third, the inevitable compromise of judicial independence when self-preservation requires favoring the government. Former San Francisco IJ Elizabeth Young explained: “I’ve talked to many of [the judges still serving], and they’re like, ‘When I go into court, I am concerned about applying the law, but I’m also concerned that I should deny more, because if I don’t, then I’ll get fired.’”<sup>47</sup> Former Boston IJ Sarah Cade reached her breaking point: “I felt I might have to compromise my ethics and might be put in a place where I felt like I was going to be asked to violate due process. So I left and I went to private practice.”<sup>48</sup>

As can be seen, for a while now, there has been significant evidence that hearings in immigration court have been regarded as “law-free zones” and “implicit bias minefields.” Mary Holper, *Discretionary Immigration Detention*, 74 Duke L.J. 961, 972 (2025). To begin, IJs are, by definition, not independent adjudicators. They are career attorneys who are employed by DOJ and thus report to the Attorney General, an appointee of the executive branch, making them “very

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<sup>43</sup> Att. X, Marco Poggio, *Judges See an Immigration Court Guttled from Inside*, Law360 (Oct. 31, 2025), <https://www.law360.com/articles/2381003/judges-see-an-immigration-court-guttled-from-inside>.

<sup>44</sup> Poggio, *supra*, note 43.

<sup>45</sup> Att. Y, Eric Katz, ‘Climate of Fear’: *Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to Trump’s Firings*, Gov’t Executive (Nov. 14, 2025), <https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-syste-m-jeopardy-due-trumps-firings/409544/>.

<sup>46</sup> Att. Z, Isabela Dias, ‘Fired for No Reason’: *Former Immigration Judges Speak Out Against Trump’s Assault on the Courts*, Mother Jones (Oct. 9, 2025), <https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/>.

<sup>47</sup> Poggio, *supra*, note 43.

<sup>48</sup> Poggio, *supra*, note 43.

susceptible to pressure from above to decide cases in a certain way.” *Accord* Karen Musalo et. al., *With Fear, Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts*, 65 B.C. L. Rev. 2743, 2755 (2024); Holper, 74 Duke L.J. at 1010 (describing an IJ as “a prosecutor masquerading as a judge.”).

“[M]any” of the IJs who were fired *en masse* were removed “seemingly because their judicial philosophies did not align with the administration’s priorities.”<sup>49</sup>

Similarly, former President of the National Association of Immigration Judges, Dana Leigh Marks, states the following:

In my opinion, due process is no longer the norm in the immigration court system. Current IJs cannot be relied on to act as neutral arbiters. This is a structural flaw and not an accusation against any particular sitting judge. Since the beginning of 2025, the administration has fired over 100 IJs for their failure to align with the administration’s priorities. I personally know and have worked with many veteran judges who have been terminated without good cause, violating their established civil service protections. They are, without exception, hard-working, knowledgeable, and fair jurists. While no stated reason was given to these judges for their terminations, the observable trend is that judges with high asylum grant rates and professional backgrounds defending immigrants are the ones being fired *en masse*. **In other words, the administration is not interested in maintaining a qualified, fair bench, but in finding “deportation judges” to advance its policy agenda.**

In addition to mass firings, the administration has taken extraordinary other steps to send a message to IJs that they must rule consistently with the administration’s anti-immigrant agenda. For example, the administration issued a policy memorandum on June 27, 2025, stating that “there are some Immigration Judges who appear to believe – based on their own personal policy preferences – that exhibiting bias is justifiable in certain situations, as long as that bias is in favor of an alien and against the Department of Homeland Security (DHS).” **The message in that policy memo is clear: side with DHS, or lose your jobs.**

*See* Att. TT (Declaration of Dana Leigh Marks) (internal citations omitted) (emphasis added).

Shira Levine, another IJ fired during this administration, states the following:

**The first time I received guidance attempting to influence my decisions in the courtroom outside of such binding legal precedent was in 2025.** Over the months I served as an immigration judge in 2025, I received a series of publicly available policy

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<sup>49</sup> *Att. AA*, Levin, Sam, “Hell on earth?: immigrants held in new California detention facility beg for help,” *The Guardian* (Sept. 27, 2025), available at: <https://www.theguardian.com/us-news/2025/sep/27/immigrants-california-detention-facility>; *see also Att. V*, Bennett, Geoff and Ali Schmitz, “Ousted immigration judge describes deepening court backlog” *PBS News Hour* (Nov. 12, 2025), available: <https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog>.

memorandums that indicated how cases should be decided. At the same time, judges at the San Francisco Immigration Court began to be fired without cause or explanation. **The guidance we received from the Agency along with the termination of immigration judges created the understanding that decisions which did not further the executive branch's enforcement priorities could put a judge's employment at risk.** Despite these pressures, I did not change how I ruled on case[s]. I was fired without cause or explanation.

Prior to my termination, **EOIR issued a policy memorandum that indicated that the way judges ruled could be used to justify their termination.** EOIR Policy Memorandum 25-42 (Aug. 22, 2025). This memorandum ignored that appeals are the procedural means of challenging legal decisions. Fewer than three percent of my cases were appealed during the four years I was on the bench and none of those cases were reversed while I was an immigration judge. Nonetheless, the policy memorandum focused on case outcomes. Many of the judges, including myself, who were targeted for termination had above average grant rates. **To me, this indicated that terminations targeted judges who were not furthering the Agency's immigration enforcement policies but were instead seeking to evenly interpret the law in each case.**

Att. UU (Declaration of Shira Levine) (emphasis added); *see also* Att. VV (Declaration of Lawrence O. Burman) (“Although [I]s] are expected to act as neutral adjudicators, I have noticed increasing concern among members of the bench about institutional intimidation and the perception that decisions unfavorable to the government could negatively affect judicial tenure.”).

Just recently, acting Attorney General Todd Blanche stated: “If there’s judges that are just *not applying the law in the way that it needs to be applied*, delaying inappropriately, have backlogs that are just unacceptable, they’re the folks that we’re going to try to find somebody different to fill that spot.”<sup>50</sup> (emphasis added). These comments further underscore that leadership at EOIR is making clear to its employees that those who do not adhere with the policy preferences of the administration will be terminated.

## ii. The BIA purge and resulting statistical evidence of bias.

A parallel purge occurred at the Board which was reduced from 28 members to 15 members

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<sup>50</sup> Att. BB, Rebecca Santana, *Justice Department targets slow immigration judges as Trump pushes faster deportations*, Associated Press (May 9, 2026), available at <https://apnews.com/article/immigration-blanche-doj-trump-judges-backlog-deportations-daa36a2e3b0c7b26115bafcae04817c6>.

in early 2025. All President Biden appointees on the Board were fired.<sup>51</sup> The statistical impact is stark. As of May 14, 2026, the reconstituted Board has issued 96 published decisions.<sup>52</sup> Of those, 94 decisions (98%) favored the administration. By contrast, during the entire four-year span of the prior administration, the BIA issued 76 published decisions.<sup>53</sup> Of those, 46 decisions (60%) favored the administration. The transformation from 60% to 98% pro-government outcomes—achieved through wholesale termination of one administration’s appointees—speaks for itself. A review of unpublished decisions reflects a similar decline in cases where the noncitizen prevailed. *See* Tab \_\_\_ (“The Board of Immigration Appeals Under the Second Trump Administration: An Empirical Analysis of Grant Rates and DHS Appellate Behavior”) (“The noncitizen-filed grant rate, the share of noncitizen-initiated appeals where the noncitizen prevailed, fell from 20.05% to 10.31%, a decline of 9.74 percentage points. The drop is statistically significant, spans every appeal type, the five largest federal circuits, and both represented and pro se noncitizens.”).

**iii. The installation and recruitment of IJs aligned with enforcement agenda.**

At the same time, the administration is actively recruiting for attorneys to become new IJs, whose employment would be even more clearly based on the pleasure of the Attorney General. Among these new hires are military lawyers who are being recruited to sit as IJs after minimal

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<sup>51</sup> Att. MM, Dias, “‘The Entire System Will Collapse’: Inside the Purge of US Immigration Courts,” Mother Jones (Mar. 6, 2025), <https://www.motherjones.com/politics/2025/03/trump-immigration-courts-firing-doge-nonsensical-system-collapse-eoir/>; Att. CC, Am. Imm. Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12, 2025), <https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/>.

<sup>52</sup> Att. DD, EOIR, *Volume 29*, U.S. DOJ (Mar. 2, 2026), <https://www.justice.gov/eoir/volume-29>. *See also* Att. EE, Jason A. Cade, “Welcome To The Trump Administration’s Board Of Immigration Appeals. The Immigrant Always Loses,” *Yale Law Journal* (forthcoming 2026) (“The Trump administration has used the Attorney General’s self-referral power and a reconstituted, ideologically aligned Board to issue approximately 89 precedential decisions, at more than three times the historical pace, in its first fourteen months. The goal is to engineer a body of precedents that reliably produces one result: removal.”)

<sup>53</sup> Att. FF, EOIR, *Volume 28*, U.S. DOJ (June 13, 2025), <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021)

training.<sup>54</sup> The move alarms legal experts for a myriad of reasons, including because of the president’s outsized influence over the military. *Id.* The administration has even widely issued policy guidance admitting that DHS (its enforcement arm) is actively coordinating with the DOJ (under which the BIA and IJs sit) to expand mandatory detention.<sup>55</sup> The DOJ has also launched a campaign to hire new IJs that **advertises the position as “deportation judges”** and describes it as an opportunity to “[b]ring the hammer down on criminal illegal aliens . . . Defend your communities, your very way of life.”<sup>56</sup> This is evidence that the Immigration Court cannot be a neutral adjudicator when the same branch of the government that also supervises the Immigration Court has made its displeasure known regarding judges *whose decisions it did not like* by terminating their employment.

The message to remaining IJs is unmistakable: neutrality is a terminable offense. No adjudicator can remain impartial when faced with the choice between upholding due process and keeping their position.

In addition, the DOJ has authorized up to 600 military lawyers to serve as temporary IJs for a renewable term not to exceed six months, while simultaneously eliminating the requirements that previously existed to serve as a temporary IJ.<sup>57</sup> Previously, temporary judge candidates were required to have served as a former IJ, appellate IJ, or administrative judge within another agency, or to have at least 10 years of immigration law experience. *Id.* The administration removed those requirements entirely, allowing “any attorney” to be selected as a temporary IJ and reduced training to

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<sup>54</sup> Att. GG, Villarreal, Alexandra, “Hiring of military lawyers as immigration judges alarms law experts” *The Guardian* (Sept. 22, 2025), available at: <https://www.theguardian.com/us-news/2025/sep/22/trump-administration-military-lawyers-immigration-judges>.

<sup>55</sup> Att. HH, Interim Guidance from U.S. Department of Homeland Security to All ICE Employees Re: “Detention Authority for Applications for Admission” (July 8, 2025), available at: <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>; *see also Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

<sup>56</sup> *See Att. W*, Gutierrez, Hilda and Michael Bott, “An all-out attack on immigration court: SF immigration judges speak out after firings” *NBC Bay Area* (Nov. 25, 2025), available at: <https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/>.

<sup>57</sup> Att. II, Designation of Temporary Immigration Judges, 90 Fed. Reg. 41,883 (Aug. 28, 2025).

approximately two weeks—far less than the standard training for permanent IJs, which includes six weeks of initial training, one year of mentorship by an experienced judge, and two years of quarterly reviews.<sup>58</sup> Corey Lewandowski, an adviser to former DHS Secretary Noem, responded to the announcement by posting: “I see more deportations of illegal immigrants in the near future”<sup>59</sup>—an explicit acknowledgment of the mass deportation policy objective underlying these appointments and the erosion of institutional boundaries between DOJ and DHS. In December, one of the appointed temporary judges was fired just a month into his six-month term. “That judge, Christopher Day, had granted asylum claims in just over half the cases he heard.”<sup>60</sup>

Most relevant to Mr. Khalil’s case, the Trump administration recently fired two IJs who dismissed high-profile deportation cases against students who had advocated for Palestinians, Ms. Öztürk and Mr. Mohsen Mahdawi, and were arrested shortly after Mr. Khalil as part of the same government targeting operation.<sup>61</sup> In contrast, IJ Comans was promoted to Acting Assistant Director of the Office of Policy at EOIR just two months after ordering Mr. Khalil removed.<sup>62</sup>

#### **iv. A barrage of EOIR Policy Memoranda establishing expectations that adjudications favor the government over noncitizens.**

Beyond personnel changes, after assuming the role of EOIR’s acting director, Sirce E. Owen (now a member of the Board), quickly issued “a string of sharply worded policy memos” that immediately “[set] the tone for her leadership.”<sup>63</sup> “Sources familiar with Owen described her as a

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<sup>58</sup> Att. JJ, Margo O’Herron, *Using Military Lawyers as Immigration Judges is Ill-Advised and Potentially Illegal*, Brennan Ctr. for Just. (Sept. 29, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/using-military-lawyers-immigration-judges-ill-advised-an-d-potentially>.

<sup>59</sup> Att. KK, Corey R. Lewandowski (@CLewandowski), X (Sept. 2, 2025, 1:47 PM), <https://x.com/clewandowski/status/1962950546652070269>.

<sup>60</sup> Att. LL, Radley Balko, “The courts are dead.” An interview with a fired immigration judge, *The Watch* (Jan. 8, 2026), <https://radleybalko.substack.com/p/the-courts-are-dead-an-interview>.

<sup>61</sup> Att. P, “Judges Fired After Blocking Deportations of Pro-Palestinian Students,” *NY Times* (Apr. 11, 2026), <https://www.nytimes.com/2026/04/11/us/politics/immigration-judges-deportations-students.html>.

<sup>62</sup> See Att. O, EOIR, Assistant Director, <https://www.justice.gov/eoir/staff-profile/office-policy-acting-assistant-director> (“Jamee E. Comans was appointed as the Acting Assistant Director of the Office of Policy in December 2025.”)

<sup>63</sup> Att. MM, Dias, “‘The Entire System Will Collapse’: Inside the Purge of US Immigration Courts,” *Mother Jones* (Mar. 6, 2025), <https://www.motherjones.com/politics/2025/03/trump-immigration-courts-firing-doge-nonsensical-system-collapse-eoir/>.

“restrictionist loyalist” with a reputation for denying cases.”<sup>64</sup>

The Catholic Legal Immigration Network (“CLINIC”) observed that “these memos also seem intended to reshape EOIR, which is meant to be a neutral arbiter, into a politically driven tool advancing the Trump administration’s clearly anti-immigrant views.”<sup>65</sup> The policy directives include: a memorandum dated June 27, 2025 warning IJs not to demonstrate “bias directed against DHS” or to be “adjudicatory outliers,” at risk of “close examination and potential action”;<sup>66</sup> a memorandum encouraging IJs to deny asylum applications without full evidentiary hearings, styled as efficiency guidance but functioning as a directive to reduce due process protections;<sup>67</sup> and memoranda restricting IJs’ ability to grant continuances<sup>68</sup> and administrative closure.<sup>69</sup>

#### v. Defiance of federal court orders.

Finally, clear evidence that EOIR has abandoned its role as a neutral tribunal comes from its response to federal court orders that the agency has explicitly chosen to defy. Examples of this trend have been cited by district court judges across the United States in a variety of settings. *See, e.g., Kumar v. Soto*, --- F.Supp.3d ----, 2026 WL 585187, at \*12 (D.N.J. Mar. 2, 2026) (“In the face of scores of violations of recent judicial orders, this silence, the Court fears, is clarifying as to the overall approach of local ICE leaders to following the Court’s orders.”); *Pal v. Lyons*, 2026 WL 937962, \*4 (D. Col. Apr. 7, 2026) (citing cases); *Singh v. Hagan*, No. 1:26-cv-01109, slip op. at 10-11 (D. Colo. Apr. 1, 2026); *Garcia Ortiz v. Henkey*, No. 1:26-cv-00043-BLW, 2026 WL 948275, at \*3 (D. Idaho Apr. 7,

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<sup>64</sup> *Id.*

<sup>65</sup> Att. NN, Cath. Legal Immigr. Network, Inc., *Navigating EOIR Directives Under Trump 2.0: Practical Guidance for Advocates and Programs* (Apr. 22, 2025), <https://www.cliniclegal.org/file-download/download/public/77642>.

<sup>66</sup> Att. OO, EOIR, Policy Memorandum 25-33, Neutrality and Impartiality in Immigration Court Proceedings (June 27, 2025), [https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27\\_EOIR\\_-\\_PM\\_25-33.pdf](https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf).

<sup>67</sup> Att. PP, EOIR, Policy Memorandum 25-28, Preemption of Legally Insufficient Application for Asylum (Apr. 11, 2025), <https://www.justice.gov/eoir/media/1396411/dl?inline>.

<sup>68</sup> Att. QQ, EOIR, Policy Memorandum 25-27, Cancellation of Director’s Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13 (Mar. 21, 2025), <https://www.justice.gov/eoir/media/1394086/dl>.

<sup>69</sup> Att. RR, EOIR, Policy Memorandum 25-29, Cancellation of Director’s Memorandum 22-03 (Apr. 18, 2025), <https://www.justice.gov/eoir/media/1397161/dl?inline>.

2026); *see also* *Juan T.R. v. Noem*, 2026 WL 232015, at \*1 (D. Minn. Jan. 28, 2026), *supplemented*, 2026 WL 555601 (D. Minn. Feb. 26, 2026) (“Attached to this order is an appendix that identifies 96 court orders that ICE has violated in 74 cases. . . . ICE has likely violated more court orders in January 2026 than some federal agencies have violated in their entire existence.”); *D.V.D. v. DHS*, 2026 WL 521557 (D. Mass. Feb. 25, 2026), *appeal docketed*, No. 26-1212 (Feb. 28, 2026) (describing at length DHS’s violations of the court’s orders). Indeed, as explained above, the Board’s recent decision in Mr. Khalil’s case is a prime example of the agency’s refusal to abide by federal court orders.

The Board should therefore grant Mr. Khalil’s request for termination because the agency has demonstrated it is unable to provide him with the neutral adjudicator to which he is entitled by law. Termination is therefore the appropriate remedy.

**c. The Board must at a minimum reopen proceedings and remand to an IJ in New York with instructions to permit discovery into the agency’s misconduct.**

At a minimum, if the Board believes that Mr. Khalil has presented insufficient evidence to justify termination at this stage,<sup>70</sup> the Board must remand proceedings to a new IJ at the New York Immigration Court, with instructions to permit discovery. *Accardi*, 347 U.S. at 260.

In light of the existing and emerging evidence of egregious government misconduct by EOIR (at all levels), Mr. Khalil at a minimum has made a prima facie case that his right to a fair hearing was violated. The Board must therefore instruct the IJ on remand to permit Mr. Khalil to pursue discovery into the agency’s handling of his removal proceedings and appeal. A party seeking discovery in immigration court must state what they expect to prove by such witnesses or documentary evidence, and to show affirmatively that they have made diligent effort, without success, to produce the same.

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<sup>70</sup> Mr. Khalil notes, however, that members of the Board and EOIR leadership would be aware of evidence of improper influence in the agency’s possession and should make all relevant evidence available to the parties in the course of adjudicating this motion. The agency’s “failure to fully develop the record on an issue material to the noncitizen’s claim is not an error amenable to the ordinary prejudice inquiry because the noncitizen cannot produce a record that [is withheld from him].” *Diabn v. Blanche*, No. 24-2066, 2026 WL 1218767, at \*6 (4th Cir. May 5, 2026).

8 C.F.R. § 1003.35(b)(2). In this instance, Mr. Khalil has submitted a FOIA request to the relevant agencies—although not required by statute, regulation, or case law—but a response will not be received for months, if not years. *Dent v. Holder*, 627 F.3d 365, 374 (9th Cir. 2010) (stating that the “government[’s] reli[ance] on a regulation (not a statute) providing that an individual seeking access to records about himself ‘must submit a written request’ to the Freedom of Information Act (FOIA) office” does not apply to removal proceedings). Mr. Khalil therefore states the following:

Mr. Khalil expects that discovery will demonstrate that multiple DOJ officials, including current members of the Board, were directly involved in the decision-making and/or drafting or advising of oral and written decisions issued by IJ Comans in the course of Mr. Khalil’s removal proceedings. This undue influence and interference are direct violations of the IJ’s clear regulatory duty to decide cases independently and impartially, and Mr. Khalil’s due process, statutory, and regulatory rights to a neutral and independent judge.<sup>71</sup>

**III. In the alternative, Mr. Khalil is entitled to a new hearing before a new IJ because the evidence demonstrates the agency violated its own regulations and has created the appearance of bias and partiality.**

Even if the Board is not inclined to terminate or order discovery at this stage, Mr. Khalil is entitled to a new hearing before a new IJ. The Fifth Circuit has been clear that, when an agency violates its own regulations, remand is appropriate. *Francois*, 120 F.4th at 466 (finding in case where agency violated its own regulations that “[t]he appropriate remedy is vacatur and remand”); *Abdel-Masih v. INS*, 73 F.3d 579, 585 (5th Cir. 1996) (“where an agency has failed to comply with its responsibilities, we should insist on its compliance rather than attempt to supplement its efforts.”); *see also Nat’l Auto. Dealers Ass’n v. Fed. Trade Comm’n*, 127 F.4th 549, 556 (5th Cir. 2025) (vacating

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<sup>71</sup> As set out in Mr. Khalil’s Motion to Remand, he is also entitled to conduct discovery into the government’s unlawful targeting of him on First Amendment grounds throughout these proceedings. He expects that such discovery will further prove that DHS had no legitimate grounds for initiating removal proceedings against him, that the Rubio Determination was issued without any basis in law or fact, that DHS improperly targeted him in retaliation for his constitutionally protected speech, and that these proceedings violate his constitutional rights.

agency action where agency failed to comply with its own procedural regulations).

The agency cannot remedy the structural defect alleged here—the lack of a neutral adjudicator in the first instance—without wholly new proceedings. *See Concrete Pipe*, 508 U.S. at 618 (“Even appeal and a trial *de novo* will not cure a failure to provide a neutral and detached adjudicator.”); *Tinoco Acevedo v. Garland*, 44 F.4th 241, 246 (4th Cir. 2022) (holding same in immigration context).

Remand must be to the New York Immigration Court, where Mr. Khalil resides with his family. *See* Motion to Remand at 24 (explaining normal course of events is for proceedings to take place in jurisdiction where noncitizen resides); *Matter of Rahman*, 20 I. & N. Dec. 480 (BIA 1992). For the reasons set out above, the case cannot be remanded to IJ Comans (who in any event is no longer an IJ) given the specter of bias and partiality. As the Board has just recently reiterated, even the appearance of partiality or bias justifies reassignment of an IJ. *Matter of Santiago-Santiago*, 29 I&N Dec. 589 (BIA 2026) (“we conclude that remanding the record to a different Immigration Judge is the best course of action to avoid the appearance of partiality or bias and to ensure the integrity of the removal proceedings”); *Matter of H-C-R-C-*, 28 I&N Dec. 809, 814 (BIA 2024) (holding that the Board has “the authority to reassign a case based on the appearance of bias, in order to ensure fairness and impartiality”); *see also generally Fort Bend Cnty. v. U.S. Army Corps of Eng’rs*, 59 F.4th 180, 202 (5th Cir. 2023) (recognizing the appellate court’s authority to reassign a case to another judge on remand and considering, *inter alia*, whether “reassignment is advisable to preserve the appearance of justice[.]”) (quoting *Miller v. Sam Houston State Univ.*, 986 F.3d 880, 892 (5th Cir. 2021)).<sup>72</sup> The importance of avoiding even the appearance of impartiality is particularly critical in Mr. Khalil’s case, given the public scrutiny his case has received and the public interest in the government’s pattern of retaliatory

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<sup>72</sup> *See also* Att. C (Declaration of Dana Leigh Marks) (“As the appearance of impropriety is as violative of ethical rules as an actual improper action, I firmly believe that the BIA’s decision should be vacated and the case remanded to a different immigration judge. The findings of the judge and the Board should be disregarded and the matter considered completely *de novo* by a different IJ to cure this defect.”).

conduct throughout his removal proceedings.

The Board must therefore direct the new IJ, and the Board if an appeal is taken, to engage in an impartial and independent adjudication of all claims and applications for relief pursuant to constitutional, statutory, and regulatory obligations.

### CONCLUSION

For all of the aforementioned reasons, the Board must withdraw its decision, reopen Mr. Khalil's removal proceedings, and terminate them. In the alternative, the Board must, at a minimum, reopen proceedings and remand them to the New York Immigration Court (either with instructions to permit discovery, or at a minimum for a new hearing before a different IJ during which the appropriate procedures are followed) so that Mr. Khalil can exercise his right to a full and fair hearing before a neutral adjudicator, which he has so far been denied.

Dated: May 14, 2026

Respectfully submitted,



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Johnny Sinodis  
Oona Cahill  
Van Der Hout LLP

Attorneys for Mr. Khalil

**CERTIFICATE OF SERVICE**

On May 14, 2026, I, Johnny Sinodis, caused the enclosed document to be served on the U.S. Department of Homeland Security via the EOIR Courts and Appeals System (ECAS). This document was electronically filed through ECAS and both parties are participating in ECAS. Therefore, there is no separate service completed.

Executed this 14th day of May 2026.

