Nos. 25-2162 & 25-2357

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MAHMOUD KHALIL,

Petitioner-Appellee,

v.

PRESIDENT UNITED STATES OF AMERICA; DIRECTOR NEW YORK FIELD OFFICE IMMIGRATION AND CUSTOMS ENFORCEMENT; WARDEN ELIZABETH CONTRACT DETENTION FACILITY; DIRECTOR UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; SECRETARY UNITED STATES DEPARTMENT OF HOMELAND SECURITY; SECRETARY UNITED STATES DEPARTMENT OF STATE; ATTORNEY GENERAL UNITED STATES OF AMERICA,

Respondents-Appellants.

On Appeal from the United States District Court
for the District of New Jersey, No. 25-1963 (MEF) (MAH)

APPENDIX: VOLUME I (1-389)

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MAHMOUD KHALIL, *Petitioner,* v. WILLIAM P. JOYCE, *et al.*, *Respondents.*	HON. MICHAEL E. FARBIARZ *Civ. Act. No.* 25-cv-1963 (MEF) (MAH) NOTICE OF APPEAL

NOTICE is hereby given that Respondents[1] appeal to the United States Court of Appeals for the Third Circuit from the order entered on June 11, 2025, granting a preliminary injunction. *See* Dkt. No. 299. The order is an appealable interlocutory order of the district court under 28 U.S.C. § 1292(a)(1). The order incorporates previously issued opinions. *See* ECF Nos. 214, 272. Respondents appeal those opinions that are attendant to the granting of the preliminary injunction.

[1] Respondents are William P. Joyce, Acting Field Office Director of New York, United States Immigration and Customs Enforcement; Caleb Vitello, Acting Director of United States Immigration and Customs Enforcement; Kristi Noem, Secretary of the United States Department of Homeland Security; Pamel Bondi, Attorney General of the United States; Donald J. Trump, President of the United States; Marco Rubio, Secretary of the United States Department of State; and Yolanda Pittman, Warden of Elizabeth Contract Detention Facility.

NOTICE is hereby given that Respondents also appeal to the United States Court of Appeals for the Third Circuit from the order entered on June 20, 2025, granting Petitioner's motion for release on bail. *See* ECF No. 316. The order is an appealable interlocutory order of the district court under 28 U.S.C. § 1292(a)(1).

Dated: June 20, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 20, 2025, the foregoing Notice of Appeal was served upon counsel of record for Petitioner by notice of electronic filing with this Court's CM/ECF system.

s/ Dhruman Y. Sampat
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MAHMOUD KHALIL, *Petitioner,* v. WILLIAM P. JOYCE, *et al.*, *Respondents.*	HON. MICHAEL E. FARBIARZ *Civ. Act. No.* 25-cv-1963 (MEF) (MAH) NOTICE OF APPEAL

NOTICE is hereby given that Respondents[1] appeal to the United States Court of Appeals for the Third Circuit from the order entered on July 17, 2025, ECF 355, modifying the preliminary injunction entered on June 11, 2025, ECF 299. The order is an appealable interlocutory order under 28 U.S.C. § 1292(a)(1). The order incorporates previously issued opinions. *See* ECF 214, 272, 299. Respondents appeal those opinions that are attendant to the preliminary injunction.

Respectfully submitted,

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July 18, 2025

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[1] Respondents are William P. Joyce, Acting Field Office Director of New York, United States Immigration and Customs Enforcement; Caleb Vitello, Acting Director of United States Immigration and Customs Enforcement; Kristi Noem, Secretary of the United States Department of Homeland Security; Pamel Bondi, Attorney General of the United States; Donald J. Trump, President of the United States; Marco Rubio, Secretary of the United States Department of State; and Yolanda Pittman, Warden of Elizabeth Contract Detention Facility.

CERTIFICATE OF SERVICE

I hereby certify that, on July 18, 2025, the foregoing Notice of Appeal was served upon counsel of record for Petitioner by notice of electronic filing with this Court's CM/ECF system.

/s/ Alanna T. Duong
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MAHMOUD KHALIL, *Petitioner,* v. WILLIAM P. JOYCE, *et al.*, *Respondents.*	HON. MICHAEL E. FARBIARZ *Civ. Act. No.* 25-cv-1963 (MEF) (MAH) AMENDED NOTICE OF APPEAL (ECF 318)

NOTICE is hereby given that Respondents'[1] appeal to the United States Court of Appeals for the Third Circuit from the order entered on June 11, 2025, ECF 299, granting a preliminary injunction, is amended to incorporate the subsequently entered order on June 17, 2025, ECF 355, modifying the preliminary injunction. *See* ECF 318, 358; Dkt. No. 25-2162 (3d Cir.). The orders are appealable under 28 U.S.C. § 1292(a)(1), and incorporate previously issued opinions. *See* ECF 214, 272. Respondents appeal those opinions that are attendant to the preliminary injunction.

Respectfully submitted,

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[1] Respondents are William P. Joyce, Acting Field Office Director of New York, United States Immigration and Customs Enforcement; Caleb Vitello, Acting Director of United States Immigration and Customs Enforcement; Kristi Noem, Secretary of the United States Department of Homeland Security; Pamel Bondi, Attorney General of the United States; Donald J. Trump, President of the United States; Marco Rubio, Secretary of the United States Department of State; and Yolanda Pittman, Warden of Elizabeth Contract Detention Facility.

CERTIFICATE OF SERVICE

I hereby certify that, on July 29, 2025, the foregoing Notice of Appeal was served upon counsel of record for Petitioner by notice of electronic filing with this Court's CM/ECF system.

/s/ Alanna T. Duong
ALANNA T. DUONG
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MAHMOUD KHALIL,

Petitioner,

v.

DONALD TRUMP et al.,

Respondents.

No. 25-cv-01963 (MEF)(MAH)

OPINION and ORDER

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III. The Preliminary Injunction

* * *

Federal officials detained a lawful permanent resident and seek to remove him from the United States for two reasons.

One reason is that the Secretary of State has determined that his activities and presence in the United States "compromise a compelling . . . foreign policy interest."

The lawful permanent resident filed a habeas corpus petition and has moved to preliminarily enjoin federal officials from

removing him from the United States based on the Secretary's determination.

The motion is granted.

* * *

I. Background

A. The Facts

The relevant facts for now are as follows.

A lawful permanent resident[1] was arrested by federal officials. See Declaration of Amy E. Greer (ECF 11-1) ¶¶ 4-6.

He remains in immigration custody. See Petitioner's Amended Memorandum of Law in Support of Motion for Preliminary Injunctive Relief (ECF 124) ("Motion for Preliminary Injunction") at 1-2.

The Department of Homeland Security is seeking to remove him from the United States on two grounds.

The first ground:

In 2024, the lawful permanent resident inaccurately completed his lawful-permanent-resident application. See DHS Evidence, Tab 2 (Apr. 9, 2025) (Form I-485); see also Additional Charges of Inadmissibility (Mar. 17, 2025) (ECF 90-1) ("Additional Charges") at 1.

This can be a basis for removal. See Additional Charges at 1; see also 8 U.S.C. §§ 1182(a)(6)(C)(i), 1227(a)(1)(A).

The second ground for removal:

The Secretary of State determined that the lawful permanent resident's continued activities or presence in the United States would "compromise a compelling . . . foreign policy interest." Memorandum from Marco Rubio, Secretary of State, to Kristi Noem, Secretary of Homeland Security (ECF 198-1) ("Determination"), at 1.

Such a determination can also be a basis for removal. See 8 U.S.C. § 1227(a)(4)(C).

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[1] Mahmoud Khalil.

B. Procedural History

The lawful permanent resident filed a habeas corpus petition in federal court. See ECF 2.

From here, he is called "the Petitioner." The various people he named in the petition are called "the Respondents."[2]

The Petitioner moved to preliminary enjoin his removal from the United States. See ECF 66.[3]

The preliminary injunction motion became fully submitted on May 14, with the filing of the parties' last legal brief. See ECF 256.

On May 28, the Court ruled on the motion.

As to the first ground of removal, related to the Petitioner's alleged failure to accurately complete the lawful-permanent-resident application, the Court denied the motion.

The Court held that the Petitioner had put forward no evidence, see Khalil v. Trump, 2025 WL 1514713, at *54 (D.N.J. May 28, 2025), and also had not meaningfully developed legal arguments. See id. at *52–53.

As to the second ground of removal, related to the Secretary of State's determination, the Court held the Petitioner was likely to succeed on the merits of his claim, see id. at *52, but had not sufficiently addressed the other things a preliminary injunction applicant must show. See id. at *55.

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[2] The Respondents are listed in the current habeas petition as: President of the United States Donald Trump; Acting Field Office Director of New York, United States Immigration and Customs Enforcement, William P. Joyce; Warden of Elizabeth Contract Detention Facility Yolanda Pittman; Acting Director of United States Immigration and Customs Enforcement Caleb Vitello; Secretary of the United States Department of Homeland Security Kristi Noem; Secretary of the United States Department of State Marco Rubio; and Attorney General of the United States Pamela Bondi.

[3] For a fuller description of the relevant procedural history, see Khalil v. Trump, 2025 WL 1514713, at *2–3 (D.N.J. May 28, 2025).

As to these matters, the Court indicated it would allow the record to be supplemented. See id.; see also ECF 273.

The Petitioner said that he would need just under a week to do so. See Petitioner's Letter (May 29, 2025) (ECF 274). The Court set a briefing schedule accordingly, see ECF 275, and the final brief was filed yesterday. See ECF 295.

C. The Court's Approach

To obtain a preliminary injunction, the Petitioner must show four things. See Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

He must establish that "he is [1] likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." Id. Of these, the "most critical" elements are the first and second. See Nken v. Holder, 556 U.S. 418, 434 (2009).

The Court considers each of these four below, see Part II, and concludes that a preliminary injunction should issue as to the Secretary of State's determination. The preliminary injunction's terms are set out in Part III.

II. Preliminary Injunction Requirements

A. Success

To obtain a preliminary injunction as to the Secretary's determination, the Petitioner must first show that he is likely to succeed on the merits of his claim. See Winter, 555 U.S. at 20.

He has made this showing. See Khalil, 2025 WL 1514713, at *56.

B. Harm

Next, the Petitioner must demonstrate that he is likely to suffer irreparable harm without preliminary relief. See Winter, 555 U.S. at 20.

The Court concludes that he has done so.

* * *

First, the Petitioner states that the Secretary's determination has cost him a job, see Declaration of Mahmoud Khalil ("Khalil Declaration") (June 4, 2024) (ECF 281-1) ¶¶ 15-16, and damaged his career prospects through "career-ending" professional harm. See id. ¶¶ 15-17 (describing a hoped-for career in "diplomacy and international affairs," steps taken down that road, and the difficulty of sustaining such a career in light of the Secretary's determination). The Respondents do not contest this. See Respondents' Letter (June 9, 2025). And as a legal matter, serious long-term damage to career prospects can count as irreparable harm.[4] See Kamdem-Ouaffo v. Task Mgmt. Inc., 792 F. App'x 218, 222 (3d Cir. 2019) (citing Morton v. Beyer, 822 F.2d 364, 372 n.13 (3d Cir. 1987)); Acierno v. New Castle Cnty., 40 F.3d 645, 654 (3d Cir. 1994); see also Carson v. Am. Brands, Inc., 450 U.S. 79, 89 & n.16 (1981); Valley v. Rapides Parish Sch. Bd., 118 F.3d 1047, 1055-56 (5th Cir. 1997); NAACP, Inc. v. Town of E. Haven, 70 F.3d 219, 224 (2d Cir. 1995).

* * *

Second, the Petitioner states that the Secretary's determination harms his reputation. See Khalil Declaration ¶¶ 3, 8-10, 16, 22. Again, the Respondents have opted not to contest this. See Respondents' Letter (June 9, 2025). And when it cannot be compensated through money damages, as cannot readily be done here, reputational injury can count as irreparable harm. See, e.g., Guardian Life Ins. Co. of Am. v. Est. of Cerniglia, 446 F. App'x 453, 456 (3d Cir. 2011); Kos Pharms., Inc. v. Andrx Corp., 369 F.3d 700, 726 (3d Cir. 2004); Pappan Enters., Inc. v. Hardee's Food Sys., Inc., 143 F.3d 800, 805 (3d Cir. 1998); accord, e.g., Life Spine, Inc. v. Aegis Spine, Inc., 8 F.4th 531, 546 (7th Cir. 2021); Register.com., Inc. v. Verio, Inc., 356 F.3d 393, 404 (2d Cir. 2004); Rent-a-Center, Inc. v. Canyon Television & Appliance Rental, Inc., 944 F.2d 597, 603 (9th Cir. 1991); see also 11A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2948.1 (4th ed. 2025) ("Injury to reputation . . . is not easily measurable in monetary terms, and so often is viewed as irreparable."); Bennington Foods LLC v.

[4] Loss of employment, standing on its own, generally would not. See Morton, 822 F.2d at 372; Moteles v. Univ. of Pa., 730 F.2d 913, 919 (3d Cir. 1984); 1 Moore's Manual --- Federal Practice and Procedure § 10A.22(2)(c) (2025).

St. Croix Renaissance, Grp., LLP, 528 F.3d 176, 178–79 (3d Cir. 2008).

* * *

Third, the Petitioner states that the Secretary's determination deters him from engaging in speech-related activities. In particular, the Petitioner states that he engaged in protest activities, see Khalil Declaration ¶ 12, and that "[a]s I remain detained because of the [Secretary of State's] [d]etermination, . . . I am unable to protest." Id. ¶ 13.[5]

Again, the Respondents have not contested this factually. See Respondents' Letter (June 9, 2025).[6]

And per the Supreme Court, "chilling" of speech counts as irreparable harm. See Elrod v. Burns, 427 U.S. 347, 373 (1976) (plurality opinion); see also, e.g., Hartman v. Moore, 547 U.S. 250, 256 (2006); Riley v. Nat'l Fed'n of the Blind of N.C., Inc., 487 U.S. 781, 794 (1988); Wooley v. Maynard, 430 U.S. 705, 714 (1977).[7]

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[5] The Petitioner's speech-related activities concern political speech. See Petition ¶¶ 22–23, 26, 29; Khalil Declaration ¶¶ 12–14; Declaration of Noor Ramez Abdalla (Mar. 14, 2025) (ECF 55) ¶¶ 6–8; see also Khalil, 2025 WL 1232369, at *45-46. And political speech is entitled to special protection under the First Amendment. See id. at *45.

[6] There is ample record evidence that the Petitioner engaged in speech-related activities. See Third Amended Petition (ECF 236) ("Petition") ¶¶ 22–29; Khalil Declaration ¶¶ 12–14; Declaration of Noor Ramez Abdalla (Mar. 14, 2025) (ECF 55) ¶¶ 6–8. And also that he would return to these activities if detention did not prevent him from doing so. See Khalil Declaration ¶¶ 13–14, 23; Petition ¶ 72; see also Khalil Declaration ¶¶ 9–12; Declaration of Veronica Salama, Exhibit B ("Abdalla June 4 Declaration") ¶ 26; Petition ¶ 22; cf. Falcone v. Dickstein, 92 F.4th 193, 210 (3d Cir. 2024). (The Petition has been verified. See Khalil Declaration ¶ 1. Therefore, the Court treats it as evidence. See, e.g., K-2 Ski Co. v. Head Ski Co., 467 F.2d 1087, 1088 (9th Cir. 1972); see also Bascom Food Prods. Corp. v. Reese Finer Foods, Inc., 715 F. Supp. 616, 624 n.14 (D.N.J. 1989).)

[7] Three things. First, the underlying likely legal violation here relates to unconstitutional vagueness. See Khalil, 2025 WL

To be sure, it might be argued that the Petitioner would be detained anyway. After all, as noted above, the Department of Homeland Security is seeking to remove the Petitioner based not only on the Secretary of State's determination --- but also on a second basis, the Petitioner's alleged failure to accurately

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1514713, at *52. But a chilling effect on speech can count as an irreparable harm even where the underlying legal violation is not itself a First Amendment violation. See, e.g., Reporters Comm. for Freedom of the Press v. Rokita, 751 F. Supp. 3d 931, 943-44, 947 (S.D. Ind. 2024) (so holding); Ctr. for Individual Freedom, Inc. v. Ireland, 2008 WL 1837324, at *5 (S.D. W. Va. Apr. 22, 2008) (same); Alexander v. Thornburgh, 713 F. Supp. 1278, 1287-88 (D. Minn. 1989) (same); cf. Walls v. Sanders, 733 F. Supp. 3d 721, 741 (E.D. Ark. 2024) (holding that a vague statute that assertedly chills teachers' classroom speech does not count as irreparable injury because "when . . . teachers speak in the course of carrying out . . . required employment obligations, they have no personal interest in the content of that speech") (cleaned up). To be sure, causation principles require a tight nexus between the underlying legal violation and the chilling impact on speech. Cf. Goldie's Bookstore v. Super. Ct. of Cal., 739 F.2d 466, 472 (9th Cir. 1984). Here, the Court finds, there is plainly that sort of close link. Second, the Petitioner seems to suggest that his detention may itself count as irreparable harm. See Petitioner's Letter (June 4, 2025) (ECF 280) at 1 & n.1. But there are cases that tug in different directions on this. Compare, e.g., Arevalo v. Hennessy, 882 F.3d 763, 767 (9th Cir. 2018), and United States v. Bogle, 855 F.2d 707, 710-11 (11th Cir. 1988), with Watkins v. Muhammad, 2024 WL 4524525, at *3 (7th Cir. Oct. 18, 2024) ("[T]he ordinary hardships [such as pretrial detention] experienced by criminal defendants do not rise to the level of irreparable harm."); see also Respondents' Letter (June 9, 2025) (ECF 288) at 2 (discussing this point in the immigration context). The Petitioner's legal briefs do not meaningfully discuss this or cite cases in support of his position. Third, as part of his irreparable-harm filing, the Petitioner put forward evidence to suggest the Secretary's determination has chilled the speech of third parties. But the Petitioner makes no legal argument as to how that can count as irreparable harm here. See, e.g., Kansas v. United States, 124 F.4th 529, 534 (8th Cir. 2024) ("The irreparable-harm analysis focuses on the moving party, not . . . [a] third party.") (cleaned up).

complete his lawful-permanent-resident application. See Additional Charges at 1.

Maybe the Petitioner would be detained, in any event, on that second basis. And if so, it might be argued, there would not be any incremental chilling effect from detaining the Petitioner for an additional reason, the Secretary of State's determination.

But that argument does not work.

The reason: the evidence is that lawful permanent residents are virtually never detained pending removal for the sort of alleged omissions in a lawful-permanent-resident application that the Petitioner is charged with here. And that strongly suggests that it is the Secretary of State's determination that drives the Petitioner's ongoing detention --- not the other charge against him.

On this point, there are three relevant pieces of evidence. (Again, none of this is contested by the Respondents. See Respondents' Letter (June 9, 2025).)

First, Kerry Doyle[8] states in a declaration that "[l]awful permanent residents . . . are . . . certainly not detained,

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[8] Doyle's relevant experience:

> I served as Principal Legal Advisor (PLA), for Immigration Customs Enforcement (ICE) from September 2021 through September 2024. In that role, I oversaw the more than 1,500 attorneys and staff who work for the Office of the Principal Legal Advisor (OPLA) across the country. As PLA, I was responsible for establishing the direction and priorities of our office in alignment with the Office of General Counsel (OGC), ICE, and DHS leadership. During that time, I also served on detail as Acting Deputy General Counsel, Office of General Counsel (OGC), Department of Homeland Security (DHS) from February 2024 through May 2024 and as Deputy General Counsel from October 2024 through December 2024. I was appointed as an Immigration

based solely on the types of allegedly missing information described [here][.]" Declaration of Veronica Salama, Exhibit P (ECF 281-16) ¶ 18.

Second, per Stacy Tolchin: "it is incredibly rare to see a lawful permanent resident detained . . . for[, as in this case,] having failed to disclose a past membership or association on the application for adjustment of status." Declaration of Veronica Salama, Exhibit L (ECF 281-12) ¶ 13 (emphasis added).

Tolchin, whose experience is extensive, see id. ¶¶ 1, 4–5, says this:

> I have represented at least ten permanent residents who have been placed into removal proceedings after they were denied naturalization. The only ones who were detained were those who had criminal convictions that DHS believed made them removable, in addition to being ineligible for naturalization.

Id. ¶ 17.

And all the more so, per Tolchin, as to one of the questions that the Petitioner allegedly answered inaccurately, given the history of "many" federal immigration officials essentially ignoring this question, see id. ¶ 12; see also id. ¶ 8; the question's asserted vagueness, see id. ¶¶ 7–11; the case law that has developed under it, see id. ¶¶ 13–14; and the particular context here. See id. ¶ 15.

> As relevant to [the Petitioner]'s case, it is incredibly rare to see a lawful permanent resident detained . . . for having failed to disclose a past membership or association on the application for adjustment of status.

> Judge and served in that position from December 2024 through mid-February 2025.
>
> In private practice, I have represented many hundreds of noncitizens in removal proceedings.

Declaration of Veronica Salama, Exhibit P (ECF 281-16) ¶¶ 3–4.

Id. ¶ 16.

The third declaration is Ira J. Kurzban's.[9]

He states that, in general, lawful permanent residents are typically not detained by the immigration judge unless detention is mandatory. See Kurzban Declaration ¶ 14. "[I]t is extremely unusual for a lawful permanent resident charged . . . [for] making material misrepresentations to be detained pending removal proceedings absent aggravating circumstances such as a criminal record." Id. ¶ 15; see also id. ¶ 16. And all of that generally tracks with this case.[10]

The Doyle, Tolchin, and Kurzban declarations are each based on extensive professional experience. They are written in a careful way. And they back each other up; they are mutually reinforcing, one to the next.

Based on the declarations, the Court finds as a matter of fact that it is overwhelmingly likely that the Petitioner would not be detained based solely on the lawful-permanent-resident-application charge. Rather, the Court finds, the Petitioner's detention almost surely flows from the charge that is based on the Secretary of State's determination.[11]

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[9] Kurzban's relevant experience: a leading immigration-law scholar, see Declaration of Veronica Salama, Exhibit K (ECF 281-11) ("Kurzban Declaration") ¶ 4, and practitioner, see id. ¶¶ 2–3, 5–7, who has been counsel of record on various landmark Supreme Court cases. See id. ¶ 6.

[10] The Petitioner has no criminal record. See Khalil Declaration ¶ 5. The Secretary of State's determination does not say that he has been involved in criminal activity or violence. See Determination at 1–2. And the Respondents have not put forward any evidence as to involvement by the Petitioner in violence, destruction of property, or any other sort of criminal activity.

[11] The Petitioner also states that even "[b]eyond [his] immediate detention," Khalil Declaration at ¶ 14, the Secretary of State's determination chills his speech. The Court credits this, and finds as a factual matter that even if the Petitioner were not detained, or even if he were detained on another basis, the Secretary's determination would deter him from speaking.

* * *

To sum up:

The Respondents have not contested the evidence put forward by the Petitioner, and in light of that the Court finds as a matter of fact that the Petitioner's career and reputation are being damaged and his speech is being chilled --- and this adds up to irreparable harm.

C. Equities

So far, the Court has held that the Petitioner is likely to succeed on the merits and would suffer irreparable harm without an injunction. See Part II.A and Part II.B.

Now the Court considers the third requirement for an injunction.[12] Has the Petitioner shown "that the balance of equities tips in his favor"? Winter, 555 U.S. at 20.

Yes.

The Respondents can have little or no interest in applying the relevant underlying statutes in what is likely an unconstitutional way. See A.C.L.U. v. Ashcroft, 322 F.3d 240, 251 n.11 (3d Cir. 2003), aff'd and remanded, 542 U.S. 656 (2004) ("[N]either the Government nor the public generally can claim an interest in the enforcement of an unconstitutional law.").

And "[w]hen a plaintiff is claiming the loss of a First Amendment right, courts commonly rule that even a temporary loss outweighs any harm to defendant and that a preliminary injunction should issue." 11A Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Civ. § 2948.2 (3d ed. 2025) (citing Ramirez v. Collier, 595 U.S. 411, 433 (2022); Roman Cath. Diocese of Brooklyn v. Cuomo, 592 U.S. 14, 19 (2020); Yang v. Kosinski, 960 F.3d 119, 136 (2d Cir. 2020); Cmty. House, Inc. v. City of Boise, 490 F.3d 1041, 1059 (9th Cir. 2007)); accord

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This is in part because of the vagueness associated with the determination's underlying approach. That makes it hard to know what speech might potentially be covered, see Khalil, 2025 WL 1514713, at *37–42, and more likely that a person will curb his speech. See id. at *41 n.63.

[12] This third requirement is less important than the first two. See Nken, 556 U.S. at 434.

Amalgamated Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty., 39 F.4th 95, 109 (3d Cir. 2022).

D. Public Interest

Finally, the Petitioner must show "that an injunction is in the public interest." Winter, 555 U.S. at 20.[13]

"[T]he public has no interest in the enforcement of what is very likely an unconstitutional statute." Odebrecht Constr., Inc. v. Sec'y, Fla. Dep't of Transp., 715 F.3d 1268, 1290 (11th Cir. 2013); accord, e.g., Schrader v. Dist. Att'y of York Cnty., 74 F.4th 120, 128–29 (3d Cir. 2023); Chamber of Com. of U.S. v. Edmondson, 594 F.3d 742, 771 (10th Cir. 2010).

And on the other side of the ledger, there is a chilling effect on speech. See Amalgamated Transit Union Loc. 85, 39 F.4th at 109 ("There is a strong public interest in upholding the requirements of the First Amendment. And, if a plaintiff demonstrates both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor the plaintiff.") (cleaned up).

III. The Preliminary Injunction

All four preliminary injunction factors point in the same direction. See Part II. In light of that, the Court exercises its discretion, see Benisek v. Lamone, 585 U.S. 155, 158 (2018), and holds:

First, the Respondents are preliminarily enjoined from seeking to remove the Petitioner from the United States based on the Secretary of State's determination, as reflected in the Secretary's memorandum to the Secretary of Homeland Security.

Second, because the Court's preliminary injunction bars the Respondents from seeking to remove the Petitioner based on the Secretary's determination, the Respondents are also

[13] This fourth requirement is less important than the first two. See Nken, 556 U.S. at 434.

preliminarily enjoined from detaining the Petitioner based on the Secretary of State's determination.[14]

The Court hereby stays its preliminary injunction for around 40 hours, until 9:30AM on June 13. This is to allow the Respondents to seek appellate review should they wish to.

In addition, the preliminary injunction shall not go into effect unless and until the Petitioner posts a nominal bond in the amount of $1, consistent with the requirement of Federal Rule of Civil Procedure 65(c).[15]

* * *

[14] The two holdings set out in the text have no impact on efforts to remove the Petitioner for reasons other than the Secretary of State's determination.

[15] The Respondents have requested the posting of a bond. See Respondents' Opposition to Petitioner's Motion for a Preliminary Injunction (ECF 156) at 35. But they have not specified any costs associated with complying with a preliminary injunction that they would seek to get back if the injunction were undone on appeal. See id.; see generally Instant Air Freight Co. v. C.F. Air Freight, Inc., 882 F.2d 797, 804-05 (3d Cir. 1989) ("[T]he bond serves to inform the plaintiff of the price they can expect to pay if the injunction was wrongfully issued."); see also Frank's GMC Truck Ctr., Inc. v. Gen. Motors Corp., 847 F.2d 100, 103 (3d Cir. 1988). The Court is unaware of any such costs. See Zambelli Fireworks Mfg. Co. v. Wood, 592 F.3d 412, 426 (3d Cir. 2010); Siegel v. Platkin, 653 F. Supp. 3d 136, 161 (D.N.J. 2023); Koons v. Reynolds, 649 F. Supp. 3d 14, 45 (D.N.J. 2023); Beattie v. Line Mountain Sch. Dist., 992 F. Supp. 2d 384, 397 (M.D. Pa. 2014); Stilp v. Contino, 629 F. Supp. 2d 449, 468 (M.D. Pa. 2009), aff'd and remanded, 613 F.3d 405 (3d Cir. 2010). To be sure, if the Respondents opt to appeal, some of their attorneys' time would be occupied. But a Rule 65 bond does not typically aim to cover the costs associated with attorneys' fees. See Tullock v. Mulvane, 184 U.S. 497, 510-12 (1902) (quoting Oelrichs v. Spain, 82 U.S. (15 Wall.) 211, 230-31 (1872)); Nokia Corp. v. InterDigital, Inc., 645 F.3d 553, 560 (2d Cir. 2011); Fireman's Fund Ins. Co. v. S.E.K. Constr. Co., 436 F.2d 1345, 1351-52 (10th Cir. 1971); Sionix Corp. v. Moorehead, 299 F. Supp. 2d 1082, 1086 (S.D. Cal. 2003); Minn. Power & Light Co. v. Hockett, 105 F. Supp. 2d 939, 942 (S.D. Ind. 1999); 11A Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Civ. § 2954 & n.1.

IT IS on this 11th day of June, 2025, so ORDERED.

Michael E. Farbiarz, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MAHMOUD KHALIL,

Petitioner,

v.

DONALD TRUMP et al.,

Respondents.

No. 25-cv-01963 (MEF)(MAH)

ORDER

The Petitioner here is Mahmoud Khalil, currently detained by federal immigration authorities in Jena, Louisiana.

The Petitioner's motion at ECF 308 is granted to the extent the motion seeks release on bail from immigration custody.

The motion at ECF 308 is denied as moot to the extent it seeks transfer to New Jersey.

The ECF 308 motion is granted and denied for the reasons stated in court today.

After the Court issued its decision on the ECF 308 motion, the Respondents orally moved for a stay of the decision. The motion was denied for the reasons stated in court.

Pursuant to the Court's decision on the ECF 308 motion, the Petitioner shall be released from immigration custody today.

The release order shall become effective upon two conditions being met. First, the setting of bail conditions by the United States Magistrate Judge. And second, an order from the United States Magistrate Judge indicating that the bail conditions have been met.

The bail conditions here shall not include any obligation that electronic monitoring be put in place or that a bond be

immediately posted. There is no basis for that in the evidentiary record the parties have developed.

The bail conditions shall include other requirements that the United States Magistrate Judge deems appropriate, including as to those states to which and through which the Petitioner may travel, and when the Petitioner must surrender his passport or passports.

IT IS on this 20th day of June, 2025, so **ORDERED.**

Michael E. Farbiarz, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MAHMOUD KHALIL, *Petitioner*, v. DONALD TRUMP et al., *Respondents*.	No. 25-cv-01963 (MEF)(MAH) **OPINION and ORDER**

* * *

For the purposes of this brief Opinion and Order, the Court assumes familiarity with the facts and procedural history of this case.

* * *

On June 11, the Court preliminarily enjoined the Respondents "from seeking to remove the Petitioner from the United States based on the Secretary of State's determination." Khalil v. Trump, 2025 WL 1649197, at *6 (D.N.J. June 11, 2025).

The Petitioner sought clarification as to how the June 11 preliminary injunction applies in certain particular circumstances. See Petitioner's Letter (July 1, 2025) (ECF 332).

As to that question, the parties filed letter briefs, see Petitioner's Letter (July 11, 2025) (ECF 347), Respondents' Letter (July 15, 2025) (ECF 349), the Court issued an Opinion and Order, see ECF 350, and the parties filed supplemental materials. See Petitioner's Brief (July 17, 2025) (ECF 352); Respondents' Brief (July 17, 2025) (ECF 353); Petitioner's Reply Brief (July 17, 2025) (ECF 354).

The Court writes briefly here to clarify in three ways the meaning of its June 11 preliminary injunction.

* * *

First.

Under the June 11 preliminary injunction, the Respondents must cause the immigration judge to promptly vacate or amend her June 20 decision to the extent it finds the Petitioner removable from the United States on the 8 U.S.C. § 1227(a)(4)(C) charge, which charge rests on the Secretary of State's determination.

The reason for this is straightforward.

In accord with the June 11 preliminary injunction, the June 20 decision simply should not have included any finding that the Petitioner can be removed from the United States on the Section 1227 charge.

At bottom, the core purpose of such a finding is to advance the process of removing the Petitioner from the United States on the referenced charge.

And there is no meaningful real-world difference between that and what the June 11 preliminary injunction explicitly forbade. See Khalil, 2025 WL 1649197, at *6 ("Respondents are preliminarily enjoined from seeking to remove the Petitioner from the United States based on the Secretary of State's determination.").

In short: issuance of the Section 1227 finding was directly inconsistent with the June 11 preliminary injunction.[1]

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[1] In recent weeks, the Respondents have apparently contended that the Court's June 11 preliminary injunction was forward-looking only, and that it therefore does not require any backward-looking undoing of actions already taken. See Respondents' Letter (July 15, 2025) at 3. The Respondents do not seem to make that argument now. See Respondents' Brief (July 17, 2025). But one way or another, the argument misses the mark. The June 20 immigration court finding came down after this Court's June 11 preliminary injunction. It should not have been made. The Court, today, needs to take a backward-looking action --- to reach back and compel the June 20 decision to be vacated or amended --- because the June 11 preliminary injunction was not properly complied with. That has nothing to do with whether the June 11 preliminary injunction did or did not include a backward-looking aspect; as of June 11, the June

And the underlying equities here, see ECF 350 at 3-4, make clear that the June 11 preliminary injunction should be interpreted and applied as written.

The Petitioner has filed a declaration that sets out harms he continues to face because of the Secretary of State's determination and the Respondents' efforts to remove him on that basis --- even after this Court's June 11 preliminary injunction. See Declaration of Mahmoud Khalil (July 16, 2025) (ECF 352-2) ¶¶ 3-9, 12.

The Respondents have not contested the Petitioner's declaration. And the immigration judge, before whom the Petitioner testified in person, described him as "credible." In the Matter of Mahmoud Khalil (June 20, 2025) (ECF 333) at 17.

Against this backdrop, the Court generally credits the Petitioner's declaration and finds as a factual matter that the continued post-June 11 efforts to remove him from the United States on the Section 1227 charge are causing various types of harm. Reputational harm. See Declaration of Mahmoud Khalil ¶¶ 3, 7. Professional harm. See id. And the chilling of speech. See id. ¶¶ 5-6.

These can count as irreparable injury, see Khalil, 2025 WL 1649197, at *2-5, and the Court finds as a factual matter that they do here.

Moreover, the Petitioner persuasively argues that if the Section 1227 finding remains in the immigration judge's June 20 decision, the Board of Immigration Appeals would simply have no choice under existing case law but to affirm it. See Khalil v. Joyce, 2025 WL 1232369, at *41-42 (D.N.J. Apr. 29, 2025); Petitioner's Brief (July 17, 2025) at 4 (citing declarations).

And once the Board decides the Petitioner's appeal, he will be subject to a final order of removal, losing his status as a lawful permanent resident and therefore his ability to work. See Petitioner's Brief (July 17, 2025) at 4 (citing declarations). The Respondents have disputed none of this, and the Court credits it.

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20 decision had of course not yet been issued. Even if the June 11 preliminary injunction had only prospective effect, the June 20 decision should not have included the Section 1227 removal finding.

Bottom line: the June 20 decision must be vacated or amended, to the extent stated above.

* * *

Second.

Under the June 11 preliminary injunction, the Respondents do not need to cause the immigration judge to revisit the determination she made in the June 20 decision as to the Petitioner's eligibility for asylum under 8 U.S.C. § 1158.

The immigration judge conducted an extensive and close written analysis of the asylum issue, spanning six single-spaced pages and based on live testimony. See In the Matter of Mahmoud Khalil at 14-16, 21-26.

In light of this, the immigration judge concluded that the Petitioner is not eligible for asylum --- for reasons that she explicitly stated are not based on the Secretary of State's determination. See id. at 21.

That conclusion is independent of the Secretary of State's determination. Therefore, it is not at odds with the Court's June 11 preliminary injunction, which ordered relief only as to the determination.[2]

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[2] The Petitioner takes a different view. He notes that asylum was also denied by the immigration judge on another ground, the Secretary's determination. See Petitioner's Letter (July 11, 2025) at 1, 3 (citing In the Matter of Mahmoud Khalil at 20-21). And the Petitioner argues that if that other ground is left in place, then the Board of Immigration Appeals might affirm the June 20 decision on that ground --- and ignore the immigration judge's independent, factual asylum analysis. See Petitioner's Letter (July 11, 2025) at 3. If the Board of Immigration Appeals opts to one day go down that road, the Petitioner can then seek relief from this Court. But the Board of Immigration Appeals deserves this Court's respect. And this Court will not proceed on the assumption that the Board will at some point take a step that would (a) be in some tension with this Court's June 11 preliminary injunction and (b) not engage with the extensive and independent asylum analysis undertaken by the immigration judge. More generally, the Respondents are right to note that federal immigration law aims to preserve a wide swath of Executive Branch discretion and autonomy. See Respondents'

* * *

Third.

Under the June 11 preliminary injunction, the Respondents must cause the immigration judge to consider in an appropriately full and thorough manner, and then determine: (i) whether the Petitioner should be granted a waiver of removability, see 8 U.S.C. § 1227(a)(1)(H), in connection with the charge lodged against him as to his alleged failure to accurately complete his lawful permanent resident application ("LPR Charge"), and (ii) whether the Petitioner should be afforded an evidentiary hearing in connection with the immigration judge's assessment of his waiver-of-removability arguments.

The Respondents must ensure that, in doing the things set out in the preceding paragraph, the immigration judge gives no consideration to the Secretary of State's determination that the Petitioner is removable from the United States under 8 U.S.C. § 1227(a)(4)(C).

The basis for the above is again straightforward.

The June 11 preliminary injunction prohibited removal of the Petitioner from the United States "based on the Secretary of State's determination."

As the Court has noted, the June 11 preliminary injunction "is not qualified." ECF 350 at 2. "It covers all efforts," including "[t]hose that as a practical matter meaningfully rely on the Secretary's determination." Id.

The Court finds as a factual matter that the Respondents' efforts to remove the Petitioner from the United States on the LPR Charge "meaningfully rely on the Secretary's determination."

Brief (July 17, 2025) at 3. And the Respondents are also right to note that district courts such as this do not have appellate jurisdiction over the Executive's immigration tribunals. See Respondents' Letter (July 15, 2025) at 1-3. All of that weighs against this Court becoming more involved in the functioning of the immigration courts than is strictly necessary --- and against requiring that the asylum part of the June 20 decision now be undone, based on a speculation as to how the Board of Immigration Appeals might one day proceed.

The Petitioner has filed multiple factual declarations on this point.[3] Each is based on extensive experience,[4] and none has been contested by the Respondents. The Court generally credits these declarations.

As a factual matter, the declarations establish the following:

- As to the LPR Charge, Section 1227(a)(1)(H) permits a waiver of removability for someone who "is the spouse [and] parent . . . of a citizen of the United States." See Doyle Declaration ¶¶ 19–20; Tolchin Declaration ¶ 6; Kurzban Declaration ¶ 15. The Petitioner fits into this category. See Declaration of Mahmoud Khalil ¶ 7.

- A request for a Section 1227(a)(1)(H) waiver is typically made by requesting an evidentiary hearing before an immigration judge. See Doyle Declaration ¶ 23; Tolchin Declaration ¶ 8; Kurzban Declaration ¶ 16.

- That request was repeatedly made here, see Declaration of Marc Van Der Hout (ECF 352-1) ¶¶ 6, 7–8, but it was denied, see id. ¶¶ 9–16, and the immigration judge issued her decision on the LPR Charge without assessing the Petitioner's eligibility for a Section 1227(a)(1)(H) waiver. See id. ¶ 14; see generally In the Matter of Mahmoud Khalil.

- But evidentiary hearings are typically granted to those who, like the Petitioner, are statutorily eligible for a Section 1227(a)(1)(H) waiver. See Tolchin Declaration ¶ 13 ("[U]nder normal circumstances, where a noncitizen . . . meet[s] the eligibility criteria [of Section 1227(a)(1)(H)], and has stated their intention to pursue a § 1227(a)(1)(H) waiver, an evidentiary hearing must be scheduled[.]"); Kurzban Declaration ¶ 20 ("An

[3] The relevant ones are the declarations of Kerry E. Doyle, Stacy Tolchin, and Ira J. Kurzban. See Declaration of Kerry E. Doyle ("Doyle Declaration") (ECF 352-3); Declaration of Stacy Tolchin ("Tolchin Declaration") (ECF 352-4); Declaration of Ira J. Kurzban ("Kurzban Declaration") (ECF 352-5).

[4] See Doyle Declaration ¶¶ 2–4; Tolchin Declaration ¶ 1; Kurzban Declaration ¶¶ 1–6; see generally Khalil, 2025 WL 1649197, at *5 (describing these declarants as having "extensive professional experience").

Immigration Judge's refusal to hold an evidentiary hearing on a waiver for an individual who is statutorily eligible for the waiver is highly unusual and is contrary to the normal conduct of immigration court procedure.").

- This strongly suggests that the Secretary of State's determination is operating as the hurdle that is preventing an evidentiary hearing, and therefore the possibility of a waiver.

- And that suggestion is buttressed by the way that the proceedings have unfolded before the immigration judge. See Declaration of Marc Van Der Hout ¶¶ 14–15.

- Not considering a Section 1227(a)(1)(H) waiver on the LPR Charge is no academic matter. The Court finds as a factual matter that not considering a waiver increases by a meaningful margin the likelihood that the Petitioner will ultimately be removed from the United States on the LPR Charge. The next three bullet points explain why.

- Per Kerry E. Doyle: "In the normal course, as the spouse of a U.S. Citizen, and the father of a U.S. citizen child, without any criminal history, or other history of immigration violations, [the Petitioner] would be an excellent candidate for the 1227(a)(1)(H) waiver." Doyle Declaration ¶ 29. And more generally, "most lawful permanent residents with a U.S. citizen spouse and/or child, who were not otherwise inadmissible at time of adjustment to lawful permanent resident status will be granted the waiver, particularly for such a minor type of alleged fraud." Id.

- Per Stacey Tolchin: "[I]f the sole charge of removal against a noncitizen were under 8 U.S.C. § 1227(a)(1)(A), due to what is perceived as fraud and/or misrepresentation at the time that they adjusted their status, the likelihood of obtaining a waiver under § 1227(a)(1)(H) would be high where the noncitizen has close relationships to U.S. citizen and/or lawful permanent resident family members and they lack any criminal history." Tolchin Declaration ¶ 15. In her judgment, the "Petitioner easily would have [been] granted that waiver given his relationship to his U.S.

citizen wife and minor U.S. citizen son, as well as his lack of criminal history." Id. ¶ 16.

- Per Ira J. Kurzban: "[W]aivers pursuant [to] 8 U.S.C. § 1227(a)(1)(H) are regularly granted to LPRs who satisfy the statutory requirements for such relief." Kurzban Declaration ¶ 22.

In short: the Court finds as a factual matter that the Secretary of State's determination is the likely reason that the Section 1227(a)(1)(H) waiver has not been ruled on --- and that not ruling on the waiver meaningfully raises the odds that the Petitioner will be removed from the United States.

This means that non-consideration of a Section 1227(a)(1)(H) waiver on the LPR Charge amounts to what the Court enjoined on June 11: "seek[ing] to remove the Petitioner from the United States based on the Secretary of State's determination." Khalil, 2025 WL 1649197, at *6.

* * *

A final point.

Complying with what is set out above may take some time.

And the Petitioner has persuasively established that he aims to appeal from the immigration judge's June 20 decision and must do so shortly --- and that when he does, the immigration judge will lose jurisdiction over the case and would, at that point, not be able to vacate or amend the June 20 decision or to work through the waiver-of-removability issue described above. See Petitioner's Brief (July 17, 2025) at 4 (citing Tolchin Declaration ¶ 17); Puc-Ruiz v. Holder, 629 F.3d 771, 782 (8th Cir. 2010).

That would undermine the preliminary injunctive relief ordered by the Court on June 11, as clarified today.

The Court has power to ensure that its injunctive decrees are effective as a practical matter. See Nken v. Holder, 556 U.S. 418, 428 (2009); Swann v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 1, 15-16 (1971); McComb v. Jack. Paper Co., 336 U.S. 187, 193 (1949).

Therefore, the Court orders:

If it appears (as seems overwhelmingly likely) that each of the steps set out in this Opinion and Order cannot be appropriately and thoughtfully completed before the close of business on July 18, then the Respondents shall promptly cause the immigration judge to take all appropriate steps on July 18 that would be required to ensure that she would not be divested of her jurisdiction over this case if a notice of appeal from her June 20 decision were filed by the Petitioner on July 19, July 20, or July 21.

These "appropriate steps" might potentially include the immigration judge timely reopening the case and vacating her June 20 decision.[5]

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[5] In its filings of July 15 and July 17, the Respondents repeatedly suggest that the Court is "expand[ing]" its June 11 preliminary injunction. See Respondents' Letter (July 15, 2025) at 2; Respondents' Brief (July 17, 2025) at 3. This is not accurate. As the Court's July 16 Opinion and Order made clear, the plain language of the June 11 preliminary injunction generally favors the Petitioner's positions. See ECF 350 at 1-2. For example, the language of the June 11 preliminary injunction clearly supports vacating or amending the June 20 decision to eliminate its Section 1227 finding --- because, in light of the language of the June 11 preliminary injunction, that finding simply should not have been made. But injunctions should be interpreted and applied with an eye to the underlying equities, and not just to their text. See ECF 350 at 2. And Article III courts should avoid involvement in the important work of immigration tribunals unless doing so is strictly necessary. Given this backdrop, the Court did not simply rest on the plain language of the June 11 preliminary injunction. Rather, it sought factual evidence before landing on a final conclusion. See ECF 350 at 5-6 & 6 n.7. That evidence has now been submitted, and it includes uncontested evidence as to injuries to the Petitioner that flow from the June 20 finding as to Section 1227(a)(4)(C)(i). See Declaration of Mahmoud Khalil ¶¶ 4-9. That evidence does not serve as a basis for "expanding" the June 11 preliminary injunction. It simply helps to show why the equities favor applying the June 11 preliminary injunction as it was written. And doing that means that the June 20 decision must be vacated or amended. As to the immigration judge's non-consideration of a Section 1227(a)(1)(H) waiver, the

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IT IS on this 17th day of July, 2025, so **ORDERED.**

Michael E. Farbiarz, U.S.D.J.

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point is a bit different. The uncontested factual evidence that has now been put before the Court makes clear that, but for the Secretary's determination, a waiver application on the LPR Charge would normally have been taken up and resolved --- and that if it was, that might well favor a person situated like the Petitioner. That uncontested factual evidence does not serve as a basis for "expanding" the June 11 preliminary injunction. Rather, it shows that the June 11 injunction, as it was written, compels consideration of the waiver possibility. After all, given the facts here, there is no real-world difference between (a) seeking to remove the Petitioner on the LPR Charge, with the Secretary's determination operating as the impediment to a possible waiver of removal and (b) what the June 11 preliminary injunction explicitly forbids --- "seeking to remove the Petitioner from the United States based on the Secretary of State's determination."

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MAHMOUD KHALIL,

Petitioner,

v.

WILLIAM P. JOYCE, et al.,

Respondents.

No. 25-cv-01963 (MEF)(MAH)

OPINION and ORDER

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* * *

A lawful permanent resident was detained, and filed a habeas corpus petition seeking his release.

The respondents, various federal officials, have moved to dismiss, arguing the Court does not have jurisdiction.

The motion is denied.

* * *

I. Background

A. The Facts

The relevant facts for now are as follows.

A lawful permanent resident[1] was arrested by federal officials in Manhattan. See Declaration of Amy E. Greer ("Greer Declaration") (ECF 11-1) ¶¶ 4-5; Second Supplemental Declaration of Acting Field Office Director William P. Joyce ("Joyce Declaration") (ECF 72) ¶¶ 6-7.

While in custody, he was handed various forms. See Declaration of Mahmoud Khalil ("Khalil Declaration") (ECF 73-1) ¶¶ 4-6; Joyce Declaration ¶ 7.

These said two main things. First, that federal officials were seeking to remove him from the United States. See Joyce Declaration ¶ 7. And second, that as part of that process, he would be required to appear before an immigration judge in Louisiana in about two weeks. See Khalil Declaration ¶ 5.[2]

About seven hours after his arrest, see Greer Declaration ¶ 6, Joyce Declaration ¶ 7, the lawful permanent resident's lawyer electronically filed a habeas corpus petition on his behalf in federal court in Manhattan.[3] See Greer Declaration ¶ 9.

* * *

From here, the lawful permanent resident is called "the Petitioner," and his habeas petition (ECF 38, as amended) is "the Petition." The Petition names various federal officials.[4] From here, they are collectively called "the Respondents."

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[1] Mahmoud Khalil. A lawful permanent resident is a person who has "been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws[.]" 8 U.S.C. § 1101(a)(20).

[2] Removing a lawful permanent resident from the United States generally requires a removal hearing. See 8 U.S.C. § 1229a. Those typically go forward before an immigration judge. See 8 U.S.C. § 1229a(a)(1); 8 C.F.R. § 1240.10(a).

[3] Under the relevant part of the habeas corpus statute, of which more below, a federal judge may direct a person's custodian to release him from custody if he is being held in violation of federal law. See Rumsfeld v. Padilla, 542 U.S. 426, 434-35 (2004); Coleman v. Tennessee, 97 U.S. 509, 534-35 (1878); 28 U.S.C. § 2241(c); see also 28 U.S.C. § 2243.

[4] The Respondents are listed in the Petition as: President of the United States Donald Trump; Acting Field Office Director of

* * *

About one hour before the Petition was filed on his behalf, the Petitioner was moved to another detention facility. See Khalil Declaration ¶ 8; Joyce Declaration ¶ 16. As a result, when the filing was made, the Petitioner was no longer in New York. See Khalil Declaration ¶ 7; Joyce Declaration ¶ 17. He was in New Jersey. See Khalil Declaration ¶¶ 8, 22; Joyce Declaration ¶ 17.

The Petitioner spent around eight hours in New Jersey.[5] See Khalil Declaration ¶¶ 7-8, 22; Joyce Declaration ¶¶ 16, 18. From New Jersey, he was taken to Louisiana, where he remains today.[6] See Greer Declaration ¶ 14; Khalil Declaration ¶¶ 24-26; Joyce Declaration ¶¶ 18-19.[7]

B. Procedural History

In the Manhattan federal court, where the Petition had been filed, the Respondents moved to dismiss the case. See Respondents' Memorandum of Law in Support of their Motion to Dismiss or Transfer the Case (ECF 31) at 1.

They argued the New York court did not have jurisdiction to hear it. The Respondents' core argument: habeas cases must generally

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New York, Immigration and Customs Enforcement, William P. Joyce; Acting Director of Immigration and Customs Enforcement Caleb Vitello; Secretary of the United States Department of Homeland Security Kristi Noem; Secretary of the United States Department of State Marco Rubio; and Attorney General of the United States Pamela Bondi.

[5] The timeline reflects that at 2:00am on March 9, the clocks moved forward to 3:00am for daylight saving time.

[6] Recall: Louisiana was where the Petitioner was due to appear before an immigration judge.

[7] As to more precise dates and times, the Petitioner was arrested in Manhattan at around 8:35pm on March 8, 2025. See Greer Declaration ¶ 6; Joyce Declaration ¶ 7. On March 9, he arrived in New Jersey at 3:20am, see Joyce Decl. ¶ 16; the habeas petition was filed on his behalf at 4:40am, see Greer Declaration ¶ 9; and he was taken from New Jersey sometime around 11:30am or noon, bound for Louisiana. See Joyce Declaration ¶ 18; Khalil Declaration ¶ 22.

be filed only in the judicial district where the person in question is being held, see id. at 3-4 --- and the Petitioner was not in New York when the Petition was filed there. See id. at 3. At that point, he was in New Jersey. See id.

In light of this, the Respondents argued, the New York court should either: (a) dismiss the case without prejudice (which would allow the Petitioner to refile it in the right district) or (b) transfer the case to the federal court in the Western District of Louisiana, where the Petitioner was (and is) confined. See id. at 9-11.

The Petitioner made various counterarguments, see generally Plaintiff['s] Memorandum of Law in Opposition to Defendants' Motion to Dismiss or Transfer (ECF 50) ("New York Opposition Brief"), and the New York court issued two main rulings.

First, the court held that it did not have power to take up the case. That was "plainly" the correct outcome under the "normal" rules for habeas cases, the court determined --- because the Petitioner was no longer in Manhattan when his habeas corpus petition was filed there. Khalil v. Joyce, 2025 WL 849803, at *7 (S.D.N.Y. Mar. 19, 2025).

And second, the court turned to deciding between (a) dismissing the case and (b) transferring it. See id. at *11. The court chose transfer, in particular to New Jersey. See id.

Why New Jersey? Because certain statutes tell federal courts where to transfer cases that ae improperly before them. One of those statutes directs a federal court to transfer such a case to where it "could" have been filed. Id. at *12 (quoting 28 U.S.C. § 1406(a)).

And at the moment the Petition was filed, there was only one such place --- New Jersey, where the Petitioner was being held. See id. at *13.

C. The Motion

The Respondents have now moved to dismiss this case on the argument that this Court lacks jurisdiction over it. See Respondents' Brief in Support of Their Renewed Motion to Dismiss or to Transfer the Case (ECF 90) ("Motion to Dismiss").

The motion has been fully briefed, and oral argument on it was heard.

The motion is before the Court.

D. The Court's Approach

After a brief discussion of relevant general principles, see Part II, the Court takes up the Petitioner's first argument: that the Respondents' motion must be denied in light of the New York court's transfer of the case here.

This argument, the Court concludes, is not persuasive. The New York court decided that it did not have jurisdiction. It did not pass on whether this Court has jurisdiction. The question is therefore an open one. See Part III.

The Court then directly considers whether it has jurisdiction. The Court's conclusion: it does.

Under habeas law, jurisdiction in a particular district is established when a petitioner is physically present in the district at the same moment a petition is filed there on his behalf. See Part II.

That confluence happened here. The Petitioner was in custody in New Jersey as of March 9 at 4:40am. And under a federal statute, the Petition, though filed in New York, must be treated as having been filed in New Jersey on March 9 at 4:40am. Therefore, this Court has jurisdiction. See Part IV.

The Court then asks whether the jurisdiction it obtained on March 9 is now lost, because the Petitioner was moved to Louisiana.

The Court's jurisdiction, it concludes, has not been lost. The Supreme Court has all but so held. See Part VI.

Finally, the Court asks whether the jurisdiction it obtained on March 9 is undone because the Petition did not name a Louisiana warden (in whose custody the Petitioner now is) or a New Jersey warden (in whose custody the Petitioner was before being moved to Louisiana).

These omissions do not defeat jurisdiction, the Court holds. As to the Louisiana warden, this is because of the effect of an on-point Supreme Court case. See Part VII.A. And as to the New Jersey warden, this is because there was no way for the Petitioner's lawyer to know he was in New Jersey when she filed the Petition on his behalf. See Part VII.B.

II. Legal Principles

This Opinion and Order generally lays out the law on a given topic as it becomes relevant.

But two legal principles come up frequently, so they are briefly sketched out here, along with some of their connections to the case.

The first: a habeas corpus petition must generally be filed in the judicial district where the habeas petitioner is physically in custody. See Rumsfeld v. Padilla, 542 U.S. 426, 435 (2004); United States v. Hayman, 342 U.S. 205, 213 (1952); Ahrens v. Clark, 335 U.S. 188, 190 (1948).[8]

Recall that the Petitioner was in custody in New Jersey at the moment when his Petition was filed, and he is now in custody in Louisiana. See Part I.A.

The second legal principle: a habeas corpus petition, like this one, that challenges custody imposed by Immigration and Customs Enforcement --- a federal agency referred to from here as "ICE" --- must generally name as the respondent the warden of the detention facility where the person is held. See Anariba v. Dir. Hudson Cnty. Corr. Ctr., 17 F.4th 434, 444 (3d Cir. 2021).

The Petitioner here did not name the warden of the New Jersey facility, though he now seeks permission to do so. See Petitioner's Memorandum of Law in Opposition to Respondents' Renewed Motion to Dismiss or Transfer & in Support of His Cross-Motion for Re-Transfer (ECF 107) ("Opposition Brief") at n.1; see also Petitioner's Supplemental Memorandum of Law in Further Support of His Motion to Compel Respondents to Return Him to

[8] There are exceptions to this rule. For example, the rule does not apply to a challenge to something other than here-and-now physical custody --- as when a person challenges a "detainer," on the argument it will lead to his or her future confinement. See Padilla, 542 U.S. at 438 (citing Braden v. 30th Jud. Cir. Ct. of Ky., 410 U.S. 484 (1973)). And things work differently when a person is detained outside the United States. See, e.g., Ex parte Hayes, 414 U.S. 1327, 1328–29 (1973) (Douglas, J., in chambers). The exceptions alluded to in this footnote are irrelevant here. This is because habeas challenges to "present physical confinement" within the United States, as in this case, must be brought in the judicial district where the person in question is confined. See Padilla, 542 U.S. at 435.

This District (ECF 96) at n.1. And the Petitioner here did not name the warden of the Louisiana facility, but he has not asked to do that.

With the key legal principles in mind, move on now to consider this case.

III. Law of the Case

The Petitioner's first argument is that the Respondents' motion to dismiss must be denied without considering whether it is persuasive. See Opposition Brief at 7-8.

The New York court, the argument goes, has already ruled on the relevant issue --- and this Court must stick with that ruling under the "law of the case" doctrine. See id. at 7-12.

But this argument does not work.

First, its premise is inaccurate. The New York court did not rule on the issue that this Court now needs to take on. See Part III.B and Part III.C. Therefore, the law-of-the-case doctrine is not on the table.

And second, even if the doctrine might have a role, the Court would not opt to apply it here. See Part III.D.

Take these points up in a moment, after a quick look at some general legal principles. See Part III.A.

A. General Principles

The starting point here is one of the law's recurring questions: how should one court weigh an earlier judicial decision?

Different bodies of legal rules, each tailored to a different circumstance, supply answers. Stare decisis is an example; res judicata is another.[9]

[9] Stare decisis is "[t]he doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation." Stare Decisis, Black's Law Dictionary (12th ed. 2024). Res judicata is "[a]n affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have

One of these bodies of rules is the "law of the case" doctrine.[10]

Under the doctrine, "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." Arizona v. California, 460 U.S. 605, 618 (1983).

The law-of-the-case doctrine may apply when, as here, a litigant asks a federal court in one district to defer in some way to a ruling a federal court in another district already made in the case. See, e.g., Hayman Cash Reg. Co. v. Sarokin, 669 F.2d 162, 168-69 (3d Cir. 1982); see generally Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 816-17 (1988) (discussing law-of-the-case doctrine as between "coordinate courts").

But the doctrine kicks in only when the two courts have resolved "the same issue." Fagan v. City of Vineland, 22 F.3d 1283, 1290 (3d Cir. 1994); accord, e.g., Arizona, 460 U.S. at 618; Musacchio v. United States, 577 U.S. 237, 244-45 (2016); Pepper v. United States, 562 U.S. 476, 506 (2011); 18 James Wm. Moore et al., Moore's Federal Practice § 134.20 (2025).

This means that "the doctrine does not apply when the first judge never decided the precise issue before the second judge." Chi. Joe's Tea Room, LLC v. Vill. of Broadview, 894 F.3d 807, 818 (7th Cir. 2018).

When the doctrine is in play, it is discretionary. See United States v. U.S. Smelting Refin. & Mining Co., 339 U.S. 186, 199 (1950); see generally In re Celgene Corp., Inc. Sec. Litig., 747 F. Supp. 3d 748, 761 (D.N.J. 2024) (laying out some of the history of this approach).

This means that a court generally has a choice. Cf. Zervos v. Verizon N.Y., Inc., 252 F.3d 163, 169 n.6 (2d Cir. 2001). It can opt to go with the earlier decision. Or it can reflect on the previous decision, and, if necessary, take things in a

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been --- but was not --- raised in the first suit." Res Judicata, sense 2, Black's Law Dictionary (12th ed. 2024).

[10] For the relationship of law of the case to stare decisis, see, for example, Loumar, Inc. v. Smith, 698 F.2d 759, 762 (5th Cir. 1983). And for the link between law of the case and res judicata, see, for example, Southern Railway Co. v. Clift, 260 U.S. 316, 319 (1922).

different direction --- informed by the prior decision, but not entirely hemmed in by it.

B. "The Same Issue"

Come back now to this case.

The Petitioner's argument is that under the law-of-the-case doctrine, the New York court's decision requires this Court to deny the Respondents' current motion to dismiss for lack of jurisdiction. See Opposition Brief at 12.

But this argument is not persuasive.

The reason why: the issue that was resolved by the New York court is not "the same," Fagan, 22 F.3d at 1290, as the issue on the now-pending motion to dismiss --- and so the law-of-the-case doctrine is not part of the mix.

* * *

To see the point, start by zeroing in on what the New York court did, and then look to the question now before this Court.

At its core, the New York court held that it did not have jurisdiction over this case, see Khalil, 2025 WL 849803, at *2, and that it would transfer the matter to New Jersey. See id.

Why New Jersey? The New York court looked mainly to a 1948 law that covers court-to-court transfers, 28 U.S.C. § 1406(a). See id. at *12-14. Under Section 1406(a), a federal court with a case that has been filed in the wrong place has two choices. It can dismiss the case (which the New York court decided against, see id. at *12) or transfer it "to any district . . . in which [the case] could have been brought" (which the New York court decided to do, see id. at *11 (quoting 28 U.S.C. § 1406(a)).

Per the New York court, Section 1406(a) pointed to New Jersey. At the moment his habeas petition was filed, the Petitioner was in custody here. Id. at *12. And as noted, a habeas petition can be filed only in the district where a person is detained. See id. at *1 (citing Padilla, 542 U.S. at 449).

Therefore, the New York court concluded, the case "could have been brought" in New Jersey and would be transferred here. See id. at *12 (quoting 28 U.S.C. § 1406(a)) (emphasis added).

Now compare all of that to "the . . . issue," Fagan, 22 F.3d at 1290, before the Court now.

That issue is the one put by the Respondents in their motion to dismiss: does this Court, in New Jersey, have jurisdiction over this case? See Motion to Dismiss at 1.[11]

Did the New York court make that determination, about this Court's jurisdiction?

The Petitioner seems to say yes. For example, the Petitioner takes the Respondents to task for arguing that "this Court . . . must re-evaluate its own jurisdiction . . . because [the New York court] got that question wrong." Opposition Brief at 10 (cleaned up).

But "wrong" or right --- the premise of this argument is that the New York court assessed this Court's jurisdiction.

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[11] Note that working through the Respondents' motion does not threaten what the Petitioner invokes --- "a perpetual game of jurisdictional ping-pong until one of the parties surrenders to futility." Opposition Brief at 12 (cleaned up). Look to the cases the Petitioner cites as the basis for his concern. In Hayman Cash Register Co. v. Sarokin, 669 F.2d 162 (3d Cir. 1982), a Washington, DC, federal court transferred a case to New Jersey --- only to have the case transferred back to DC by the New Jersey court. See id. at 163-64. That back-and-forth took two years, see id., and the court of appeals put an end to it. The other main case cited by the Petitioner is Christianson v. Colt Industries Operating Corp., 486 U.S. 800 (1988). There, the Federal Circuit transferred a case to the Seventh Circuit, which then transferred it back. See id. at 806-07. This, too, took two years, see id. at 804, and the Supreme Court cut things off based, in part, on law-of-the-case grounds. But Hayman and Christianson are a long way off from this case. There is no danger here of "perpetual . . . ping-pong," Christianson, 486 U.S. at 818, played until someone folds. The New York court transferred this case to New Jersey. But no one wants the case to now be sent back to New York. (In purely nominal fashion, solely to preserve the issue for appeal, the Petitioner asks for a return to New York. See Opposition Brief at 30-31. But put that aside as irrelevant for now. There is no real ask from either party to go back to New York.)

But subject to an exception taken up below in footnote 14, there is nothing explicit along those lines in the New York court's decision.[12]

For example, the critical argument from the Respondents in New York was that habeas jurisdiction never vested in New Jersey, because the Petitioner did not file a Petition here. See Respondents' Memorandum of Law in Support of Their Motion to Dismiss or to Transfer the Case (ECF 31) at 10. And, the Respondents argued, the federal transfer statutes cannot fill the gap because they "do not independently vest courts with jurisdiction." See Respondents' Reply Memorandum of Law in Further Support of Their Motion to Dismiss or to Transfer the Case (ECF 71) at 14.

But these questions were not addressed in the New York court's opinion. There was no discussion, for example, as to whether one court can potentially take habeas jurisdiction on a derivative basis --- based on an earlier filing in another court. And there was no discussion as to whether there is a federal statute that vests the jurisdiction the Respondents said was missing.

These are not gaps in the New York court's analysis. They are, rather, indications of what the analysis was about. The New York court opined as to its own jurisdiction. See Khalil, 2025 WL 849803, at *5-*11. But it did not purport to rule as to this Court's jurisdiction --- which raises substantial (and distinct) issues of its own, covered here. See Part IV to Part VII.

* * *

Moreover, there are strong affirmative indications that the New York court did not see itself as resolving this Court's jurisdiction.

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[12] To be sure, the Petitioner notes that the New York court ruled that it had subject-matter jurisdiction over this case and that this Court does, too. See id. But such a ruling is beside the point. No one doubts that federal district courts have jurisdiction over the subject matter, habeas cases under 28 U.S.C. § 2241. Rather, the question is whether this Court has power over this habeas petition. A ruling as to federal courts' subject-matter jurisdiction over habeas cases generally does not answer that.

Look to one in particular.

To see it, start by noting that in the Supreme Court's Padilla decision, Justice Kennedy suggested in a concurrence that certain sorts of wrongful behavior from the United States, like hiding a detainee's location, might confer habeas jurisdiction on a particular court, even one that might not otherwise have power over the case. See 542 U.S. at 454 (Kennedy, J., concurring).

The New York court did not decide whether to adopt for itself this concurrence. See Khalil, 2025 WL 849803, at *8. But it determined that even if the concurrence might be on the table as a general matter, the actions of federal officials in this particular case would not trigger it. See id. at *8–11.

In reaching this conclusion, the New York court put aside any questions as to federal officials' conduct related to the Petitioner's later New Jersey-to-Louisiana transfer. See id. at *8. Those questions, the New York court said, were not "jurisdictionally relevant." Id. at *9.

And that makes sense. Any possible downstream misconduct by federal officials in sending the Petitioner from New Jersey to Louisiana could not impact whether there was or was not jurisdiction at an earlier point, in New York.

Such an inquiry might, of course, shed light on whether there was jurisdiction in New Jersey.

But no analysis like that was conducted. The New York court suggested such an analysis would be "jurisdictionally [ir]relevant." Id. at *9. And with good reason. It was, indeed, irrelevant to its question (is there jurisdiction in New York?) --- even as it might well have been relevant to a question it was not addressing (is there jurisdiction in New Jersey?).

* * *

Nor is it surprising in any way that the New York court transferred the case here without first deciding that this Court has jurisdiction.

Courts routinely transfer cases on the understanding that the transferee court will itself determine in the first instance, when the case arrives, whether it has jurisdiction. See, e.g., Abira Med. Lab'ys, LLC v. Cigna Health & Life Ins. Co., 2023 WL

4074081, at *2 n.4 (D.N.J. June 16, 2023); Ike v. U.S. Citizenship & Immigr. Servs., 2020 WL 7360214, at *2 (D.D.C. Dec. 15, 2020); Kneizys v. Fed. Deposit Ins. Co., 2020 WL 5632954, at *4 (D. Nev. Sept. 21, 2020); Moore v. Baker, 2018 WL 3421601, at *1 (M.D. Ala. June 18, 2018), report and recommendation adopted by 2018 WL 3420802 (M.D. Ala. July 13, 2018); Morrison v. Rochlin, 2017 WL 1162938, at *3 n.3 (M.D. Pa. Mar. 29, 2017); Hara v. Hardcore Choppers, LLC, 904 F. Supp. 2d 22, 28 (D.D.C. 2012); Benninghoff v. Ortho-McNeil Pharma., Inc., 2011 WL 13218034, at *2 (C.D. Cal. Apr. 6, 2011); Miller v. Toyota Motor Corp., 2008 WL 11451547, at *3 (N.D. Ohio Sept. 30, 2008); De Pedrero v. Schweizer Aircraft Corp., 2008 WL 11503874, at *1 (S.D. Tex. Feb. 4, 2008); Int'l Flavors & Fragrances Inc. v. Van Eeghen Int'l. B.V., 2006 WL 1876671, at *8 (S.D.N.Y. July 6, 2006); Alta. Telecomms. Rsch. Ctr. v. Rambus, Inc., 2006 WL 1049083, at *3 n.2 (E.D. Va. Apr. 12, 2006); Apollo Prods., Inc. v. Marino, 2006 WL 1798250, at *5 (W.D. Mo. June 28, 2006); Weber v. Jolly Hotels, 977 F. Supp. 327, 334 (D.N.J. 1997); Downs v. Red River Shipping Corp., 1994 WL 554174, at *3 n.4 (E.D. La. Oct. 6, 1994); United States v. Am. River Transp., Inc., 150 F.R.D. 587, 592 (C.D. Ill. 1993); Trask v. Serv. Merch. Co., 135 F.R.D. 17, 21 n.3 (D. Mass. 1991); Miller v. Campbell, 1991 WL 311899, at *1 (E.D. Mich. Feb. 7, 1991); Jennings v. Entre Comput. Ctrs., Inc., 660 F. Supp. 712, 716 (D. Me. 1987); Booth v. Alvin Petroleum, Inc., 1987 WL 6748, at *4 (E.D. Pa. Feb. 13, 1987); cf. Federal Practice and Procedure § 3842.

And there may well have been special reason to proceed that way here.

To decide there was no wrongful conduct in New York, which may have been relevant to jurisdiction, the New York court leaned on its understanding of how ICE handles everyday cases in New York. See Khalil, 2025 WL 849803, at *8-10. That understanding was based to an extent on the New York judge's own direct experience with New York ICE practices. See id. at *8.

How does New Jersey ICE operate? The New York court may well have thought that the question was best considered in the first instance by a New Jersey judge --- himself or herself personally familiar with local ICE practices. Cf. Padilla, 542 U.S. at 449 n.17 (dismissing Justice Kennedy's proposed exception to habeas rules given that its factual premise was never suggested by the

district court, "which was much closer to the facts of the case than we are").

More generally, the New York court might have thought that determining what happened to the Petitioner in New Jersey could bear on New Jersey jurisdiction, see Khalil, 2025 WL 849803, at *8 (citing Padilla, 542 U.S. at 454 (Kennedy, J., concurring)) --- but that any necessary fact-gathering on that point should go forward closer to where things happened, in New Jersey.

* * *

And one last point.

The Third Circuit has repeatedly made clear in the law-of-the-case context that the question of what one court decided is assessed, in part, with reference to the issues that were teed up for it by the parties.

In United States v. Curtis, 683 F.2d 769 (3d Cir. 1982), for example, the court of appeals "decline[d] to infer [the first court's] rejection," id. at 772, of an argument that the parties had not meaningfully raised to the court "in the absence of some judicial statement that the contention has been considered and rejected." Id.

And look, too, to Fagan v. City of Vineland, 22 F.3d 1283 (3d Cir. 1994). There, the Third Circuit held that the first judge had not considered a particular issue --- in large part because the motion papers before him did not themselves dive into it. See id. at 1290-91.

Against this backdrop, it would make little sense to conclude that the New York court held that this Court has jurisdiction --- even as the Petitioner himself did not substantially make that argument in New York.

The Petitioner's initial opposition brief mentioned going forward in New Jersey --- but only as a fourth fallback. See New York Opposition Brief at 20. The Petitioner argued to keep the case in New York; or if not, to allow jurisdictional discovery; or if not that, to allow an amendment to the Petition. See id. And if all that failed, the Petitioner argued, the case should be moved to New Jersey instead of Louisiana. See id.

None of this teed up a serious reckoning with the distinct legal complexities associated with this Court's jurisdiction, and none

of those complexities were discussed in the Petitioner's opening brief --- which cited none of the key authorities that are relevant to New Jersey jurisdiction. There was, for example, no discussion from the Petitioner of 28 U.S.C. § 1631, see Part IV.B below, or Demjanjuk v. Meese, 784 F.2d 1114 (D.C. Cir. 1986), see Part VII below.

And when the New York court followed up with a directive for further briefing as to the import of three particular statutes, see Order (ECF 63), there was more of the same --- New Jersey jurisdiction was not substantially put forward as an issue by the Petitioner.

The Petitioner suggested that "venue" was proper in New Jersey. See New York Opposition Brief at 20; Plaintiff['s] Supplemental Memorandum of Law in Opposition to Respondents' Motion to Dismiss or Transfer (ECF 70) ("New York Supplemental Opposition Brief") at 1–2, 5. And it did so largely by leaning on arguments from the location of witnesses, lawyers, and parties, see New York Supplemental Opposition Brief at 2–3, arguments that the New York court mainly agreed with. See Khalil, 2025 WL 849803, at *12.

But this argument from the Petitioner simply invited the New York court to do what it did --- to transfer the case on convenience-type grounds, see id., and to allow the transferee court (this Court) to decide in the first instance on its own jurisdiction.

And this, as the cases cited above show, is an everyday approach in transfer cases.

* * *

A final, related piece of the Petitioner's papers helps to make clear that the question of New Jersey jurisdiction was far removed from how this case was litigated in New York.

The New York court, as noted, sought analysis as to three statutes. See Order (ECF 63). In response, the Petitioner said that these statutes "use almost identical language." New York Supplemental Opposition Brief at 5. But they do not. Two of the statutes (28 U.S.C. § 1404(a) and 28 U.S.C. § 1406(a)) use virtually "identical language," and they touch in various ways on transfer and convenience. See 28 U.S.C. §§ 1404(a), 1406(a).

But the third statute uses quite different language than the other two. And that difference is perhaps the single most important piece of the New Jersey jurisdiction analysis to come. See Part IV.B. But the Petitioner did not note that language for the New York court, apparently because it did not matter for the argument he was making --- an argument as to transfer and convenience, not as to New Jersey jurisdiction.

* * *

Bottom line: the New York court decided that it did not have jurisdiction, but not that this Court does.

C. Implicitly "The Same Issue"

To finish out the analysis, go one step further.

Was the issue of New Jersey's jurisdiction somehow taken up implicitly by the New York court? See Moore's Federal Practice § 134.20 ("The law of the case doctrine applies to an issue or issues that have actually been decided explicitly or by necessary implication."); cf. Christianson, 486 U.S. at 817.

At one or two points, the Petitioner appears to argue the New York court's transfer decision necessarily implied that this Court has jurisdiction over the case. See Opposition Brief at 9, 12.

This argument, if it is being made, seems to start from the New York court's ruling that this case "could have been brought," 28 U.S.C. § 1406(a) (emphasis added), in New Jersey because the Petitioner was in this state at the moment of filing.

And that is certainly true to what the New York court held.

From that starting point, the Petitioner's argument seems to be this. Because (a) this case "could have been brought" in New Jersey (as the New York court ruled, citing the Section 1406(a) transfer statute), it follows that (b) this case should be treated as if it was brought in New Jersey at the moment it was filed in New York --- and because of that (c) this Court now has jurisdiction over the case.

Much of this argument might well be persuasive in the end. Indeed, Part IV of this Court's Opinion explains why (b) is sound. And Part VI of this Court's Opinion explain why the progression from (b) to (c) also makes sense. But these issues are not addressed in the New York court's opinion.

Maybe, though, the conclusions reached in this Opinion were logically necessary to, and thus implicitly baked into, the New York court's transfer decision.[13]

But this works only if the New York court's decision --- (a), in the above --- necessarily leads to (b), and then (b) necessarily leads to (c).

But it does not go that way.

The first step in the (a)/(b)/(c) progression is the move from (a) (saying that the case could have been brought in New Jersey, as the New York court held) to (b) (concluding that, therefore, the case should be treated as if it was brought in New Jersey).

But that (a)-to-(b) move is not a necessary one --- not in logic and not in the law.

* * *

To see the point, start by imagining a student who turns in a math assignment late. She could have done her homework on time. But that does not mean that her late work must be received by the teacher as if it was handed in on time. What could have been done (on-time work) sets the table for another question (whether to accept the late work). But it does not answer it.

Or think of a train passenger asking the conductor not to charge him the extra $5 penalty fare, the step-up fine imposed for buying the ticket on board the train instead of back in the station. The passenger will not argue to the conductor that he could have bought the ticket in the station. That is not a winning argument. Why? Because the fact that the passenger could have bought the ticket earlier does not compel the conductor to give the passenger a break, to treat him as if he did buy the ticket earlier.

In short, there is typically real daylight between what could have been done and what was done. Sometimes that daylight can be closed up. The late homework might be accepted as if it had been submitted on time. The conductor might say "no problem" and not charge the $5 penalty.

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[13] Recall: "[t]he law of the case doctrine applies to an issue or issues that have actually been decided explicitly or by necessary implication." Moore's Federal Practice § 134.20.

But none of that changes the basic point: saying that a thing could have been done (which is what the New York court said about filing this case in New Jersey) does not inevitably lead to the conclusion that the thing should be treated as if it was done.

* * *

And what is true as a matter of common sense is true as a matter of habeas corpus law, too.

In the Supreme Court's Padilla case, for example, a person was held in New York and then transferred to South Carolina. Only after the transfer was a habeas petition filed on his behalf in New York. See 542 U.S. at 431-32. Could the petition have been filed for the person while he was in New York? Yes, and if so, there would have been jurisdiction there. See id. at 441.

But that possibility (what could have happened) did not answer whether the New York court had jurisdiction over the case. Indeed, the Padilla Court discussed that point at some length, see id. at 448-49 & n.17, and then held the New York court did not have jurisdiction. See id. at 451.

In short, where the case could have gone forward (New York) did not determine which court (New York or South Carolina) had power over the case when it mattered.

Take another example.

In al-Marri v. Rumsfeld, 360 F.3d 707 (7th Cir. 2004), a person detained in Illinois, believing he was to be moved to military custody, asked to stay his transfer to have time to petition for habeas. See id. at 712. But he was transferred before he could file his petition. Per the Seventh Circuit, the question of where the petition could have been filed (in Illinois, before the transfer) did not answer whether jurisdiction was vested in the Illinois court (as if the filing had in fact been made):

> After the United States filed a motion to dismiss al-Marri's indictment in the Central District of Illinois, his lawyer orally opposed "any movement of Mr. Al-Marri until we have an opportunity to file --- it will be a habeas corpus action I suspect . . . . We would ask that the Court stay his removal from the Peoria County jail for at least

> until some time tomorrow so we would have an opportunity to file an appropriate petition with the Court in regard to the transfer to military custody." The district judge denied this motion . . . .
>
> According to al-Marri, asking the district court for an injunction against transfer was equivalent to filing a petition under § 2241; and if such a petition had been filed while al-Marri was still in the Central District of Illinois, that would have [allowed the Illinois court to exercise jurisdiction over such a petition] . . . . But what actually happened, rather than what could have happened, governs. Someone who files a notice of appeal one day after the time expired loses, even if the notice could have been filed on time. Likewise with a complaint filed one day after the statute of limitations, or a summons attempted to be served in hand one day after the potential defendant left the jurisdiction. What did happen is that, after arriving [in South Carolina], al-Marri filed a petition in Peoria, Illinois.

Id. at 712 (emphasis in original) (cleaned up).

Accordingly, the Seventh Circuit held, the habeas corpus case could not go forward in Illinois.

* * *

In a nutshell, the New York court's opinion might be understood as implicitly holding that this Court has jurisdiction over this case only if the New York holding (that this case "could have been" brought in New Jersey) necessarily requires the conclusion that New Jersey has jurisdiction. It does not. Padilla and al-Marri show that. Where a case "could have been" filed does not answer the question of whether it should be treated as having been filed there.

* * *

Where things stand:

The issue raised here by the Respondents' motion is whether this Court has jurisdiction over this case.

That issue was not resolved by the New York court. See Part III.B.

And it does not work to argue that the New York court somehow implicitly held that this Court has jurisdiction. That runs aground on Padilla and al-Marri. See Part III.C.

All of this means that the law-of-the-case doctrine does not come online here --- because "[t]he law of the case operates only to limit reconsideration of the same issue." Fagan, 22 F.3d at 1290.

D. Discretion

As noted, the law-of-the-case doctrine is discretionary. See Part III.A.

And even assuming arguendo that the doctrine could be taken to apply here, based on some aspect of the language or implicit logic of the New York opinion, the Court would use its discretion not to invoke the doctrine in this case.[14]

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[14] In its next-to-last paragraph, the New York court's opinion said: "It will be up to the transferee court in New Jersey to consider not only [the] Petition, over which it alone has jurisdiction, but also the various motions that [the Petitioner] has filed to date in connection with his Petition[.]" Id. at *14 (emphasis added). But it is not clear these words were necessary to the New York court's transfer decision. And while the words are in the opinion's "in sum" conclusion, the body of the opinion being summarized does not directly consider this Court's jurisdiction, for the reasons noted in Parts III.B and III.C above. Moreover, especially because the Petitioner did not himself meaningfully argue in New York as to New Jersey jurisdiction, see Part III.B, this Court does not take the underscored words as resolving the question. See Fagan, 22 F.3d at 1289-91 (opinion and case citation by the first judge "might imply" a holding on an issue taken up by the second --- but did not count as resolving "the same issue" because the holding was "ambiguous" as to whether it did, and "[t]he record [wa]s unclear" given that the parties had not directly briefed the issue); see also Curtis, 683 F.2d at 772 (law-of-the-case

This Part III.D explains why.

* * *

"[O]ne of the bases of the law of the case doctrine is to promote the finality and efficiency of the judicial process by protecting against the agitation of settled issues." In re Celgene, 747 F. Supp. 3d at 761 (cleaned up).

When "[t]ime was invested, attention was focused, and a decision was made," id., the ball should stop bouncing. An issue that "has been reached and resolved, and is in the rear-view mirror," id., should be left there.

But none of that is this case.

The relevant question --- does this Court now have jurisdiction? --- was not substantially addressed by the New York court. This does not clear the "a decision was made" bar. Id. Moreover, the question of this Court's current jurisdiction can hardly be chalked up as being in the "rear-view mirror." Id. The Respondents made that clear in New York, saying that if the New York court opted to transfer this case to New Jersey, they would raise, here, the question of whether this Court has jurisdiction. See Respondents' Memorandum of Law in Support of Their Motion to Dismiss or to Transfer the Case (ECF 31) at 10-11.

In short: if the Court were to assume arguendo that the law-of-the-case doctrine applies here because the New York court focused on "the same issue," Fagan, 22 F.3d at 1290, this Court would exercise its discretion to not apply the doctrine, because of the "unusual circumstances," see Hayman Cash Reg., 669 F.2d at 165, 169, 170, set out above, plus three more discussed just below.

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doctrine not triggered, in spite of language in the first opinion that might "reflect[] full awareness" of a certain question, because the parties had not meaningfully briefed that issue). On balance, the better understanding is that the New York court did what courts routinely do. See Part III.B (collecting cases). It transferred this case here on convenience-focused grounds, see Khalil, 2025 WL 849803, at *13-14, and left it for this Court in the first instance to rule on its jurisdiction.

First, the law-of-the-case doctrine aims to nip delay in the bud by preventing an issue that was considered before from being litigated again. See id. at 167.

And more pointedly: "the place of trial [should not] remain unsettled for an unnecessarily long time to accommodate double judicial consideration." Hoffman v. Blaski, 363 U.S. 335, 349 (1960) (Frankfurter, J., dissenting). Cases need to get off the ground.

But these concerns do not loom large. A "double" look is not happening here --- the New York court ruled on its jurisdiction, and this Court today rules on its own. And there has been no "unnecessar[y]" delay. The New York court ruled ten days after the habeas petition was filed. This Court rules today on the second business day after oral argument. (Oral argument itself went forward around 36 hours after the last brief as to jurisdiction was filed.)

Second, the law-of-the-case doctrine rests on the idea that it is for "the judicial department to say what the law is." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803). This "duty," id., falls to the judiciary as a whole ("the judicial department"), and there is no reason to think that one judge is somehow better at it than another. The law-of-the-case doctrine reflects that idea --- by telling the second judge to respect the first, who has "sa[id] what the law is" for the case, and whose determination should generally stand.

But again, none of this is at stake here. On the point of New Jersey's jurisdiction, there has not yet been a sustained statement of "what the law is."[15]

Third and finally, courts routinely hold that "judges are significantly less constrained by the law of the case doctrine with respect to jurisdictional questions." Gilbert v. Ill. State Bd. of Educ., 591 F.3d 896, 903 (7th Cir. 2010) (cleaned up); accord, e.g., Phelps v. Alameda, 366 F.3d 722, 728 n.6 (9th Cir. 2004); cf. Pub. Int. Rsch. Grp. of N.J., Inc. v. Magnesium Elektron, Inc., 123 F.3d 111, 118-19 (3d Cir. 1997). And that

[15] Cf. Pennsylvania v. Brown, 373 F.2d 771, 784 (3d Cir. 1967) ("It is universally recognized that questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.") (cleaned up).

principle applies with special force here. Especially on a potentially complex question, it does not make sense to allow either a very short statement or an implicit ruling to take the place of a direct and detailed analysis.

Jurisdiction is the "first and fundamental question," Great S. Fire Proof Hotel Co. v. Jones, 177 U.S. 449, 453 (1900), and it should be taken head-on and fully before it is determined whether this Court can assume power over this case.

E. Conclusion

The law-of-the-case doctrine does not apply. This is because the issue here is whether this Court has jurisdiction, and that "same issue" was not taken up by the New York court, see Part III.B, not even implicitly. See Part III.C.

In addition, even assuming arguendo there is some way in which that "same issue" was reached and resolved in New York, law of the case is a discretionary doctrine, see Part III.A. --- and the Court chooses not to apply it here. See Part III.D.

IV. What Supplies Jurisdiction

The Petitioner's law-of-the-case argument aimed to cut things off at the pass, but it was not persuasive. See Part III.

Come now then to the substance of the Respondents' motion to dismiss for lack of jurisdiction.

The argument the motion rests on is unpacked just below in Part IV.A, and in Part IV.B the Court explains why it does not work.

A. The Respondents' Argument

The Respondents' argument can be put this way:

A habeas court has jurisdiction over a case when it has two things at once. First, it must have the habeas petition. And second, it must have, in its district, the habeas petitioner. See Motion to Dismiss at 1; cf. Padilla, 542 U.S. at 435, 437.

The New York court sent the Petition to New Jersey on March 19. See Khalil, 2025 WL 849803, at *14. But by the time the Petition arrived in New Jersey, the Petitioner was gone. He was in Louisiana.

At no moment, then, were the Petition and the Petitioner together in the same place. When the Petitioner was here, the Court lacked the Petition; and now that the Court has the Petition, the Petitioner is elsewhere. The Petition and the Petitioner missed each other; and so, the argument goes, there has never been jurisdiction in this Court.

Therefore, it makes no difference that the New York court moved the case here on March 19 under Section 1406(a) and Section 1404(a), because the case "could have been" or "might have been" brought here back on March 9, when the case was first filed and the Petitioner was physically in New Jersey.

Why does the transfer make no difference?

Jurisdiction is missing because the Petition and the Petitioner were never here together, as the Supreme Court in Padilla required. And the transfer statutes do not purport to provide the missing jurisdiction. See Motion to Dismiss at 1, 5, 9-10.

On the Respondents' argument, the transfer statutes are like conveyor belts, smoothing the way for cases to move from one district to another.

But they are not like time machines. They do not allow a Petition that arrived in New Jersey on March 19 to be treated as if it had arrived in New Jersey on March 9 at 4:40am --- the moment it was filed in New York, and also a moment when the Petitioner was here in New Jersey. And unless the Petition can be somehow backdated and thought of as having been in New Jersey on March 9 when the Petitioner was last here, there is no moment when both the Petition and the Petitioner were here together in New Jersey. Therefore, there would be no habeas jurisdiction in the state.

B. Section 1631

The problem with the Respondents' argument as set out above is this: it does not reckon with 28 U.S.C. § 1631.

That statute dates from 1982, and it is titled "Transfer to cure want of jurisdiction." Per Section 1631:

> Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such

> action . . . to any other such court . . . in which the action . . . could have been brought at the time it was filed or noticed, and the action . . . shall proceed as if it had been filed in . . . the court to which it is transferred on the date upon which it was actually filed in . . . the court from which it is transferred.

28 U.S.C. § 1631 (emphasis added).

The statute is a command from Congress to the courts. Its language is clear. See Jimenez v. Quarterman, 555 U.S. 113, 118 (2009) ("[W]hen the statutory language is plain, we must enforce it according to its terms."); accord King v. Burwell, 576 U.S. 473, 474 (2015); Dodd v. United States, 545 U.S. 353, 359 (2005).

It tells a court that receives a transferred case (as this Court did) that it must treat the case ("shall proceed") "as if it had been filed in . . . the court to which it is transferred" (New Jersey) at the time it was first filed in the transferor court (New York).

In other words, when Section 1631 is in play, it does indeed work as a kind of time machine, in a way that Section 1404(a) and Section 1406(a) do not purport to.

If Section 1631 applies, its import for this case is unmissable:

The Petition arrived in New Jersey on March 19. But this Court, per Section 1631, "shall proceed" as if the Petition got here when it was filed in New York --- March 9 at 4:40am. At that moment, the Petitioner was in New Jersey --- so there is no missing piece of the jurisdictional puzzle. Under Section 1631, the Petition counts as having been in New Jersey at the same moment the Petitioner was here.

The key questions, then, are these: does Section 1631 apply to this case, and does it have the effect sketched out above? Yes and yes, the Court concludes. The sections that follow explain why.

1. The Court Can Look to Section 1631

In transferring this case, the New York court relied on Section 1404(a) and Section 1406(a), not Section 1631. See Khalil, 2025 WL 849803, at *12-13.

Does this mean this Court should not rely on Section 1631?

No. In Xu v. DHS/ICE Office of Chief Counsel, 2024 WL 2185060 (3d Cir. May 15, 2024), for example, the Third Circuit preserved the timeliness of a lawsuit by "deem[ing]" it transferred under Section 1631 --- even though the district court had not used that statute, but rather had dismissed the case. See id. at *1.

And before that, on another occasion, the Third Circuit had come to essentially the same conclusion --- that a transferee court can invoke Section 1631 even though the transferor court did not. See Martinez-Nieto v. Att'y Gen. of U.S., 805 F. App'x 131, 135 (3d Cir. 2020).

And every circuit court to have decided the issue has landed on that same spot, too. See Franco v. Mabe Trucking Co., Inc., 3 F.4th 788, 796 (5th Cir. 2021); Kolek v. Engen, 869 F.2d 1281, 1284 (9th Cir. 1989);[16] Ross v. Colo. Outward Bound Sch., Inc., 822 F.2d 1524, 1526-27 (10th Cir. 1987); In re Teles AG Informationstechnologien, 747 F.3d 1357, 1361 (Fed. Cir. 2014); see also Ctr. for Nuclear Resp., Inc. v. U.S. Nuclear Regul. Comm'n, 781 F.2d 935, 944-45 (D.C. Cir. 1986) (R.B. Ginsburg, J., dissenting).

In short: the Court can, and does,[17] look to Section 1631 here; the fact the New York court did not invoke it as a basis for

[16] Accord Rodriguez-Roman v. INS, 98 F.3d 416, 423-24 (9th Cir. 1996); In re McCauley, 814 F.2d 1350, 1352 (9th Cir. 1987).

[17] The Fifth Circuit has explained that Section 1631 --- which says a court "shall" transfer if certain requirements are met --- is sometimes mandatory. See Franco, 3 F.4th at 796. And the statute includes a similarly mandatory directive from Congress to the transferee court. That court "shall proceed as if [the case] had been filed in . . . the court to which it is transferred[.]" 28 U.S.C. § 1631 (emphasis added).

transferring this case does not matter, as every circuit to consider the question has suggested.[18]

2. Section 1631 Applies to Habeas Petitions

Per the section just above, the Court can look to Section 1631 -- but does it apply in habeas cases like this one?

Yes. Section 1631 applies to any "civil action" filed in a district court, see 28 U.S.C. § 1631, and a habeas proceeding is a civil action. See, e.g., Mayle v. Felix, 545 U.S. 644, 654 n.4 (2005).

In accord with this, the Third Circuit has repeatedly recognized that Section 1631 applies to habeas petitions. See, e.g., Robinson v. Johnson, 313 F.3d 128, 139 (3d Cir. 2002) (stating that a district court may transfer a habeas petition under § 1631); United States v. Vidal, 647 F. App'x 59, 60 (3d Cir. 2016) (same); Foy v. Super-Rich Members of Illuminati, 622 F. App'x 102, 103 (3d Cir. 2015) (same); Harvey v. Maiorana, 518 F. App'x 82, 83 (3d Cir. 2013) (same).

And so have other courts of appeals across the Nation. See, e.g., Chappell v. Colorado, 2024 WL 2973701, at *2 n.5 (10th Cir. June 13, 2024); Gallo-Alvarez v. Ashcroft, 266 F.3d 1123,

[18] The Court decides the issue with the benefit of the parties' views, though to a very limited extent. The New York court ordered briefing on various statutes, including Section 1631, see ECF 63, and the parties provided it. See ECF 70-71. And in his brief to this Court, the Petitioner notes (lightly) that transfer under Section 1631 could have been appropriate. See Opposition Brief at 11 n.9. Note that had the Petitioner not invoked Section 1631 in any way at all, this Court could have considered it sua sponte. See Danziger & De Llano, LLP v. Morgan Verkamp LLC, 948 F.3d 124, 132 (3d Cir. 2020) (a district court "may transfer a case at the parties' request or sua sponte" under Section 1631). What position to take is for the litigants under the party-presentation principle; but saying what the law is --- that is for the Court, and can therefore be raised sua sponte. See In re Celgene Corp., 747 F. Supp. 3d at 760 n.17. Indeed, not bringing to bear Section 1631 would ignore Congress' mandatory directive to transferee courts, see footnote 17, as to how they "shall proceed." This Court must hew to Congress' directive. Cf. Amy Coney Barrett, Substantive Canons and Faithful Agency, 90 B.U. L. Rev. 109, 112 (2010).

1127-28 (9th Cir. 2001); Phillips v. Seiter, 173 F.3d 609, 610 (7th Cir. 1999).

3. Section 1631 Applies Here

Section 1631 applies to habeas cases in general, see Part IV.B.2 --- but does it apply to this habeas case in particular?

It does. The statute's effect on a transferee court is mandatory, see footnote 17, but only in two circumstances. See Franco, 3 F.4th at 796. First, when the transferor court "finds that there is a want of jurisdiction." 28 U.S.C. § 1631. And second, when transfer to another court is "in the interest of justice." Id.

Here, each box was checked. The New York court (the transferor court) determined that there was "a want of jurisdiction." See Khalil, 2025 WL 849803, at *14. And it held that transfer was in the interest of justice. See id.[19]

4. Section 1631 Covers Personal Jurisdiction

To this point, the Court has established that it can look to Section 1631, even though the New York court did not invoke it as a basis for transfer, see Part IV.B.1 --- and that Section 1631 applies to habeas petitions in general, see Part IV.B.2, and to this one in particular. See Part IV.B.3.

Section 1631 is in play. What then does it do?

The words of the statute make clear that it cures jurisdictional defects. It tells the transferee court that it "shall" treat the case as having been brought there, in the transferee court, at the moment it was first initiated in the transferor court.

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[19] Had the New York court not made its own "interest of justice" determination, it is possible that this Court might have been called on to assess the question, as part of determining whether Section 1631 applies. Cf. Xu, 2024 WL 2185060, at *1 & n.1 (determining that a Section 1631 transfer would be "in the interest of justice" where the district court had dismissed the complaint altogether); Martinez-Nieto, 805 F. App'x at 135 (similar). But this is irrelevant for now, because the New York court issued its own interest-of-justice ruling.

But what kinds of jurisdictional defects can be cured by Section 1631?

Subject-matter defects are irrelevant here. See footnote 12.

Does the statute cure the sort of personal jurisdiction issues that are on the table here?

A leading treatise has suggested that Section 1631 focuses only on subject-matter jurisdiction cures. See Federal Practice and Procedure ¶ 3842.

But this is not the better view.

To see why, start with the text --- and end with it.

"If the text be clear and distinct, no restriction upon its plain and obvious import ought to be admitted, unless the inference be irresistible." Martin v. Hunter's Lessee, 14 U.S. 304, 338–39 (1816); see Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253–54 (1992) (collecting cases).

Section 1631 says it can cure "a want of jurisdiction." Had Congress wished, it could have said, for instance, that the statute will cure "a want of subject-matter jurisdiction." But it did not, and the Court interprets the words as they are. The Court may not add a "restriction," Martin, 14 U.S. at 339, and reading in "subject-matter" as a limit on "jurisdiction" would do just that.

The Fifth Circuit has recently made this point, noting that Congress' choice of an open-ended umbrella term in Section 1631 (jurisdiction) means that the term cannot be pared back to remove some of what it ordinarily encompasses (like personal jurisdiction). See Franco, 3 F.4th at 793.

This makes sense. "Jurisdiction" may be "a verbal coat of too many colors." United States v. L. A. Tucker Truck Lines, Inc., 344 U.S. 33, 39 (1952) (Frankfurter, J., dissenting). But that is the term Congress chose. And it will not do for a court to see itself as tidying up Congress' work after the fact, by removing some here and a bit there, on the thought that doing so provides more coherence.

Moreover, the Fifth Circuit confirmed its reading by looking to a present-day dictionary, which defines "jurisdiction" as referencing both the personal and subject-matter sorts. See Franco, 3 F.4th at 792; cf. Kontrick v. Ryan, 540 U.S. 443, 455

(2004) (suggesting that "the label 'jurisdictional' . . . delineat[es] the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority").

To be sure, the Supreme Court routinely directs courts to look to the contemporary meaning of statutory text, and that often involves a look to time-of-enactment dictionaries. See Sandifer v. U.S. Steel Corp., 571 U.S. 220, 227–28 (2014).

But "jurisdiction" meant roughly the same thing in 1982, when Section 1631 became law. Shortly before the statute's enactment, a leading legal dictionary defined "jurisdiction" as "a term of large and comprehensive import," generally sweeping in "the authority by which courts and judicial officers take cognizance of and decide cases." Jurisdiction, Black's Law Dictionary (5th ed. 1979). The same dictionary defined "want of jurisdiction," the fuller phrase in Section 1631, as a "[l]ack of jurisdiction over person or subject matter." Want of Jurisdiction, Black's Law Dictionary (5th ed. 1979) (emphasis added).

Given the clear meaning of "jurisdiction," there is no textual reason to think Congress wanted Section 1631 to reach only one sort of jurisdiction.

Congress' choice not to use the words "subject-matter jurisdiction" in Section 1631 is especially telling given that it has repeatedly used that language elsewhere in Title 28. See Franco, 3 F.4th at 792-93 (citing, for example, 28 U.S.C. § 1390(a)) ("The term 'venue' refers to the geographic specification of the proper court or courts for the litigation of a civil action that is within the subject-matter jurisdiction of the district courts in general.") (emphasis added).

And when legislators could have, but did not, adopt "obvious alternative" language, "the natural implication is that they did not intend" the alternative, and the Court cannot revisit that choice. Lozano v. Montoya Alvarez, 572 U.S. 1, 16 (2014).

In short: the text of Section 1631 is clear, and underscores that the statute works to cure all sorts of jurisdictional defects --- the kind at issue here (related to personal

jurisdiction) and also those that have no bearing here (related to subject-matter jurisdiction).[20]

* * *

This conclusion reflects the clear judicial consensus.

As alluded to above, the Fifth Circuit has held "that the term 'jurisdiction' in Section 1631 encompasses both personal and subject-matter jurisdiction." Franco, 3 F.4th at 794.

The First, Sixth, and Seventh Circuits have said the same. See Fed. Home Loan Bank of Bos. v. Moody's Corp., 821 F.3d 102, 114 (1st Cir. 2016), abrogated on other grounds by Lightfoot v. Cendant Mortg. Corp., 580 U.S. 82 (2017); Roman v. Ashcroft, 340 F.3d 314, 328 (6th Cir. 2003); North v. Ubiquity, Inc., 72 F.4th 221, 227 (7th Cir. 2023).

And "[t]he Ninth, Tenth, and Eleventh Circuits have implicitly reached the same conclusion by either applying § 1631 to a transfer to cure a defect in personal jurisdiction, directing a district court to consider utilizing the provision to rectify a lack of personal jurisdiction, or approving such a transfer after it occurred." Franco, 3 F.4th at 794 (citing Gray & Co. v. Firstenberg Mach. Co., 913 F.2d 758, 761–62 (9th Cir. 1990); Ross, 822 F.2d at 1527–28)); see United States v. Kinsey, 393 F. App'x 663, 665 (11th Cir. 2010); accord Okongwu v. Reno, 229 F.3d 1327, 1331 & n.3 (11th Cir. 2000).

And though the Third and Eighth Circuits have not answered this question directly, they have said in dicta that a transfer under Section 1631 can cure a lack of personal jurisdiction. See Island Insteel Sys., Inc. v. Waters, 296 F.3d 200, 218 n.9 (3d Cir. 2002); Johnson v. Woodcock, 444 F.3d 953, 954 n.2 (8th Cir. 2006); accord Chavez v. Dole Food Co., Inc., 836 F.3d 205, 224 (3d Cir. 2016) (noting that the proper transfer statute was "arguably" Section 1631 in a case where personal jurisdiction

[20] The Second Circuit has said that "the legislative history of section 1631 provides some reason to believe that this section authorizes transfers only to cure lack of subject matter jurisdiction." SongByrd, Inc. v. Est. of Grossman, 206 F.3d 172, 179 n.9 (2d Cir. 2000). But because the text is clear, the legislative history is out of bounds. See, e.g., Bostock v. Clayton Cnty., 590 U.S. 644, 674 (2020) ("[L]egislative history can never defeat unambiguous statutory text[.]"); accord Nat'l Ass'n of Mfrs. v. Dep't of Def., 583 U.S. 109, 132 n.9 (2018).

was lacking); Tripati v. Wexford Health Sources Inc., 2022 WL 17690156, at *2 n.4 (3d Cir. Dec. 15, 2022) (similar); Danziger, 948 F.3d at 132 (calling Section 1631 the "relevant statute" regarding transfer where district court lacked personal jurisdiction); D'Jamoos ex rel. Est. of Weingeroff v. Pilatus Aircraft Ltd., 566 F.3d 94, 109-11 (3d Cir. 2009) (remanding to the district court to consider whether transfer was appropriate under Section 1631 when it lacked personal jurisdiction over defendant).[21]

* * *

The Court holds: Section 1631 can cure a personal-jurisdiction defect of the kind at issue here, and not just subject-matter jurisdiction defects.

5. What Section 1631 Means Here

The previous sections, see Parts IV.B.1 to IV.B.4, established that the Court can look to Section 1631 in this case and use it to cure difficulties as to personal jurisdiction.

How would that work here? To see the answer, start by looking again at the statutory language, and filling in some of the facts of this case.

> Whenever a civil action [here, this habeas case] is filed in a court [the New York court] . . . and that court finds that there is a want of jurisdiction [as it did here], the court shall, if it is in the interest of justice [as it found], transfer such action . . . to any other such court [this Court] . . . in which the action . . . could have been brought . . . , and the action . . . shall proceed as if it had been filed in . . . the court to which it is transferred on the date upon which it was actually filed in . . . the court from which it is transferred [that is, March 9, 2025, at 4:40am].

[21] The Fourth Circuit has not decided the issue. See In re Carefirst of Md., Inc., 305 F.3d 253, 257 n.2 (4th Cir. 2002).

28 U.S.C. § 1631.

Bottom line: Section 1631 means that the Petition here is treated as if it was backdated --- and in particular, as if it was filed on March 9.

Various Third Circuit cases back up this reading. Consider some below.

a) Miller

In Miller v. United States, 753 F.2d 270 (3d Cir. 1985), the petitioner challenged his discharge from the Army before the Third Circuit and the Federal Circuit. Later, he petitioned the Third Circuit for fees incurred at the Federal Circuit. See id. at 272.

The Third Circuit held that it lacked jurisdiction over the claim for Federal Circuit fees. But by then, the deadline to file for fees in the proper court (the Federal Circuit) had passed. See id. at 273, 276.

But the Third Circuit recognized that the Federal Circuit would have had jurisdiction over the fee petition "had it been filed as an original petition with that court." Id. at 276. Backdating jurisdiction to the time of the original filing, the Third Circuit sent the petition to the Federal Circuit "in the interest of justice." Id.

b) Martinez-Nieto

A newer Third Circuit case shares the same holding. In Martinez-Nieto v. Attorney General of United States, 805 F. App'x 131 (3d Cir. 2020), a person petitioned the Third Circuit to review a decision of the Board of Immigration Appeals. See id. at 133–34. He filed his petition on the last possible day --- and, mistakenly, in the district court instead of the court of appeals. See id. at 135.

The Third Circuit explained that the two criteria of Section 1631 were met: the district court lacked jurisdiction, and a transfer would serve the interest of justice. See id. at 135. It therefore assumed jurisdiction over the otherwise time-barred petition, since it "would have been able to exercise jurisdiction on the date that the petition was filed in the District Court." Id.

Like Miller, Martinez-Nieto parallels the facts here. A petitioner filed his action in a court that lacked jurisdiction. By the time he sought to fix his error, the right court could no longer exercise jurisdiction because of a procedural hurdle. A transfer "in the interest of justice" cured this problem by backdating jurisdiction in the receiving court to the time at which the petition was originally filed.

c) Other Cases

Miller and Martinez-Nieto are no outliers.

Before, after, in between them, Third Circuit cases have pointed in the same direction: Section 1631 vests a court with precisely the jurisdiction it would have had at the time of the original case's filing. See Xu, 2024 WL 2185060, at *1; Forkpa-bio v. Att'y Gen. of U.S., 296 F. App'x 239, 243 n.4 (3d Cir. 2008); Mejia-Juarez v. Att'y Gen. of U.S., 287 F. App'x 204, 205 n.1 (3d Cir. 2008); Keller v. Petsock, 849 F.2d 839, 843 (3d Cir. 1988); cf. Monteiro v. Att'y Gen. of U.S., 261 F. App'x 368, 369 (3d Cir. 2008); Lawal v. Ashcroft, 89 F. App'x 774, 776 (3d Cir. 2004); Campbell v. Off. of Pers. Mgmt., 694 F.2d 305, 309 n.6 (3d Cir. 1982).

V. Section 1631 and Two Further Issues

The analysis set out in Part IV establishes that this case, filed in New York on March 9 at 4:40am, must be treated as if it had been filed in New Jersey on March 9 at 4:40am --- under the authority of Section 1631.

This establishes that this Court has jurisdiction.

After all, the Petitioner was in custody in New Jersey on March 9. The Petition must be treated as if it was filed here in New Jersey at that same moment. And per the Supreme Court in Padilla: that adds up to jurisdiction. See Padilla, 542 U.S. at 447 (so holding); see generally Part II.

But there are two complexities.

The first: what of the fact that the Petitioner, here in New Jersey when the Petition was filed, is now in Louisiana? Jurisdiction may well have been proper in New Jersey on March 9. But is jurisdiction still proper today, now that the Petitioner is no longer in New Jersey?

The Court's conclusion: yes, for the reasons set out in Part VI.

The second issue: what of the fact that the Petitioner has not named as a respondent either the warden of the Louisiana facility (where he is now in custody) or the warden of the facility in New Jersey (where he was in custody while here)? That is generally required. See Anariba, 17 F.4th at 444 (holding that a habeas petition that challenges ICE custody must generally name as the respondent the warden of the facility where the person is held).

Jurisdiction might well have been proper in New Jersey on March 9. But is jurisdiction still proper given that he has not sued the relevant warden?

The Court's conclusion: again, yes, for the reasons laid out in Part VII.

Take all this up now, in the next two Parts.

VI. The Endo Rule

As noted just above, see Part V, this Court's jurisdiction is not undone because the Petitioner is no longer in New Jersey, having been moved to Louisiana after the Petition was filed.

The basis for this conclusion is a rule --- call it "the Endo Rule" --- that a habeas court that otherwise has jurisdiction over a case does not lose that jurisdiction just because the habeas petitioner has been moved out of the district.

Is that rule good law? This Part shows that it is.

The Court moves through the background quickly --- describing the key Supreme Court decision in this area and the two competing understandings of it, only one of which supports the referenced Endo Rule. See Part VI.A.

From there, the Court explains that any debate that there once may have been is now over. The Endo Rule is now the law. See Part VI.B.

And under the Endo Rule, this Court --- which otherwise has jurisdiction, see Part IV --- does not lose that jurisdiction because the Petitioner was transferred from New Jersey to Louisiana.

A. Background

Start with the key Supreme Circuit case, Ex parte Endo, 323 U.S. 283 (1944).

Mitsuye Endo, an American citizen, was removed from her home and detained in a California "relocation center," along with thousands of other Japanese-Americans. See id. at 284-85, 288.

While confined at the "center," she filed a habeas petition in a California federal court. See id. at 285.

The petition was denied, Endo appealed, and while the appeal was pending she was moved out of California and to a different facility, this one in Utah. See id.

The case went to the Supreme Court, which held Endo should be released. See id. at 304. But how? Could the California court issue a habeas corpus writ releasing Endo --- even though she had been moved out of California?

Yes, the Supreme Court held. See id. at 307.

* * *

How to understand the Supreme Court's Endo decision?

On some accounts, the decision was not about the California court's power after Endo was moved to Utah. Rather, the decision was about whether the case had become moot because the people who were originally named as respondents in the habeas petition were no longer Endo's immediate custodians.

On this reading, the Supreme Court in Endo held no more and no less than this: the case before it was not moot. See id. at 305.

On that interpretation, Endo defeats any argument that a case in which a habeas petitioner has been moved is not ripe for decision --- but it does not affirmatively supply a basis for the first court (the California court) to continue to exercise jurisdiction.

There is some language in Endo that supports a mootness-flavored reading. See id. And over the years, some courts have foregrounded the mootness/ripeness aspects of the decision.[22]

* * *

But there is another interpretation of Endo --- one focused squarely on the idea that a court keeps power over a habeas case, even after the petitioner-detainee may have been transferred out of the court's territory.

That reading is true to the Endo Court's language. See id. at 306-07 (stating that the California federal court "acquired jurisdiction" when Endo filed her habeas petition, and kept the case because the objective of the habeas corpus statute "may be in no way impaired or defeated by the removal of the prisoner from the territorial jurisdiction of the District Court," and the habeas "decree of the court [can be] made effective if a respondent who has custody of the prisoner is within reach of the court's process even though the prisoner has been removed from the district since the suit was begun").

And that reading is in keeping with broader jurisdictional principles.

Diversity jurisdiction, for example, locks in at the time a case is filed --- and survives changing circumstances down the line.

That is true as to changes in the parties' citizenship. See Louisville, N.A. & C.R. v. Louisville Tr. Co., 174 U.S. 552, 566 (1899) (so holding); McCracken v. ConocoPhillips Co., 335 F. App'x 161, 162 (3d Cir. 2009) (same).

And it is also true as to changes in the amount in controversy. See St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283,

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[22] See, e.g., Copley v. Keohane, 150 F.3d 827, 829-30 (8th Cir. 1998); Sharp v. Ciccone, 360 F.2d 605, 606 (8th Cir. 1966); Factor v. Fox, 175 F.2d 626, 628-29 (6th Cir. 1949); White v. Gilley, 2023 WL 5987206, at *2-3 (E.D. Ky. Sept. 13, 2023); Dailey v. Pullen, 2023 WL 3456696, at *3 (D. Conn. May 15, 2023); Parker v. Hazelwood, 2019 WL 4261832, at *6 (D.N.H. Sept. 9, 2019); Gonzalez v. Grondolsky, 152 F. Supp. 3d 39, 44-45 (D. Mass. 2016); Bowen v. Harris, 224 F. Supp. 976, 977-78 (W.D. Mo. 1964).

289-90 (1938) (so holding); Auto-Owners Ins. Co. v. Stevens & Ricci Inc., 835 F.3d 388, 395-96 (3d Cir. 2016) (same).

Or take this example: jurisdiction over in rem civil forfeiture and admiralty proceedings is generally determined by the physical location of the "res," the thing, at the moment when a case is initially filed and the res is seized. See Republic Nat'l Bank of Mia. v. United States, 506 U.S. 80, 84-85 (1992).

The res might later wind up leaving the physical jurisdiction of a district court. Maybe it is moved. Or maybe it is sold off, and the cash goes somewhere else.

What then for the court's jurisdiction? The answer: the court that initially had jurisdiction generally keeps it. See Republic Nat'l Bank, 506 U.S. at 84; see also, e.g., United States v. Real Props. & Premises, 521 F. App'x 379, 383 (6th Cir. 2013) (applying Republic Nat'l Bank to retain jurisdiction); Vitol, S.A. v. Primerose Shipping Co. Ltd., 708 F.3d 527, 540-41 (4th Cir. 2013) (same, as to quasi in rem proceedings); Ventura Packers, Inc. v. F/V Jeanine Kathleen, 424 F.3d 852, 860-61 (9th Cir. 2005) (in rem).[23]

[23] This has essentially been the rule since the early days of this Republic. See, e.g., The Little Charles, 26 F. Cas. 979, 982 (C.C.D. Va. 1818) (No. 15,612) (Marshall, C.J.) (in a case regarding the seizure of a vessel, "[t]here must be seizure to vest the jurisdiction. But it is not believed that the continuance of possession, is necessary to continue the jurisdiction. It is a general principle, that jurisdiction, once vested, is not divested, although a state of things should arrive in which original jurisdiction could not be exercised."); The Rio Grande, 90 U.S. (23 Wall.) 458, 463 (1875) (similar). Note that there are exceptions to the rule. Jurisdiction, for example, can be lost if a change in circumstances renders any judgment "useless," because there is nothing left within the court's jurisdiction to collect against. See Republic Nat'l Bank, 506 U.S. at 85-87; see also Cmty. Bank of Lafourche v. Lori Ann Vizier, Inc., 541 F. App'x 506, 513 (5th Cir. 2013); Eurasia Int'l, Ltd. v. Holman Shipping, Inc., 411 F.3d 578, 583-84 (5th Cir. 2005); Woodlands Ltd. v. Nationsbank, N.A., 164 F.3d 628, *5-6 (4th Cir. 1998); United States v. One Parcel of Real Estate at 3262 SW 141 Ave., Mia., 33 F.3d 1299, 1303-04 (11th Cir. 1994); Newpark Shipbuilding & Repair, Inc. v. M/V Trinton Brute, 2 F.3d 572, 573 (5th Cir. 1993).

B. Consensus Understanding

As alluded to just above, see Part VI.A, there has been a debate over the years as to how to most faithfully read Endo.

But that back and forth is now over. The Supreme Court has made clear that Endo is not a mootness case but a jurisdictional one. Per the Court in Padilla:

> Endo stands for the important but limited proposition that when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release.

Padilla, 542 U.S. at 441 (emphasis added).

That might have been dicta, but other cases' holdings point the same way.

Take, for example, Anariba v. Director Hudson County Correctional Center, 17 F.4th 434 (3d Cir. 2021).

There, a person detained in New Jersey filed a habeas petition. See id. at 436. The petition was denied. Transferred to a detention facility outside New Jersey, he made a new filing, which the Third Circuit took as a motion to reconsider the habeas ruling. See id. at 439, 444.

Could the motion be taken up, even though the habeas petitioner was no longer in New Jersey? Yes, the Third Circuit answered, see id. at 445-46 --- because like Padilla, it took Endo as supporting continued jurisdiction in a habeas court, even after the habeas petitioner was moved out of the relevant district. The Third Circuit cited Endo and Padilla. See id.

And it noted:

> Our precedent likewise reflects an adherence to the general rule articulated in Endo, that the government's post-filing transfer of a § 2241 petitioner out of the court's territorial jurisdiction does not strip the court of jurisdiction over the petition.

Id. (citing Ex parte Catanzaro, 138 F.2d 100, 101 (3d Cir. 1943)).[24]

And from Catanzaro:

> [W]e do not believe that passing about of the body of a prisoner from one custodian to another after a writ of habeas corpus has been applied for can defeat the jurisdiction of the Court to grant or refuse the writ on the merits of the application.

138 F.2d at 101.

All of this is consistent with other Third Circuit cases. See, e.g., Hoffman v. Warden Phila. FDC, 2022 WL 1564177, at *2 (3d Cir. May 18, 2022); McGee v. Martinez, 490 F. App'x 505, 506 (3d Cir. 2012); Brown v. Yates, 154 F. App'x 319, 320 (3d Cir. 2005).[25]

And the district courts of this Circuit have treated the matter as done and settled: a habeas court with jurisdiction does not lose it because the detainee has been moved out of the district. See, e.g., Summers v. FCI Loretto Warden, 2025 WL 72797, at *1 (W.D. Pa. Jan. 10, 2025); Saillant v. Hoover, 2020 WL 4924567, at *2 (M.D. Pa. Aug. 21, 2020); Guerrero Sanchez v. Sabol, 2019 WL 1977922, at *5 n.14 (M.D. Pa. May 3, 2019); Almahdi v. Rabsatt, 2015 WL 5567312, at *2 (D.N.J. Sept. 22, 2015); McGee

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[24] See also Anariba, 17 F.4th at 448 ("Allowing a district court to retain jurisdiction for all post-filing proceedings . . . despite a detainee's transfer out of the territorial jurisdiction of the district court in which the § 2241 petition was filed, would minimize incentives for Government abuse of the already turbulent ICE transfer process.").

[25] Other circuit courts take the same approach. See Roberts v. LeJeune, 43 F.4th 695, 698 (7th Cir. 2022); Lennear v. Wilson, 937 F.3d 257, 263 n.1 (4th Cir. 2019); Pinson v. Bekebile, 604 F. App'x 649, 652-53 (10th Cir. 2015); White v. Lamanna, 42 F. App'x 670, 671 (6th Cir. 2002); Vasquez v. Reno, 233 F.3d 688, 695 (1st Cir. 2000); Francis v. Rison, 894 F.2d 353, 354 (9th Cir. 1990); Harris v. Ciccone, 417 F.2d 479, 480 n.1 (8th Cir. 1969); see also Stokes v. U.S. Parole Comm'n, 374 F.3d 1235, 1237-39 (D.C. Cir. 2004); Henderson v. INS, 157 F.3d 106, 125 (2nd Cir. 1998).

v. Martinez, 2011 WL 5599338, at *2 (M.D. Pa. Nov. 17, 2011); Dandridge v. Schultz, 2007 WL 4300846, at *8 n.3 (E.D. Pa. Dec. 6, 2007); Qiang v. Dist. Dir. for Immigr. Customs Enf't, 2006 WL 3762029, at *2 (M.D. Pa. Dec. 20, 2006); Parra v. U.S. Parole Comm'n, 2005 WL 8164431, at *2 n.3 (W.D. Pa. Dec. 13, 2005); Bah v. Wagner, 2005 WL 83259, at *1 (E.D. Pa. Jan. 13, 2005); Miller v. United States, 2004 WL 887420, at *1 (E.D. Pa. Apr. 23, 2004); Chavez-Rivas v. Olsen, 194 F. Supp. 2d 368, 371 (D.N.J. 2002); Caballero v. United States, 145 F. Supp. 2d 550, 558 (D.N.J. 2001); see also White v. Grace, 2005 WL 1309044, at *4 (M.D. Pa. June 1, 2005).

* * *

Bottom line: the Endo Rule is the law --- and under that rule this Court retains the jurisdiction it had over this case, see Part IV, even though the Petitioner is now in Louisiana.

VII. The Immediate Custodian Rule

To this point, the Court has determined that it properly acquired jurisdiction over this case because, under 28 U.S.C. § 1631, the Petition counts as if it was filed here at around 4:40am on March 9 --- when the Petitioner was in New Jersey. See Part IV.

And as set out just above, see Part VI, jurisdiction has stayed with the Court since March 9 --- even though later on March 9 the Petitioner was moved to Louisiana and remains there.

There is, though, one remaining issue.

As noted, see Part II and Part V, habeas petitions must name as a respondent the detainee's "immediate custodian." See generally Padilla, 542 U.S. at 435. For a person being detained in connection with an immigration matter, the immediate custodian is the warden of the detention center. See Anariba, 17 F.4th at 444.

The Petitioner did not name any warden.

That was no surprise --- at the time she put together a filing on his behalf, the Petitioner's lawyer thought he was in New

York. It would not have made sense for her to name the warden of a New Jersey facility.[26]

Is this an issue? As a practical matter, not always.

When a habeas case is filed in the wrong district and then sent to another, the petitioner often simply adds a proper respondent-warden in the new district --- and things are wrapped up that way.[27]

But that is not required.

A court does not have jurisdiction unless the proper immediate custodian is named as a respondent on the petition. See Padilla, 542 U.S. at 441. A respondent-custodian can choose to waive objections to personal jurisdiction. See Dufur v. U.S. Parole Comm'n, 34 F.4th 1090, 1096–97 (D.C. Cir. 2022); Flynn v. Kansas, 299 F. App'x 809, 810 n.3 (10th Cir. 2008); Smith v. Idaho, 392 F.3d 350, 355–56 (9th Cir. 2004). But he or she does not need to.

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[26] Naming a New Jersey warden while confident that her client was in New York might have been in some tension with the lawyer's professional obligations. See Fed. R. Civ. P. 11(b); cf. Moore's Federal Practice § 11.11. And note that the law has long expected lawyers working on behalf of detainees to do the legwork needed to name the right custodian, even when doing so is very difficult. See, e.g., Paul D. Halliday, Habeas Corpus: From England to Empire 43 (2010) (describing 17th- and 18th-century practice).

[27] For cases in which courts have gone down that route or a similar one, see, for example: Jackson v. Chapman, 589 F. App'x 490, 491 n.1 (11th Cir. 2014); Kordelski v. Jordan, 111 F. App'x 557, 558 n.* (10th Cir. 2004); Stanley v. Calif. Sup. Ct., 21 F.3d 359, 360 (9th Cir. 1994); West v. Louisiana, 478 F.2d 1026, 1029 (5th Cir. 1973); Medina v. People, 2020 WL 5217150, at *6 (C.D. Cal. July 28, 2020); Bradley v. U.S. Parole Comm'n, 2017 WL 2604267, at *1 n.2 (M.D. Pa. May 23, 2017), report and recommendation adopted by 2017 WL 2592403 (M.D. Pa. June 15, 2017); Forney v. Recktenwald, 2014 WL 4437552, at *1 (M.D. Pa. Sept. 9, 2014); Burns v. Weber, 2010 WL 276229, at *5 (D.N.J. Jan. 19, 2010); see also Bridges v. Chambers, 425 F.3d 1048, 1049 (7th Cir. 2005); Smith v. Idaho, 392 F.3d 350, 353 n.3 (9th Cir. 2004); Cruz-Aguilera v. INS, 245 F.3d 1070, 1073 n.2 (9th Cir. 2001).

That is in essence the tack the Respondents take here.

First, they argue that this Court lacks jurisdiction because the Petitioner's current immediate custodian (the warden of the Louisiana facility where he is held) is not named as a respondent. See Motion to Dismiss at 6 (implying this argument); Transcript at 17:14-19, Khalil v. Joyce, No. 25-01963 (D.N.J. Mar. 28, 2025) ("March 28 Transcript").

And this might be a practical problem.

There are hard territorial limits on a habeas court's jurisdiction. This Court's habeas power ends at the state line. Out-of-state "long arm" jurisdiction is available in most other civil cases, but not in this one. See Padilla, 542 U.S. at 444-45; see also Gonzalez v. Grondolsky, 152 F. Supp. 3d 39, 44 (D. Mass. 2016) (interpreting Padilla); Qiang, 2006 WL 3762029, at *2 (same); see generally Brian R. Means, Postconviction Remedies § 12:5 (2024) (describing Padilla).

So if the Louisiana warden must be named, the Court might not be able to reach him or her.

And second, the Respondents argue that even if the Petition were treated as having been filed on March 9, there is no jurisdiction here because a New Jersey warden was never named. See Motion to Dismiss Brief at 8 ("Because [the Petitioner's] original petition was improper, no court has yet had proper habeas jurisdiction over this matter."); March 28 Transcript at 8:25 to 9:12.

* * *

Neither of these arguments works.

The first argument, as to the Louisiana warden, runs aground on the Supreme Court's Endo Rule, see Part VI, for reasons explained below in Part VII.A.

The second argument, as to the New Jersey warden, makes for a closer question. But it, too, does not work --- in light of the "unknown custodian" exception most commonly associated with Judge Bork's decision in Demjanjuk v. Meese, 784 F.2d 1114 (D.C. Cir. 1986). This is explained in Part VII.B.

A. The Louisiana Warden

Recall that under the Endo Rule a court retains jurisdiction over a habeas petitioner even after the petitioner is moved out of the court's territory. See Part VI.

But how can this work?

Assume that the court decides that the petitioner must be released. The court then would be expected in the ordinary case to issue a writ to the petitioner's immediate custodian. But the court does not have obvious direct power over the custodian. After all, in the Endo situation the immediate custodian is by definition physically outside the court's jurisdiction.[28]

Something needs to give. Either the Endo idea that the court keeps jurisdiction as the petitioner is moved about. Or the idea that habeas writs can run only to the immediate custodian.

The Supreme Court's choice: to relax the immediate custodian rule.[29] Per the Padilla Court:

> Endo stands for the . . . proposition that when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release.

542 U.S. at 441.

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[28] "By definition" because Endo is about detainees who are moved outside a court's territory. And immediate custodians are always physically with detainees. See Padilla, 542 U.S. at 444 ("By definition, the immediate custodian and the prisoner reside in the same district."). That is what makes them "immediate" custodians. See Yi v. Maugans, 24 F.3d 500, 508 (3d Cir. 1994) ("[I]t is the warden that has day-to-day control over the prisoner and who can produce the actual body.").

[29] In a somewhat analogous non-habeas context, courts have seen things differently --- and held that it is the retain-jurisdiction principle that might not be sustainable. See footnote 23 (discussing the "useless judgment" rule).

Who has "legal authority"? A senior supervisor of the immediate custodian.

For example, in the Endo case itself, the California court did not have power over Endo's Utah-based immediate custodian. See 323 U.S. at 285. But that did not matter, the Supreme Court explained. The California court had jurisdiction over an up-the-chain supervisor of the immediate custodian, and the supervisor could tell the immediate custodian to release Endo. See id. at 304-05.

* * *

Come back now to this case.

Here, there was no need for the Petitioner to have named the Louisiana warden as a respondent. This is because one of the warden's senior supervisors is named --- and that is what is needed under the Supreme Court's decisions in Padilla and Endo.

The senior supervisor-respondent is the Secretary of Homeland Security. See footnote 4. Her cabinet department includes ICE. See Clark v. Martinez, 543 U.S. 371, 375 (2005). And ICE runs the facility where the Petition is currently detained. See Joyce Declaration ¶¶ 18–19.

Moreover, as the Respondents concede, the Secretary "is within the Court's jurisdiction." See Respondents' Letter (Mar. 28, 2025) (ECF 140). Therefore, if it came to it, this Court could order the Secretary to direct the immediate custodian to release the Petitioner.

B. The New Jersey Warden

Come now to a final immediate custodian issue.

The Petition, as discussed above, was filed in New York on March 9, and must be treated as if it was filed in New Jersey at that moment. See Part IV.B. But the Petition said nothing about the Petitioner's then-custodian --- the warden of the New Jersey facility where he was then held.

That seems at first glance to run afoul of the immediate custodian rule. After all, jurisdiction requires not only that the petitioner be in the district --- but also that his immediate custodian be named as a respondent on the petition.

See Padilla, 542 U.S. at 435, 442. And here no New Jersey warden was named.[30]

The Court's concludes that, on the facts here, this is no bar to jurisdiction.

To explain why, the Court first sets out some relevant (and uncontested) facts, see Part VII.B.1, and then describes the unknown custodian exception to the immediate custodian rule. See Part VII.B.2. The Court then determines, see Part VII.B.3, that the exception applies to this case --- and excuses the Petitioner's failure to name a New Jersey warden. See Part VII.B.3.

1. Facts

Move now through some of the relevant facts.

The Petitioner, as previously noted, was arrested at around 8:30pm on March 8. See Greer Declaration ¶ 4; Joyce Declaration ¶ 7. The arrest took place in Manhattan. See Joyce Declaration ¶ 7.

One of the arresting agents said to the Petitioner's wife that he was being taken to a particular and prominent local building. See Declaration of Noor Ramez Abdalla (ECF 55) ("Abdalla Declaration") ¶ 14; see also Greer Declaration ¶ 7. The building is in Manhattan.

A lawyer for the Petitioner then "worked all night to draft a habeas petition." Greer Declaration ¶ 9. It was electronically filed at 4:40am, see id., in the federal court in Manhattan.

Why there? Per the lawyer:

> At the time of filing the petition, we had every reason to believe that Mahmoud [the

[30] The Endo Rule, as discussed just above in Part VI, is not relevant. It is about a transfer (in this case, to Louisiana) after jurisdiction has attached --- not about whether jurisdiction properly attached in the first place. It allows for loosening of the immediate custodian rule at Time 2, after a person has been moved. See Part VI.A. But it does not purport to say anything as to the immediate custodian rule for the earlier period, at Time 1.

> Petitioner] was detained in New York because of what the DHS agent told his wife and the ICE Online Detainee Locator System.
>
> I originally checked the ICE locator around 10 PM on Saturday, March 8th and Mahmoud was not in the system. I checked again at 1:35 AM on Sunday, March 9th and it said he was in custody in New York and to call the field office. I checked again at 4:29 AM on Sunday, March 9th and it said the same thing. I checked again at 8:30 AM on Sunday, March 9th and Mahmoud was still listed as being detained in New York.

Id. ¶¶ 9-10.

In a nutshell: the Petitioner filed in Manhattan because affirmatively-supplied information said he was there. The arresting agent pointed to Manhattan, and so did the online "detainee locator" --- it "located" the Petitioner in New York, both before and after the filing was made there.

But as has been discussed, the Petitioner was moved from Manhattan to New Jersey during the early hours of March 9, about 80 minutes before the Manhattan petition was filed. Compare Joyce Declaration ¶ 14, with Greer Declaration ¶ 9.

Could the Petitioner have told his lawyer or someone else that he had been moved to New Jersey? The evidence on this point is from the Petitioner, and has not been disputed:

> The moment I arrived [in New Jersey], I told the officers that I needed to call my attorney. They told me to ask another guy at the facility. I asked that guy, and he said I needed to wait until I was processed.

Khalil Declaration ¶ 9.

> Later, in the morning, I asked a female officer to allow me to call my attorney, and she told me, like the first guy, to wait until I was processed.

Id. ¶ 12.

Could someone have determined in real time that the Petitioner had been moved to New Jersey, such that the Petition, then being prepared, might have listed a New Jersey warden as a respondent?

Nothing in the record suggests that. And there is no suggestion that anyone connected with the Petitioner was sitting on their hands. The lawyer worked through the night on a habeas petition, and re-checked the "detainee locator" ten or so minutes before filing. See Greer Declaration ¶¶ 9–10.

Per the Petitioner's wife's declaration:

> I was unable to sleep that night, first working with Amy [the lawyer] to secure immigration counsel for Mahmoud and then trying to find a way to make contact with him. The lawyers relayed to me that he seemed to be in Manhattan throughout the night, according to an ICE locator. By the early morning, they had filed a lawsuit in federal court, with my consent.
>
> Within a few hours and still in the early morning on Sunday, the locator showed Mahmoud as being held at an immigration detention facility in Elizabeth, New Jersey. I immediately went there, desperate to see my husband. I attempted to see him twice and was told by employees at the facility that he was not there, and that I would not be able to see him. I waited outside of the facility for approximately two hours and was never able to see or be in contact with Mahmoud.

Abdalla Declaration ¶¶ 15–16.

Based on the undisputed evidence here, the Court finds that, as of the time she filed the petition on March 9, the Petitioner's lawyer had been affirmatively and persistently led to believe he was in Manhattan;[31] that she relied on that information; and that

[31] The record here does not provide any obvious reason to conclude that the information supplied by the arresting agent, or posted on the website, was provided in bad faith or with an intent to deceive. But no definitive findings are necessary on this point. This is because the application of the unknown

in spite of her best efforts there was no realistic way for her to know that the Petitioner was, in fact, in New Jersey when she filed the Petition.

All of this leads, all but necessarily, to another finding: as of the time she filed the Petition, there was no real way for the Petitioner's lawyer to know that, at that moment, the Petitioner's immediate custodian was a New Jersey warden. After all, there was no way for her to know he was in New Jersey.

2. The Unknown Custodian Exception

Situations like the above are rare. A lawyer for a person in custody can almost always name the detainee's immediate custodian. But not always, and that is when the unknown custodian exception to the immediate custodian rule kicks in.

Take it up here.

* * *

The unknown custodian exception is often associated with Judge Bork, who issued a relevant in-chambers opinion in Demjanjuk v. Meese, 784 F.2d 1114 (D.C. Cir. 1986).

In federal custody and soon to be extradited, the Demjanjuk petitioner applied for a habeas writ, but the United States declined to say where he was. See id. at 1115-16. What to do? How to satisfy the immediate custodian rule when there is no sense of where the detainee is (and therefore who his immediate custodian is)?

In these circumstances, Judge Bork held that the habeas petition before him could be assessed on the merits. See id. at 1116. It was the more "[]practica[l]" solution, Judge Bork ruled. Id. This even though it was at odds with the district of confinement rule, of which more soon, because it was anyone's guess whether the petitioner was in DC, where Judge Bork sat. And this even though it was at odds with the immediate custodian rule, for the same reason.

Given that the immediate custodian was unknown, Judge Bork relaxed the immediate custodian rule --- and allowed the Attorney General to be named as the respondent on the habeas

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custodian exception, as discussed below, does not turn on the presence of such factors.

petition, on the theory that the Attorney General was the ultimate supervisor of the immediate custodian --- whoever that custodian might turn out to be. See id.

That, in a nutshell, is what the unknown custodian exception does. It opens up an exception to the otherwise-applicable immediate custodian rule when, on the facts of a given case, the immediate custodian simply cannot be known.

* * *

Is this rule the law of the land? The Supreme Court's Padilla opinion suggests the answer is yes.

In Padilla, Chief Justice Rehnquist wrote for five Justices. Two of those Justices, in a concurrence, proposed an exception to the immediate custodian rule. See 542 U.S. at 454 (Kennedy, J., concurring). The Chief Justice rejected this exception. "No exceptions to this rule, either recognized or proposed, apply here." Id. at 435–36. The "proposed" exception was clearly the one offered up by the two concurring Justices --- the Chief Justice had cited it. See id. at 436.

But what were the "recognized" exceptions? The Chief Justice's opinion suggests two, and each laid out in footnote 18 of the Padilla opinion. That footnote reads in part:

> Demjanjuk v. Meese, 784 F.2d 1114 (C.A.D.C.1986), on which the dissent relies, is similarly unhelpful: When, as in that case, a prisoner is held in an undisclosed location by an unknown custodian, it is impossible to apply the immediate custodian and district of confinement rules. That is not the case here, where the identity of the immediate custodian and the location of the appropriate district court are clear.

542 U.S. at 450 n.18 (cleaned up).

And at another point in the opinion, the Chief Justice explained that, on the facts of the Padilla case itself, "the identity of the immediate custodian" was not "shrouded . . . in secrecy." Id. at 449 n.17.

All of this suggests that the Padilla majority took Judge Bork's unknown custodian exception as part of our law.

After all, as far as "proposed" and "recognized" exceptions went, the unknown custodian exception was on the "recognized" side of the line. And the Padilla Court took the exception as a given, with the facts of the case to be measured against it (was the immediate custodian "shrouded . . . in secrecy"?).

* * *

The United States has generally taken the same basic approach. Where the issue has come up around the country, it has argued that the unknown custodian exception does not match the facts of a particular case. See Appellee's Brief at 25, Remy v. Chadbourne, 184 F. App'x 79 (2d Cir. 2006) (No. 05-0602), 2006 WL 6263982; Brief for John Ashcroft Attorney General of the United States at 33, Filsaime v. Ashcroft, 393 F.3d 315 (2d Cir. 2004) (No. 03-2221), 2004 WL 3525390, at *33; Respondents' Reply Memorandum in Support of Motion to Dismiss Improper Respondents at 6 n.3, Ali v. Obama, 741 F. Supp. 2d 18 (D.D.C. 2010) (No. 10-1020), 2008 WL 8202651; Memorandum in Support of Motion to Dismiss, at 10, Baez v. INS, 2005 WL 3541030 (E.D. La. Oct. 25, 2005) (No. 03-1568), 2003 WL 25713262.

But it does not appear to have contended that the unknown custodian exception is in some sense itself incorrect as a matter of law.

* * *

Lower court opinions have also treated the unknown custodian rule as a basic part of our law.

In United States v. Moussaoui, 382 F.3d 453 (4th Cir. 2004), for example, a defendant sought access to a trial witness held in military custody via a writ of habeas corpus ad testificandum, but the immediate custodian was unknown. See id. at 465.

No matter, the Fourth Circuit held. "[T]he immediate custodian [was] unknown. Under such circumstances, the writ is properly served on the prisoner's ultimate custodian." Id. (citing Demjanjuk, 784 F.2d at 1116).

The "ultimate custodian" in Judge Bork's case was the Attorney General who supervised all the federal prisons in which the habeas petitioner might have been held. See Demjanjuk, 784 F.2d at 1116. In Moussaoui, the "ultimate custodian" was the Secretary of Defense, who supervised all the Nation's troops,

some of whom were said to be holding the witness. 382 F.3d at 465.

Moussaoui does not stand alone.

In United States v. Paracha, 2006 WL 12768 (S.D.N.Y. Jan. 3, 2006), aff'd, 313 F. App'x 347 (2d Cir. 2008), the court came to the same conclusion on virtually the same facts. Witnesses were said to be in the custody of the United States "in undisclosed locations abroad." Id. at *5. Could a habeas writ issue for their testimony? Yes, the Court held, citing the unknown custodian exception: because "the immediate custodian is unknown, a writ may properly be served on the prisoner's ultimate custodian." Id. at *6 (citing Demjanjuk and Moussaoui). And so the writ went to the Secretary of Defense. See id.

Another example. In Ali v. Ashcroft, 2002 WL 35650202 (W.D. Wash. Dec. 10, 2002), a habeas class action named the Attorney General as respondent. See id. at 3. What about the immediate custodian rule? Per the district court, this did not matter: "[a] nationwide habeas class with the Attorney General as respondent is appropriate when the location of the putative class members is unclear." Id.

In dicta, the lower federal courts have consistently embraced the unknown custodian exception to the immediate custodian rule. See, e.g., Vasquez, 233 F.3d at 696; Roman, 340 F.3d at 325; Aransevia v. McKelvy, 77 F. App'x 531 (D.C. Cir. 2003); Guerra v. Meese, 786 F.2d 414, 416 n.1 (D.C. Cir. 1986); Hamama v. Adducci, 2017 WL 2806144, at *2 (E.D. Mich. June 26, 2017); Heras-Quezada v. Terry, 2012 WL 13076586, at *2 (D.N.M. July 17, 2012), report and recommendation adopted by 2012 WL 13076297 (D.N.M. Sept. 10, 2012); Bailes v. Quinlan, 1988 WL 58914, at *1 n.3 (D.D.C. May 20, 1988); cf. Blackmon v. England, 323 F. Supp. 2d 1, 4 (D.D.C. 2004).

And a standard treatise has put it this way: "The 'immediate custodian' rule . . . is inapplicable . . . where the prisoner's current whereabouts are unknown." Randy Hertz & James S. Liebman, 1 Federal Habeas Corpus Practice & Procedure § 10.1 (7th ed. 2015); accord Brian R. Means, Federal Habeas Manual § 1:93 (2024) ("[W]here the immediate custodian is unknown, the writ may be served on the prisoner's ultimate custodian.").

3. Applying the Unknown Custodian Exception

The unknown custodian exception is an established part of federal law, see Part VII.B.2, and under it the immediate custodian rule can be set aside in "limited and special circumstances." Demjanjuk, 784 F.2d at 1116.

Which ones? When the identity of the immediate custodian is virtually unknowable.

That was the case here.

The Petitioner's lawyer, the Court has found, was affirmatively led to believe that he was in New York --- and because no phone calls were allowed, the Petitioner could not undo the impression. See Part VII.B.1.

What happens when the unknown custodian exception applies? The Petitioner is permitted to name not his immediate custodian, as is normally required, but his "ultimate" custodian. See Demjanjuk, 784 F.2d at 1116; Moussaoui, 382 F.3d at 465; Paracha, 2006 WL 12768, at *6.

And that is what the Petitioner did here. His Petition, filed on March 9, named as a respondent the Secretary of the Department of Homeland Security. She is the ultimate supervisor of any possible warden of a New Jersey detention facility.

All of this adds up the conclusion that the Respondents' New Jersey-focused immediate custodian argument is not persuasive. The Petitioner did not name as a respondent his immediate New Jersey custodian. But he did not need to. That custodian was not only unknown to the Petitioner's lawyer, but virtually unknowable to her. And so the Petition could clear the bar by doing what it did --- naming the Petitioner's ultimate custodian, the Secretary of Homeland Security.

* * *

Take now three points related to the above conclusion, each rooted in a comparison of this case to Demjanjuk.

a) "If Known"

The first point: in some ways, this is an easier case for application of the unknown custodian exception than Demjanjuk --- given where this case is procedurally and where that one was.

To see the point, note that a federal habeas court exercises a package of powers. The "power to entertain a prisoner's request that the court direct a habeas writ to a custodian" is one of these powers. Lee Kovarsky, A Constitutional Theory of Habeas Power, 99 Va. L. Rev. 753, 757 (2013). Another power typically comes into play later, the "power to issue a habeas writ instructing a custodian to produce the body and justify detention." Id.; see also id. at 763-65 (describing habeas procedure at common law); Halliday, Habeas Corpus: From England to Empire at 39-63 (setting out, historically, the set of procedures that were bundled together in order "to produce the body").

Judge Bork used the unknown custodian rule through to the end of the case --- at the merits stage.

But this case is at a much earlier point. All that is in play for now is the table-setting question, the Court's "power to entertain a prisoner's request that the court direct a habeas writ to a custodian." Kovarsky, A Constitutional Theory of Habeas Power, 99 Va. L. Rev. at 757.

And at this earlier point in the litigation, there is more flexibility in terms of a petitioner naming the correct custodian.

The habeas statute, for example, is cleaved in two. Section 2243 covers the later stages of a habeas case, on merits/remedy. See 28 U.S.C. § 2243. Section 2242 covers the earliest stage --- what is essentially the pleading stage, where this case is now.

In turn, Section 2242 is more forgiving when it comes to naming precisely the right custodian. See 28 U.S.C. § 2242 (indicating that a habeas petition "shall allege . . . the name of the person who has custody over [the petitioner] . . . if known") (emphasis added); see also Nguyen v. Kissinger, 528 F.2d 1194, 1204 n.17 (9th Cir. 1975) (the section "requires the naming of the custodian 'if known,' seemingly contemplating the power of the district court to develop the fact if unknown"). Section 2243, which kicks in later, has no "if known" carve-out.

Judge Bork, as noted, applied the unknown custodian exception through to what was the last stage of the habeas proceeding. He ruled on the merits of the habeas petition before him, see

Demjanjuk, 784 F.2d at 1116-18, but even at that point no immediate custodian had been named.

It is a lighter lift than that to apply the unknown custodian exception to this case now --- at the beginning of the habeas process, when Congress has suggested (through the "if known" language) something of a different approach to unknown custodian issues. Cf. Armentero v. INS, 340 F.3d 1058, 1068 (9th Cir. 2003), reh'g granted, opinion withdrawn, 382 F.3d 1153 (9th Cir. 2004), opinion after grant of reh'g, 412 F.3d 1088 (9th Cir. 2005) ("[W]hile a petitioner's immediate physical custodian is typically a proper respondent . . . the statutory custodian requirement of 28 U.S.C. § 2241 is sufficiently flexible to permit the naming of respondents who are not immediate physical custodians if practicality, efficiency, and the interests of justice so demand.").[32]

b) The District of Confinement Rule

Turn now to another reason why it is more straightforward to apply the unknown custodian exception in this case than in Demjanjuk.

To see the point, first take a step back.

* * *

The law often channels cases to particular courts based on fixed-in-advance criteria, like where an event took place or where a defendant lives. See Daimler AG v. Bauman, 571 U.S. 117, 128 (2014); Atl. Marine Constr. Co. v. U.S. Dist. Ct. for the W. Dist. of Tex., 571 U.S. 49, 55-56 (2013). Applying pre-baked rules of this sort has a number of effects, including paring back possible forum-shopping.

[32] At a later stage in the proceedings here, would the unknown custodian exception continue to excuse not naming the New Jersey warden who apparently held the Petitioner as of March 9? That question is for later. But it also may never come up. The Petitioner has sought permission to amend the Petition, see Opposition Brief at n.1, to add appropriate respondents now that the dust has settled, and it is clear where the Petitioner was on March 9 at 4:40am. That request is hereby granted, and the Petition may be amended to add additional respondents, provided the amended petition is filed before 5:00pm on April 3.

Habeas law is no exception. It too has rules that send certain cases to certain courts. And limiting forum-shopping is also a key purpose of those rules.

The rules are reflected in Congress' 1867 amendments to the habeas statute, under which the district courts have power to grant habeas writs --- but only "within their respective jurisdictions." 28 U.S.C. § 2241(a).

Congress, per the Supreme Court, "thought [it] inconvenient, potentially embarrassing, certainly expensive and on the whole quite unnecessary to provide every judge anywhere with authority to issue the Great Writ on behalf of applicants far distantly removed from the courts whereon they sat." Carbo v. United States, 364 U.S. 611, 617 (1961).

Judicial practice reflects this same concern, and courts have long held that a habeas writ cannot typically issue as to a person in custody outside the borders of the district in which the habeas court sits. See, e.g., United States ex rel. Harrington v. Schlotfeldt, 136 F.2d 935, 940 (7th Cir. 1943); United States ex rel. Belardi v. Day, 50 F.2d 816, 817 (3d Cir. 1931); In re Boles, 48 F. 75, 75-76 (8th Cir. 1891); Ex parte Yee Hick Ho, 33 F.2d 360, 361 (N.D. Cal. 1929); Ex parte Gouyet, 175 F. 230, 233 (D. Mont. 1909); see also Carbo, 364 U.S. at 616 (describing an unreported decision in which Chief Justice Chase, riding circuit, "reject[ed] an application for the Great Writ from a prisoner on the ground that he was incarcerated outside his circuit").[33]

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[33] This may sometimes have been the approach in pre-1867 cases, too. See, e.g., In re Bickley, 3 F. Cas. 332, 333 (S.D.N.Y. 1865) (No. 1,387) (discussing "actual confinement" of the prisoner in the court's district). As to a possible reason why, note that the 1867 amendments' reference to habeas courts' "respective jurisdiction" is often taken to mean the district courts' territorial jurisdiction. See Padilla, 542 U.S. at 442-44; see also, e.g., Ex parte Kenyon, 14 F. Cas. 353, 354 (C.C.W.D. Ark. 1878) (No. 7,720). But that may not have added quite so much. Especially in the pre-"long arm" era, territorial limits on the jurisdiction of the federal courts were often thought to already exist, flowing from the fact that Congress in 1789 had opted to divide the Nation into distinct territorial districts. (For an example of this approach, see Justice Washington's opinion in Ex parte Graham, 10 F. Cas. 911 (C.C.E.D. Pa. 1818) (No. 5,657).) On this understanding,

In the mid-20th century, the Supreme Court began to refer to this approach in shorthand --- as the "district of confinement rule." See Ahrens, 335 U.S. at 210 (Rutledge, J., dissenting) (using the term "district of confinement"); Carbo, 364 U.S. at 618 (same); Braden, 410 U.S. at 499 n.15 (same); see generally Padilla, 542 U.S. at 442 ("[T]he traditional rule has always been that the Great Writ is issuable only in the district of confinement.") (cleaned up).

The district of confinement rule is this: "for . . . habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement." Padilla, 542 U.S. at 443 (emphasis added).

But this line can be hard to hold.

Habeas is a remedy that runs to a detainee's custodian, on the theory that it is the custodian who can release the detainee if ordered to do so by a court. See, e.g., id. at 435; Braden, 410 U.S. at 494–95; Wales v. Whitney, 114 U.S. 564, 574 (1885); see also 28 U.S.C. § 2243.

And that can fold complexity into the mix.

Sometimes, for example, a person might be detained in district A while his custodian is in both district A and district B. This may be the case when the custodian is physically in district A but exercises power in both district A and district B. Does this mean that the case can go forward in both the district of confinement (A) and also in one of the districts where the custodian is located (B)? Does the background district of confinement rule get overridden or softened?[34]

Or take another example.

Think of a federal criminal prisoner, held in a prison in district A under the authority of the Attorney General, as in some sense all or virtually all federal criminal prisoners are. Can her habeas case go forward only in district A (because that

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territorial limits on jurisdiction in habeas cases may have been taken as the background assumption --- confirmed and made more explicit in the 1867 statutory amendment, but not newly established by it.

[34] The Third Circuit has suggested that the answer is no, the action goes forward only in A. See Day, 50 F.2d at 817–18.

is her "district of confinement"), or can it go forward in any of the country's 94 judicial districts that she picks? (The theory for going forward in any of the 94 districts would be that the Attorney General is legally present in each district, cf. Fed. R. Civ. P. 4(i)(2), and that, if ordered to do so by any district court, the Attorney General can as a practical matter direct the release of a person confined in district A.[35])

* * *

All of this points to habeas law's core challenge in this area: to prevent the district of confinement rule (habeas cases generally go forward only in the district where the petitioner is held) from being undermined by the fact that habeas cases must always run against a custodian (who may well be somewhere else, outside the district of confinement).

A critical part of the Supreme Court's approach to this issue has been to adopt the immediate custodian rule.

That rule tells habeas petitioners to name nearby officials (like the warden of a detention facility, see Padilla, 542 U.S. at 435, Yi v. Maugans, 24 F.3d 500, 507 (3d Cir. 1994)), and not far-off supervisors (like the warden's boss in another state or back in Washington).

> In habeas challenges to present physical confinement, . . . the district of confinement is synonymous with the district

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[35] If a habeas case can go forward anywhere a petitioner chooses, the forum-shopping would become severe. Per Judge Easterbrook:

> National venue would mean that one idiosyncratic district or appellate court anywhere in the nation could insist that the entire federal government dance to its tune. Requiring prisoners to litigate where they are confined . . . not only distributes business among the district courts and circuits but also allows important issues to percolate through multiple circuits before the Supreme Court must review a disputed question.

al-Marri, 360 F.3d at 710.

> court that has territorial jurisdiction over the proper respondent. This is because . . . the immediate custodian rule applies . . . . By definition, the immediate custodian and the prisoner reside in the same district.

Padilla, 542 U.S. at 444 (cleaned up).

> Whenever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement.
>
> This rule, derived from the terms of the habeas statute, serves the important purpose of preventing forum shopping by habeas petitioners. Without it, a prisoner could name a high-level supervisory official as respondent and then sue that person wherever he is amenable to long-arm jurisdiction. The result would be rampant forum shopping, district courts with overlapping jurisdiction, and the very inconvenience, expense, and embarrassment Congress sought to avoid when it added the jurisdictional limitation 137 years ago.

Id. at 447 (cleaned up).

The immediate custodian rule, in short, checks all the boxes.

It tells habeas petitioners who to sue: the immediate custodian. And zeroing in on the immediate custodian prevents any possible end-run around the district of confinement rule --- because an immediate custodian is always in the same district where the petitioner is confined.

Put differently, the immediate custodian rule eases the possible tension between (1) the overarching district of confinement rule and (2) the idea that all habeas petitions must name a custodian.

The reason is that, under the immediate custodian rule, these two always point in the same direction. Why? Because the district of confinement rule focuses on where a habeas

petitioner is. And the immediate custodian rule focuses on a custodian who is always with the petitioner. A person in custody and his immediate custodian are, "[b]y definition," id. at 444, always in the same place.

* * *

Against the backdrop set out above, come back to Demjanjuk and then to this case.

In Demjanjuk, Judge Bork relaxed the immediate custodian rule because the custodian was unknown. See Part VII.B.2.

But doing so in that case was an especially large leap. This was because in Demjanjuk, relaxing the immediate custodian rule (via the unknown custodian exception) potentially threatened to undermine one of the key reasons the immediate custodian rule is there in the first place --- to prevent habeas petitions from going forward in a place that is not the district of confinement.

After all, the Demjanjuk petition was filed before Judge Bork in Washington, DC. But the Demjanjuk petitioner may not have been confined there. Where he was being held was unknown to the court. See Demjanjuk, 784 F.2d at 1115–16. He could just as easily have been in custody in Texas or Michigan or Maine. Any federal judge in America might have been asked to use the unknown custodian exception and get to the merits, just as Judge Bork was asked to (and did). Cf. id. at 1116 ("[i]t is impracticable to require the attorneys to file in every jurisdiction").

* * *

But this case poses none of these issues.

This case, as filed on March 9 at 4:40am, can go forward in New Jersey because that is where the Petitioner was confined at that moment. See Part VII.B.1. And because New Jersey was the district of confinement then, this case can go forward only in New Jersey, unless it is now dismissed and re-filed elsewhere. See Padilla, 542 U.S. at 443 ("[F]or . . . habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.") (emphasis added).

This means that relaxing the immediate custodian rule here --- because as of the time of filing on March 9 the Petitioner's

lawyer could not know that the Petitioner was in New Jersey --- does not open the door to forum-shopping. The case as filed can go forward only here. The other 93 districts, where the Petitioner was nowhere to be found, are out of the question.

Indeed, relaxing the immediate custodian rule here has precisely the opposite effect of forum-shopping.

It opens the way to this case continuing in the district that was the single district of confinement at the moment the Petition was filed. The unknown custodian exception does this by removing an impediment to this case going forward in New Jersey, the district of confinement (the impediment being the contention that the immediate custodian rule was violated because no New Jersey custodian was timely named as a respondent).

* * *

To put the point in a different way:

Per the Supreme Court, the immediate custodian rule exists in part to protect the district of confinement rule.

If the unknown custodian exception to the immediate custodian rule makes sense even where (as in Demjanjuk) it seems to undermine the district of confinement rule, then there is an all-the-stronger case for applying the unknown custodian exception here.

Why? Because applying the unknown custodian exception in this case actively advances the district of confinement rule. Applying the exception here helps ensure that this case goes forward in the district of confinement, New Jersey, where the Petitioner was held when the Petition was filed.

If the unknown custodian exception can apply (as in Demjanjuk) even in the teeth of the district of confinement rule --- why not apply it where, as here, it is the way to make that rule stick?

c) Conclusion

The unknown custodian exception applies here. See Part VII.B.3. And in two important ways it makes more sense to apply the exception in this case than it did in Demjanjuk. See Parts VII.B.3.a–b.

In another sense, though, Demjanjuk was a stronger and easier case for application of the unknown custodian exception.

That is the subject of this section.

* * *

Per the Supreme Court, courts must apply the habeas statute with an eye to the underlying equitable nature of the writ. See Brown v. Davenport, 596 U.S. 118, 132 (2022); Holland v. Florida, 560 U.S. 631, 646 (2010); Boumediene v. Bush, 553 U.S. 723, 780 (2008); Munaf v. Green, 553 U.S. 674, 693 (2008); Schlup v. Delo, 513 U.S. 298, 319 (1995).

And it appeared in Demjanjuk that, if the unknown custodian exception were not brought to bear, no habeas petition could have been heard anywhere in the United States (save, perhaps, by a Supreme Court Justice). After all, the location of the petitioner was being kept confidential. See Part VII.B.3. No proper custodian could be named anywhere because no custodian could be named --- and this would have been as much a problem for a habeas petition filed in DC, where the case was brought, as it would have been anywhere else.

From an equitable perspective, this suggests that Demjanjuk was a more persuasive case for application of the unknown custodian exception. Without that exception, the Demjanjuk case could not go forward anywhere. But this case, without the exception, can simply be dismissed and refiled in Louisiana.[36]

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[36] The equities, as referenced here, have nothing to do with the merits. Not in this case --- the Court expresses no view on the case's merits. And not in Demjanjuk --- where Judge Bork was convinced that the petition before him was plainly not persuasive on the merits. See 784 F.2d at 1116-17. (To be sure, there may be a way in which habeas law and Judge Bork's view of the merits came together in Demjanjuk. The habeas petition came to Judge Bork in the first instance, and he was a circuit judge. He decided that it was not worth the time to remand the case to a district court, see id. at 1115, as would typically be done under Federal Rule of Appellate Procedure 22(a), because the case was plainly doomed on the merits. See id. The case being in a circuit court, and not a district court, meant no real possibility of fact-finding, whereas a district judge could presumably have considered

* * *

To unpack the point a bit more, in Demjanjuk the unknown custodian exception was the last resort. It was applied, and the case was considered. But if the exception was not applied, there would have been no way for the petitioner to seek habeas relief --- not in Washington, DC, (where no custodian was named) and not anywhere else (where there would have been the same problem). Without leaning on the unknown custodian exception, there could have been no habeas remedy anywhere.[37]

Here, things are different. If the unknown custodian rule is not applied here, this case might arguably need to be dismissed. But if so, a habeas petition can still be presented. The Petitioner is now detained in Louisiana, and he can presumably refile a habeas petition there.

In that sense --- and it is plainly an important one --- this case is a less compelling one for application of the unknown custodian exception than Demjanjuk was.

* * *

That point moves the needle, but not far enough. And on balance the Court's judgment remains the same: that the unknown custodian exception applies here.

First, the exception applies on its face, see Part VII.B.3, and, while it is associated with Demjanjuk, the exception is bigger than just that case. See VII.B.2. Second, applying the exception here is generally consistent with the habeas statute.

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allowing for some tightly-limited discovery to identify a custodian. See, e.g., Maqaleh v. Hagel, 738 F.3d 312, 325-26 (D.C. Cir. 2013), vacated in part on unrelated grounds sub nom. al-Najar v. Carter, 575 U.S. 908 (2015) (describing jurisdictional discovery in the habeas context). The lack of a named custodian --- an issue addressed in Demjanjuk through the unknown custodian exception --- might conceivably have been handled in a narrower way, and in a factual way rather than a legal way, if Judge Bork had viewed the petition as even potentially having merit, such that a remand to the district court could have made sense.)

[37] And in such a circumstance, there might be an argument that applying the unknown custodian exception is constitutionally required, by the Suspension Clause. Cf. Roman, 340 F.3d at 325.

See Part VII.B.3.a. And third, on the facts of this particular case, the unknown custodian exception vindicates the district of confinement rule, and in that sense protects against forum-shopping. See Part VII.B.3.b.

All that weighs heavily.

Moreover, applying the unknown custodian exception in this case is in the interest of the equitable concerns that the Supreme Court has long invoked in habeas law.

If the unknown custodian exception does not apply here, and this case is therefore dismissed, it is true that the Petition can be refiled in another federal court.

But it is also true that if the exception does not apply, and the case is dismissed on that basis, then the implication would be that there can be a period of time during which a person can be arrested in the United States and then moved by federal officials, during which period no habeas court would have the power to hear him out --- even though, as here, his lawyers and family cannot determine where he is only because they have been given inaccurate information about his whereabouts, and because he has not been allowed to correct that information by making a phone call.

A detainee in that situation would not be able to file a habeas petition in his original place of confinement, because he is no longer there. See Khalil, 2025 WL 849803, at *14 (so holding).

And without the benefit of the unknown custodian exception, he might well not be able to file a habeas petition in the place where he was moved --- because when he filed in the first location he did not name his second custodian (who was then unknown).

Looking back from the perspective of today, April 1, that may not seem like very much. The Petitioner is now in Louisiana. He can file a habeas petition from there.

But that is not the only perspective.

The implication of not applying the unknown custodian exception here is that, as of March 9, the Petitioner, detained in the United States, would not have been able to call on any habeas court. Not in Louisiana, New York, or New Jersey. And not anywhere else, either.

That is too far. Our tradition is that there is no gap in the fabric of habeas --- no place, no moment, where a person held in custody in the United States cannot call on a court to hear his case and decide it. See, e.g., 3 William Blackstone, Commentaries *131 ("[T]he sovereign is at all times entitled to have an account, why the liberty of any of her subjects is restrained, wherever that restraint may be inflicted."); accord, e.g., Boumediene, 553 U.S. at 741; 2 Joseph Story, Commentaries on the Constitution of the United States § 1341, p. 237 (3d ed. 1858).

VIII. Conclusion and Next Steps

The Court's conclusion: it has jurisdiction over this case and the Respondents' motion to dismiss must therefore be denied.

* * *

Recall for a moment the basis for this conclusion.

A habeas court generally has jurisdiction (1) where the habeas petitioner is physically in the court's district when (2) he files his habeas petition. See Part II.

Here, each box is checked. The Petitioner was in New Jersey on March 9 at 4:40am. And Congress has required that the Petition must be taken as having been filed in New Jersey at that same moment. See Part IV.

That vested this Court with jurisdiction.

The Court's jurisdiction is not defeated by the Petitioner having been moved to Louisiana. See Part VI.

And the Court's jurisdiction is not undone, either, by the Petition not having named either a Louisiana or New Jersey warden. See Part VII.

* * *

Before concluding, note that this case is postured in an unusual way. But in rare circumstances, other courts have dealt with a case that, in some ways, has similar facts to this one.

In such cases, a habeas petition is filed in Place 1 while the petitioner is actually in Place 2; and by the time a court sends the case to a court in Place 2, the petitioner has been moved to Place 3.

These cases have all landed on the same conclusion as this Court: jurisdiction is proper in Place 2. See Golding v. Sessions, 2018 WL 6444400 (S.D.N.Y. Dec. 6, 2018); Simpson v. Ashcroft, 321 F. Supp. 2d 13 (D.D.C. 2004); Belvett v. Ashcroft, 2002 WL 287839 (S.D.N.Y. Feb. 27, 2002). Here, that place is New Jersey.

* * *

In the ordinary course, the Court's decision today would likely be unappealable. But there may be reasons for allowing an interlocutory appeal here under 28 U.S.C. § 1292(b). The Court will solicit the parties' views on this question.

But discussion about an interlocutory appeal may turn out to be unnecessary. The Respondents, for example, may opt to waive their right to further challenge this Court's jurisdiction (and venue) over the Petition. As to that point, the Court will solicit the Respondents' views pursuant to an Order. It will issue shortly.

* * *

For the reasons set forth above, the Respondents' motion to dismiss is denied.

It is on this 1st day of April, 2025, so **ORDERED**.

Michael E. Farbiarz, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MAHMOUD KHALIL, *Petitioner*, v. WILLIAM P. JOYCE et al., *Respondents*.	No. 25-cv-01963 (MEF)(MAH) **OPINION**

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* * *

A lawful permanent resident is held in immigration custody, and federal officials have begun proceedings before an immigration judge to remove him from the United States.

The lawful permanent resident has moved for a preliminary injunction, claiming that one of the charges against him is unconstitutional and that this Court should therefore order him released.

In response, federal officials argue that the motion should be denied, in part because this Court cannot hear the case. Certain statutes, they say, strip the Court of jurisdiction.

The jurisdictional argument is not persuasive. This Opinion explains why.

I. Background

A. The Facts

A lawful permanent resident[1] was arrested by federal officials. See Declaration of Amy E. Greer (ECF 11-1) ¶¶ 4-6; Second Supplemental Declaration of Acting Field Office Director William P. Joyce ("Joyce Declaration") (ECF 72) ¶¶ 6-7.

While in custody, he was handed various forms. See Declaration of Mahmoud Khalil ("Khalil Declaration") (ECF 73-1) ¶¶ 4-6; Joyce Declaration ¶ 7.

These said two main things.

First, that federal officials were seeking to remove him from the United States based on 8 U.S.C. § 1227(a)(4)(C)(i), of which more in a moment. See Joyce Declaration ¶ 7.

And second, that as part of that process he had to appear before an immigration judge.[2] See Khalil Declaration ¶ 5.

The proceedings before the immigration judge are now underway.

* * *

[1] Mahmoud Khalil. A lawful permanent resident is a person who has "been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws[.]" 8 U.S.C. § 1101(a)(20).

[2] Removing a lawful permanent resident from the United States generally requires a hearing. See 8 U.S.C. § 1229a. Those typically go forward before an immigration judge. See id. § 1229a(a)(1); 8 C.F.R. § 1240.10(a). An immigration judge is an "attorney[] whom the Attorney General appoints as [an] administrative judge[] . . . to conduct specified classes of proceedings, including [removal] hearings under section 240 of the [Immigration and Nationality Act]." 8 C.F.R. § 1003.10(a).

At an immigration court hearing earlier this month, the immigration judge assessed federal officials' argument that the lawful permanent resident should be removed from the United States under 8 U.S.C. § 1227(a)(4)(C)(i).

Under that statute, "[a]n alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable."

The immigration judge referred to a memorandum from the Secretary of State to the Secretary of the Department of Homeland Security. See Audio Recording of Hearing (April 11, 2025) ("April 11 Audio Recording") at 1:34:40 to 1:34:48.

In the memo, the Secretary of State wrote that he had "determined" that the Petitioner was "deportable" under Section 1227(a)(4)(C)(i). See Memorandum from Marco Rubio, Secretary of State, to Kristi Noem, Secretary of Homeland Security ("Determination") (ECF 198-1) at 1.

Based on the memo, the immigration judge ruled that the requirements of Section 1227(a)(4)(C)(i) had been met and that the lawful permanent resident could therefore be removed from the United States. See April 11 Audio Recording at 1:37:46 to 1:38:25.

* * *

There are further immigration court proceedings to come.

For example, an appeal of the immigration judge's decision might be taken to the Board of Immigration Appeals.[3]

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[3] The Board of Immigration Appeals "function[s] as an appellate body charged with the review of . . . administrative adjudications under the [Immigration and Nationality Act]." 8 C.F.R. § 1003.1(d)(1). It can hear appeals from a variety of decisions made by immigration judges. See id. § 1003.1(b). The Attorney General can review the decisions of the Board of Immigration Appeals. See id. § 1003.1(d)(7)(i), (h). Sometimes, the Attorney General opts to do so. See, e.g., Matter of Coronado Acevedo, 28 I. & N. Dec. 648 (A.G. 2022); Matter of B-Z-R-, 28 I. & N. Dec. 563 (A.G. 2022); Matter of A-C-A-A-, 28 I. & N. Dec. 84 (A.G. 2020); Matter of O-F-A-S-, 28 I. & N. Dec. 35 (A.G. 2020).

And more proceedings have been scheduled before the immigration judge.[4]

B. Procedural History

The lawful permanent resident filed a habeas corpus petition in a federal district court.

From here, he is called "the Petitioner." The various people he named in his habeas petition are referred to, collectively, as "the Respondents."[5]

* * *

The Petitioner filed his case in New York, but it was transferred to New Jersey. See Khalil v. Joyce, 2025 WL 849803 (S.D.N.Y. Mar. 19, 2025).

In New Jersey, the Respondents moved to dismiss the case, arguing it should go forward in Louisiana, where the Petitioner is in custody. The motion was denied. The Court held that

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[4] In addition to the Section 1227(a)(4)(C)(i) charge, federal officials have also pressed a second charge in immigration court against the lawful permanent resident, for allegedly not disclosing certain information when he applied for lawful permanent resident status. See Additional Charges of Inadmissibility/Deportability at 1. Federal officials are also seeking to remove the lawful permanent resident from the United States based on the failure-to-disclose charge. See id. The immigration judge has scheduled a proceeding for next month on that charge.

[5] The Respondents are listed in the Petition as: President of the United States Donald Trump; Acting Field Office Director of New York, United States Immigration and Customs Enforcement, William P. Joyce; Warden of Elizabeth Contract Detention Facility Yolanda Pittman; Acting Director of United States Immigration and Customs Enforcement Caleb Vitello; Secretary of the United States Department of Homeland Security Kristi Noem; Secretary of the United States Department of State Marco Rubio; and Attorney General of the United States Pamela Bondi.

habeas jurisdiction is proper in New Jersey. See Khalil v. Joyce, 2025 WL 972959 (D.N.J. Apr. 1, 2025).[6]

But as the Court noted: there are "other jurisdictional hurdles." Khalil v. Joyce, 2025 WL 1019658, at *1 n.2 (D.N.J. Apr. 4, 2025).

This Opinion considers them.

C. The Motion

The Petitioner has moved for a preliminary injunction. See ECF 66.

Through this motion, he asks the Court to order three things. See Petitioner's Amended Memorandum of Law in Support of Motion for Preliminary Injunctive Relief ("Motion for Preliminary Injunction") (ECF 124) at 9-10.

* * *

First, and as noted above, the Secretary of State has determined that the Petitioner's presence and activities in the United States "would have potentially serious adverse foreign policy consequences and would compromise a compelling U.S. foreign policy interest." Determination at 1. And based on the Secretary's determination, the immigration judge has ruled that the Petitioner can be removed from the United States. See April 11 Audio Recording at 1:37:46 to 1:38:25.

The Petitioner asks the Court to order that the Secretary's determination be set aside, vacated. See Motion for Preliminary Injunction at 9.

The determination, the Petitioner argues, was made in retaliation for statements the Petitioner made on political

[6] The Respondents asked the Court of Appeals to review this decision, and the Petitioner has opposed that request. See Petition for Permission to Appeal an Interlocutory Order of the United States District Court for the District of New Jersey Pursuant to 28 U.S.C. § 1292(b) at 1-2, Khalil v. President U.S. (No. 25-08019); Opposition to Petition for Permission to Appeal an Interlocutory Order of the U.S. District Court for the District of New Jersey Pursuant to 28 U.S.C. § 1292(b) at 1-3, Khalil v. President U.S. (No. 25-08019).

issues, and this retaliation violates the First Amendment. See id. at 10-18.[7]

* * *

Second, the Petitioner alleges that the Respondents are pursuing a policy to "to arrest, detain, and seek to remove noncitizens who engage in expressive activities . . . supporting Palestinian rights," id. at 4, --- and that it is because of this policy that federal official are seeking to remove him from the United States. See id.

The Petitioner asks the Court to order that the policy be stopped. See id. at 9-10.

The policy violates the First Amendment, the Petitioner says, because it is premised on "viewpoint discrimination," id. at 19 --- it operates against people who take one view in certain public debates, but not those who take other views.

And the policy also violates the Fifth Amendment, the Petitioner says, because it is too vague --- and due process requires

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[7] Two things. First, the Petitioner also argues that the Secretary's determination is unconstitutionally vague. See Motion for Preliminary Injunction at 23-24. (But note that the Petitioner does not argue in his petition that Section 1227(a)(4)(C)(i) is itself unconstitutionally vague.) Second, in a footnote in one of his legal briefs, the Petitioner references the second charge against him, the one based on his alleged failure to make certain disclosures in his lawful-permanent-resident application. See Petitioner's Reply in Support of Motion for Preliminary Injunctive Relief ("Reply Brief") (ECF 175) at 16 n.11. But there is no reference to this in the habeas petition. See Salas v. Warren, 2019 WL 3423534, at *1 n.1 (D.N.J. July 30, 2019) (declining to consider claims that the petitioner raised in his traverse, rather than his petition); Quang Van Nguyen v. Wenerowicz, 2013 WL 6473264, at *6 (E.D. Pa. Dec. 10, 2013) (similar, as to claims first raised in a reply brief); accord, e.g., Carrascosa v. McGuire, 520 F.3d 249, 264 (3d Cir. 2008); St. John v. Ashcroft, 43 F. App'x 281, 282 (10th Cir. 2002); Bracken v. Dormire, 247 F.3d 699, 702 (8th Cir. 2001). Nor does the legal brief purport to seek relief from the Court based on the second charge. No challenge to the second charge is before the Court.

precision, so that people can know in advance what the government might seek to do. See id. at 16.

* * *

Third and finally, the Petitioner says he is being detained by immigration authorities in retaliation for the public statements he has made, see id. at 33, and also to "chill" him from making other statements. See id. This, the argument goes, violates the Petitioner's First Amendment rights --- and the Court should therefore order the Petitioner released from custody. See id. at 9.

D. The Response

The Petitioner, as noted, has sought a preliminary injunction as to each of the three things set out above.

In doing so, the Petitioner is asking for a remedy at an early stage of this case, before it runs its typical and full course.[8]

To win a preliminary injunction, a litigant must show a number of things.

One of them: that he is "likely" to be the ultimate winner --- when the case is over and done, and reaches its normal finish line. See, e.g., Starbucks Corp. v. McKinney, 602 U.S. 339, 345 (2024).

The Respondents argue that the Petitioner has not met this standard. See Respondents' Opposition to Petitioner's Motion for a Preliminary Injunction ("Opposition Brief") (ECF 156) at 8-32.

As to why, some of the Respondents' arguments focus on the merits of the case. See id. at 23-32.

Others zero in on the Court's power over the case --- in particular, on a set of statutes that the Respondents say take away this Court's jurisdiction. See id. at 8-21.

II. The Question

"Jurisdiction is, as always, the 'first and fundamental question.'" Baymont Franchise Sys., Inc. v. Narnarayandev, LLC,

[8] For example, there has been no discovery to this point, or testimony.

348 F.R.D. 220, 227 (D.N.J. 2024) (quoting Great S. Fire Proof Hotel Co. v. Jones, 177 U.S. 449, 453 (1900)).

This is because a court that does not have jurisdiction does not have power over a case. It cannot decide the merits, see Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94 (1998), and so it should not speak to them.

Against this backdrop, the Court will consider in this Opinion solely whether it has jurisdiction. Merits issues (and other issues, like venue) will be taken up later.

* * *

Begin the jurisdictional analysis by getting a fuller sense of the main issue that is on the table.

The Court starts off with jurisdiction here.

The habeas corpus statute gives federal district courts jurisdiction over habeas cases, see 28 U.S.C. § 2241(a), and this is a habeas case. See Second Amended Petition ("Petition") (ECF 162) ¶ 20.

Moreover, the Court has previously ruled that it has habeas jurisdiction over this case in particular. See Khalil, 2025 WL 972959.

The question, then, is this: does anything take away the Court's jurisdiction?

The Respondents say yes, and they point to two "jurisdiction-stripping" statutes. See Opposition Brief at 9–20, 23.

The statutes are in Title 8 of the United States Code, at Section 1252(g) and Section 1252(b)(9). Their current versions became law in 2005.[9]

If these statutes do not strip away this Court's habeas jurisdiction, then things stay as they were and this Court resolves the case.

If these statutes do strip away this Court's habeas jurisdiction, then the way forward is different. The front-line review will be done by the immigration courts.

[9] Another statute is invoked, too. See Opposition Brief at 20–21. But it is mostly irrelevant here, and is therefore taken up only later, in Part VIII.

Either way, though, the next rung up on the ladder is the same. Whoever does the first-cut look, this Court or the immigration courts, what follows is review in a federal court of appeals (and after that, review would be possible in the Supreme Court).[10]

III. The Court's Approach

The Court first takes up the Respondents' argument that Section 1252(b)(9) strips jurisdiction.

Section 1252(b)(9), it is said, prevents this Court from considering the Petitioner's claim that the Secretary of State's determination under Section 1227(a)(4)(C)(i) was unconstitutional.

Out of the gate, this Section 1252(b)(9) argument looks strong. See Part IV.A.

But ultimately, it is not persuasive.

This is because Section 1252(b)(9) applies only after a final order of removal has been entered by the immigration courts. The words of the statute say so. See Part IV.B. And so has the Third Circuit.[11] See Part IV.C.

But no final order of removal has been entered in this case. Therefore, Section 1252(b)(9) does not apply.

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[10] The text refers to immigration courts because, as noted in footnote 3, certain rulings from immigration judges can be appealed to the Board of Immigration Appeals. Review by a federal court of appeals generally takes place only after the Board of Immigration Appeals has ruled. See, e.g., Dia v. Ashcroft, 353 F.3d 228, 234 (3d Cir. 2003). If this Court has jurisdiction and is responsible for initially handling the case, any appeal would be to the federal court of appeals for the Third Circuit. See 28 U.S.C. § 1291. If this Court does not have jurisdiction and the immigration courts therefore do the ground-floor review, then any appeal would be to the federal court of appeals for the circuit that covers Louisiana, where the Petitioner is held; that is the Fifth Circuit. See 8 U.S.C. § 1252(b)(2).

[11] In a case called Chehazeh v. Attorney General of the United States, 666 F.3d 118 (3d Cir. 2012).

* * *

There is, though, a wrinkle.

In another case,[12] the Third Circuit has suggested that Section 1252(b)(9) can apply, as here, before a final order of removal has been entered by the immigration courts.

But even on the assumption that the second case is controlling, Section 1252(b)(9) does not remove jurisdiction from this Court as to the Secretary of State's determination.

Under the second case, Section 1252(b)(9) strips jurisdiction from a federal district court over a claim only when that claim could still get "meaningful" federal court review later --- after the immigration courts have wrapped up their work, and the claim then goes to a federal court for the first time, a federal court of appeals. See Part V.

But in this case, that sort of delayed federal court review would not be "meaningful" federal court review.

This is for two reasons.

First, because there would be little to show for any such delay. Usually, the immigration courts can tee things up for the federal court of appeals, by providing a remedy for any illegal conduct, by finding the facts, and by applying their distinctive expertise. But the immigration courts cannot do any of that as to the Secretary of State's determination. See Part VI.A to Part VI.C.

And second, the law requires sped-up judicial review of First Amendment claims of the kind the Petitioner raises here. That is not consistent with delaying federal court review until after the immigration courts have finished their work and the case then moves to a federal court of appeals. See Part VI.D.

* * *

Next, the Court considers the Respondents' argument that Section 1252(g) cuts off review here of the Secretary of State's determination.

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[12] EOHC v. Secretary United States Department of Homeland Security, 950 F.3d 177 (3d Cir. 2020).

But the Section 1252(g) argument does not work. It runs aground on the plain words of the statute and the Supreme Court's main decision in this area.[13] See Part VII.

* * *

Finally, the Court considers the alleged policy that the Petitioner has challenged --- and assesses whether Section 1252(b)(9) or Section 1252(g) take away jurisdiction from this Court to consider it.

As to the policy, the jurisdiction-stripping argument is not persuasive for most of the same reasons it was not persuasive as to the Secretary's determination, plus a few more. See Part VIII.[14]

IV. Section 1252(b)(9) Does Not Apply Here

Get underway now with the jurisdictional analysis.

The Respondents' first argument is that Section 1252(b)(9) removes this Court's jurisdiction to consider the Petitioner's request for an injunction vacating the Secretary of State's determination. See Opposition Brief at 9–14.

At first, this argument looks strong. See Part IV.A.

But in the end, it does not work. Section 1252(b)(9) does not apply in cases like this one, in which a final order of removal has not been entered by the immigration courts. See Part IV.B. And the Third Circuit has confirmed as much. See Part IV.C.

Bottom line: Section 1252(b)(9) is irrelevant here. It applies to post-order-of-removal cases, and this is a pre-order-of-removal case.

A. Section 1252(b)(9)

To start off, bracket for a few moments the question of whether Section 1252(b)(9) does or does not apply to pre-order-of-removal cases like this one. Assume, instead --- and throughout

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[13] The decision is Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471 (1999).

[14] There is also a third statute. Its impact is marginal, and it is considered briefly in Part VIII.

this Part IV.A --- that Section 1252(b)(9) applies to such cases.

Under the statute, there is a four-part test for deciding whether Section 1252(b)(9) removes jurisdiction over a given claim. See Part IV.A.2.

Applying that test, the Court concludes that Section 1252(b)(9), assuming that it applies, would strip away this Court's jurisdiction over the Petitioner's claim that the Secretary of State's determination is unconstitutional. See Part IV.A.3.

That sets the stage for the question taken up in Part IV.B and in Part IV.C: does Section 1252(b)(9) apply in pre-order-of-removal cases like this one?

1. The Statute

Begin, as always, with the words Congress used in the law it passed. See Lawson v. FMR LLC, 571 U.S. 429, 440 (2014); United States v. Turkette, 452 U.S. 576, 580 (1981).

Here, those words are "clear and distinct," Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 339 (1816), so they must be enforced as written. See Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253–54 (1992) (collecting cases).

And their effect here is unmissable. If Section 1252(b)(9) applies, there is no jurisdiction in this Court over the Petitioner's challenge to the Secretary of State's determination.

* * *

In relevant part, Section 1252(b)(9) says:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section.

8 U.S.C. § 1252(b)(9).

* * *

This part of Section 1252(b)(9) does not itself say when and where the "judicial review" it mentions is to take place.

But other parts of Section 1252 do. They make clear that the "judicial review" alluded to in Section 1252(b)(9) is conducted only by federal courts of appeals, with federal district courts having no role. And the court of appeals' review kicks in after the immigration courts are done with their work --- after the Board of Immigration Appeals has affirmed the immigration judge's order or after the time for appealing to the Board has run out.[15]

2. The Question

As set out just above, if "judicial review" is covered by Section 1252(b)(9), then that review must happen only later (after the immigration courts have finished their work) and only elsewhere (in the federal court of appeals, not here).

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[15] The sources for the statements in the text are laid out here. As to when the "judicial review" alluded to in Section 1252(b)(9) takes place: that review is of "an order of removal under subsection (a)(1)," id. § 1252(b); subsection (a)(1) clarifies that an "order of removal" is "a final order of removal," id. § 1252(a)(1) (emphasis added); and an order of removal becomes "final" on the earlier of "a determination by the Board of Immigration Appeals affirming such order" or "the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals." Id. § 1101(a)(47)(B); Yusupov v. Att'y Gen. of U.S., 518 F.3d 185, 195 (3d Cir. 2008), as amended (Mar. 27, 2008). As to where "judicial review" will go forward: in a federal court of appeals, see 8 U.S.C. § 1252(a)(5), and in particular in the court of appeals that sits in "the judicial circuit in which the immigration judge completed the proceedings." Id. § 1252(b)(2); see Castillo v. Att'y Gen. of U.S., 109 F.4th 127, 129 (3d Cir. 2024). And critically: court of appeals review will be the "[e]xclusive means of review." 8 U.S.C. § 1252(a)(5). Exclusive means exclusive. The federal "judicial review" described in Section 1252(b)(9) will happen only in a court of appeals. That rules out a place in the process for the district court.

The question, then, is this: is the judicial review the Petitioner seeks here, of the Secretary of State's determination, covered by Section 1252(b)(9)?

If it is not covered, then Section 1252(b)(9) is no hurdle to this Court keeping jurisdiction.

If it is covered, Section 1252(b)(9) strips jurisdiction --- and review by this Court would be out of bounds.

* * *

To answer the question, look to the front end of Section 1252(b)(9), the part before the word "shall."

Again, Section 1252(b)(9):

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section.

8 U.S.C. § 1252(b)(9) (emphasis added).

What judicial review is covered by the first half of the sentence?

"Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter[.]" Id.

In other words, Section 1252(b)(9) kicks in when four conditions are met:

1. There is "any action . . . or proceeding,"
2. "to remove an alien from the United States,"
3. "under this subchapter," and
4. judicial review is sought as to "a[] question[] of law and fact" that "aris[es] from" such "action" or "proceeding."

Below, the Court ticks through these --- and concludes that each of the four boxes is checked.

What this means: Section 1252(b)(9) covers judicial review of the Secretary of State's determination --- and so, if Section 1252(b)(9) applies in the first place,[16] that Section prevents this Court from assessing the Secretary's determination.

3. The Answer

Section 1252(b)(9), as noted, spins off a four-part test for deciding whether judicial review of a claim is covered by the statute. See Part IV.A.2.

As shown below, each part of the test is satisfied.[17]

a) "Action"

Is the Secretary's determination an "action" or "proceeding" within the meaning of Section 1252(b)(9)?

The Court's conclusion: it is an "action."

At around the time of Section 1252(b)(9)'s initial enactment in 1996, authoritative sources understood "action" broadly.[18]

The Oxford English Dictionary defined "action" as "a thing done, a deed." Action, n., sense 3.a, Oxford English Dictionary (2d

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[16] Recall: that is assessed below, in Part IV.B and Part IV.C.

[17] Section 1252(b)(9)'s key terms are not defined by the statute. See 8 U.S.C. § 1101(a) (defining other terms in the statute). Therefore, the Court looks to the ordinary and contemporary meanings of the words Congress used in the Section. See Sandifer v. U.S. Steel Corp., 571 U.S. 220, 227 (2014). This includes referring to time-of-enactment dictionaries, both general and legal. See, e.g., Sandifer, 571 U.S. at 227; Taniguchi v. Kan Pac. Saipan, Ltd., 566 U.S. 560, 566-67 (2012); see also Khalil, 2025 WL 972959, at *17.

[18] Section 1252(b)(9) was first passed in 1996, and its current version dates to 2005. Why the focus on 1996? Because that is when the relevant sentence of Section 1252(b)(9) was passed. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009. In 2005, more words were added to Section 1252(b)(9) to specify that it reached habeas jurisdiction. See REAL ID Act of 2005, Pub. L. No. 109-13, 199 Stat. 305. But none of those words is at issue in this Opinion.

ed. 1989). And a leading legal dictionary went roughly the same way. See Action, Black's Law Dictionary (6th ed. 1990) ("something done.").

In making his determination, formalized through a memorandum, the Secretary of State took an action. Writing or approving a memo is not something that just happens; it takes doing --- the "do[ing]" of "something."

The inquiry could end there.

And it would, except that something else reinforces the conclusion that the Secretary's determination is an "action." Namely, Congress put the word "any" before the word "action"; the statute says "any action." 8 U.S.C. § 1252(b)(9) (emphasis added).

And putting "any" before a word confirms it must be understood in an inclusive way, to reach the outer edge of its possible orbit.

A year after Section 1252(b)(9) first became law, for example, the Supreme Court said: "Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" United States v. Gonzales, 520 U.S. 1, 5 (1997) (quoting Webster's Third New International Dictionary 97 (1976)).

This wide-angle view of "any" matches up with a long line of Supreme Court cases.

In Collector of Internal Revenue v. Hubbard, 79 U.S. 1, 15 (1870), for example, the Supreme Court interpreted a statute that said certain tax suits shall not "be maintained in any court." 79 U.S. at 3. It was "quite clear" that "any court" meant any court, federal or state. Id. at 15.

More recently, the Court reaffirmed that "any" "ordinarily 'refers to a member of a particular group or class without distinction or limitation' and in this way 'implies every member of the class or group.'" SAS Inst., Inc. v. Iancu, 584 U.S. 357, 362 (2018) (cleaned up) (quoting Any, Oxford English Dictionary (3d ed. 2016)); see also United States v. Alvarez-Sanchez, 511 U.S. 350, 358 (1994).

* * *

Bottom line:

The Secretary of State's determination was a decision made as to the Petitioner, and it culminated in a physical thing in the world -- the memorandum that reflects the determination. The determination was "something done," and that is what "action" means.

And whatever possible doubt there might be is dissipated by Congress' use of "any action." Per that phrase, Section 1252(b)(9) covers all actions --- without qualification, nothing carved out.

This conclusion, that the Secretary's determination is an "action," is linguistically obvious.

So much so that the Petitioner seems to see things in the same way. In making his determination, the Petitioner writes in his legal brief, the Secretary "had taken [an] action." Motion for Preliminary Injunction at 17 (emphasis added); see also id. at 1, 7, 13 (describing the challenged conduct as an "action").

* * *

The first of the four Section 1252(b)(9) boxes is checked. The Secretary's determination counts as an "action."

* * *

Before moving on, note a possible counterargument.

Namely, it might be argued that Section 1252(b)(9) refers only to an "action" of the legal sort --- as in, say, a civil action, or some other kind of lawsuit. After all, one of the basic definitions of "action" is "[a] legal process or suit." Action, n., sense 8, Oxford English Dictionary (2d ed. 1989).

If this were the right understanding of Section 1252(b)(9), the Secretary's determination could not be chalked up as an "action." The determination is "a thing done." Action, n., sense 3, Oxford English Dictionary (2d ed. 1989). But it is not a lawsuit.

This sort of reading, though, does not make sense.

For starters, Section 1252(b)(9) does not speak of "bringing" an action, but of "tak[ing]" one.

In everyday English, people "take action" all the time. But people do not "take a civil action" --- they bring one.

That is how the words have been used for centuries. See, e.g., id. (quoting 1 Tomlins, Law Dictionary (1809)) ("A man attainted of treason . . . cannot bring an action.").

And to see the proof: across 200 years, the U.S. Reports contain 136 mentions of a "civil action brought" --- but none of a civil action "taken." Cf. Delligatti v. United States, 145 S. Ct. 797, 813 (2025) (Gorsuch, J., dissenting) ("[A]nalyzing 'how particular combinations of words are used in a vast database of English prose' can shed light on how ordinary people understand statutory terms.") (quoting Facebook, Inc. v. Duguid, 592 U.S. 395, 412 (2021) (Alito, J., dissenting)).

Moreover, to read "action" in its legal sense would make redundant another term in Section 1252(b)(9) --- "proceeding."

"Proceeding" covers a part of the legal process. See Proceeding, Black's Law Dictionary (6th ed. 1990) ("[T]he form and manner of conducting juridical business before a court or judicial officer."); Proceeding, vbl. n., sense 3, Oxford English Dictionary (2d ed. 1989) ("The instituting or carrying on of an action at law[.]"); see also Waetzig v. Halliburton Energy Servs., Inc., 145 S. Ct. 690, 698-99 (2025) (surveying definitions of "proceeding").

As the Supreme Court confirmed this Term: "'proceeding' encompasses all steps in an action." Waetzig, 145 S. Ct. at 699.

If "proceeding" sweeps in the full arc of "an action," as the Supreme Court's recent opinion suggests, then "action" --- if it is understood in its legal sense --- would be fully encompassed within "proceeding."

The two words would cover the same thing. They would become redundant. One or the other would be reduced to surplus, an unnecessary bit of add-on. And reading statutes to create redundancies and surplus --- that is not how things are supposed to go. See Bufkin v. Collins, 145 S. Ct. 728, 741 (2025); Waetzig, 145 S. Ct. at 699; Marbury v. Madison, 5 U.S. (1 Cranch) 137, 174 (1803).

And note a final point.

On the few occasions it has discussed Section 1252(b)(9), the Supreme Court has used "action" in its general sense --- not in any legal sense. See, e.g., Jennings v. Rodriguez, 583 U.S.

281, 293 (2018) (suggesting that placing someone in detention is an "action"); Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 483 (1999) ("AADC") (similar).

In a nutshell: the possible counterargument sketched out here does not work. As used in Section 1252(b)(9), "action" means what it usually does. It does not mean a lawsuit.[19]

b) "To Remove"

The first of the four Section 1252(b)(9) boxes is checked. See Part IV.A.3(a). The Secretary of State's determination was an "action taken."

The next question: was the "action taken to remove an alien from the United States"? 8 U.S.C. § 1252(b)(9) (emphasis added).

It was.

The key word in the quoted phrase is "to."

As used with the verb "remove," "to" signals "purpose or intention." To, sense B.I, Oxford English Dictionary (2d ed. 1989).

And the cases confirm what the dictionaries say. See, e.g., Loughrin v. United States, 573 U.S. 351, 354-55 (2014)

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[19] To be sure, courts sometimes analyze a word with reference to its neighbor. See Jones v. United States, 527 U.S. 373, 389 (1999) ("Statutory language must be read in context and a phrase gathers meaning from the words around it.") (cleaned up); see also Jarecki v. G.D. Searle & Co., 367 U.S. 303, 307 (1961); Amy Coney Barrett, Congressional Insiders and Outsiders, 84 U. Chi. L. Rev. 2193, 2197 n.11 (2017). And so it might be argued here that "proceeding" (which undoubtedly has a legal meaning) should be taken to overspill itself, and to color the meaning of the neighboring "action" --- leaving "action" with some legalistic hues (a civil action, a lawsuit). But that does not work. If "action" and "proceeding" are each assigned a legal-shaded meaning, the words become redundant. Courts often look to contextual clues to avoid superfluous readings. See, e.g., United States v. Kaluza, 780 F.3d 647, 659 (5th Cir. 2015). But they have rejected contextual arguments that create redundancy. See, e.g., Waetzig, 145 S. Ct. at 699; Arcadia v. Ohio Power Co., 498 U.S. 73, 78 (1990).

(concluding that "to obtain" in 18 U.S.C. § 1344 signals "inten[t]"); Allison Engine Co. v. U.S. ex rel. Sanders, 553 U.S. 662, 668 (2008) (concluding that "to get" in the relevant statute "denotes purpose").

* * *

Given the above, the question is this: was the Secretary of State's determination (an "action") done ("taken") with the purpose or intention ("to") of removing an alien from the United States"?

Yes, clearly.

When a Secretary of State says he has "reasonable ground[s] to believe" that a person's "presence or activities in the United States . . . would have potentially serious adverse foreign policy consequences for the United States"[20] --- that statement has only one known function in our law.

And that function is to seek the person's removal from the United States. See 8 U.S.C. § 1227(a)(4)(C)(i) ("[a]n alien" who meets the criteria quoted just above "is deportable.").

The memo that formalizes the Secretary's determination confirms this.

Its "subject" line says that it concerns "[r]emovability [d]eterminations" under the immigration laws. See Determination at 1.

The first paragraph of the memo explains that the Secretary has deemed the Petitioner to be a "deportable alien[]" under the removal statute. See id. The second paragraph lays out the Secretary's understanding of the relevant statute. See id. And the last paragraph asserts that the Petitioner's "presence" in the United State would harm American foreign policy. See id. at 1-2.

In short: under Section 1252(b)(9), "to remove an alien from the United States" means to act with the intent or purpose to remove someone. And that was the purpose of the Secretary's determination.

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[20] That is in essence what the Secretary's determination says here. See Determination at 1-2.

c) "Under This Subchapter"

Next: Section 1252(b)(9) applies when the claim in question "aris[es] from any action taken . . . under this subchapter."

The subchapter in question is Subchapter II of Chapter 12 of Title 8 --- the part of the Immigration and Nationality Act that spans Section 1151 to Section 1382.

And the Secretary made his determination under 8 U.S.C. § 1227(a)(4)(C), which is part of Subchapter II.

So the Petitioner's claim, which challenges the Secretary's determination, "aris[es] from an[] action taken . . . under this subchapter."

d) "Arising From"

To this point, the Court has concluded that the Secretary's determination was (a) an action taken (b) to remove an alien from the United States (c) under the relevant subchapter.

That leaves a fourth and final question.

Judicial review is sought here to enjoin the Petitioner's detention as a violation of the First Amendment. See Petition ¶¶ 89-90.

Does assessment of that "question[]. . . aris[e] from an[] action taken [the Secretary's determination] to remove an alien [the Petitioner] from the United States"?

Yes.

The Supreme Court has recently debated what "arising from" means in Section 1252(b)(9). See Jennings, 583 U.S. 281. How tight must the nexus be between A and B to say that B arises from A?

Whatever the answer to that question might be in the abstract, there can be no doubt that review of the legality of the Petitioner's detention "aris[es] from" the Secretary's determination.

The two are tightly yoked together. The Secretary of State's determination is not tangential to the detention of the Petitioner or his removal under Section 1227(a)(4)(C)(i). Quite the opposite. The determination is what allows removal to go forward in the first place --- indeed, it has only that purpose under the law, and it is the only piece of evidence put forward

before the immigration courts in support of a Section 1227(a)(4)(C)(i) removal.

* * *

To sum up:

Built into Section 1252(b)(9) is a four-part test for deciding whether judicial review is or is not covered.

Here, that test is satisfied, for the reasons set out above.[21]

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[21] And also: this conclusion gets support from two statements about Section 1252(b)(9) in AADC. There, the Supreme Court said that Section 1252(b)(9) "channels judicial review of all" relevant "decisions and actions, 525 U.S. at 483 (emphasis in original), to the immigration courts and the court of appeals. And Section 1252(b)(9) is a "zipper" clause, that "says 'no judicial review in deportation cases unless this section provides judicial review.'" Id. at 482. These statements strengthen the conclusion that the Secretary's determination is covered by Section 1252(b)(9). But they should not be treated as definitively fixing the meaning of Section 1252(b)(9). First, subsequent cases have limited these statements. Justice Alito's Jennings plurality opinion, for example, construed Section 1252(b)(9) as allowing for judicial review of prolonged immigration detention in a federal district court, see 583 U.S. at 294–95 --- and that would seem to be at odds with the quotes from AADC. Second, the AADC statements about Section 1252(b)(9) were dicta; the holding in AADC was about the meaning of a different immigration-related provision, 8 U.S.C. § 1252(g). See 525 U.S. at 473. And third, when the AADC Court said that Section 1252(b)(9) covers "all" actions and decisions, see id. at 483, it was rejecting an argument that Section 1252(g) covers all actions from the beginning ("commence[ment]") to the end ("execut[ion]" of removal orders). See AADC, 525 U.S. at 482-83. Section 1252(g) could not mean that, the Court reasoned, because Section 1252(b)(9) already does. See id. at 483. But even if 1252(b)(9) covers all actions between commencement and execution, it might arguably have nothing to say about the Secretary of State's determination --- because that is a pre-commencement step. All of this said, though, the AADC statements tip the scales, at least to an extent, toward the conclusion that the Secretary's determination is covered by Section 1252(b)(9). After all, Supreme Court dicta carry special weight. See, e.g., Singh v. Uber Techs. Inc., 939 F.3d 210, 223 (3d Cir. 2019). And the AADC Section 1252(b)(9)

What this means: assuming that Section 1252(b)(9) applies here in the first place, this Court has no jurisdiction to consider the Petitioner's claim as to the Secretary's determination.

Is this assumption right? Take that up now.

B. The Text

The words of Section 1252(b)(9) seem to cover the Petitioner's challenge to the Secretary's determination. See Part IV.A.

But the analysis that supports this conclusion, see id., is zoomed in to a fault. Pan out to see the rest of the statute, and what becomes clear is this: Section 1252(b)(9) does not apply here as a categorical matter. It does not reach cases like this one, in which a final order of removal has not been entered.

* * *

Section 1252(b)(9) is part of Section 1252(b), and Section 1252(b) starts with a lead-in.

> With respect to review of an order of removal . . . , the following requirements apply:

From there, Section 1252(b) runs through a set of numbered "requirements," 1252(b)(1), (b)(2), and so on --- out to (b)(9).

With that structure in mind, look to some relevant parts of Section 1252(b):

> **(b) Requirements for review of orders of removal**
>
> With respect to review of an order of removal . . . , the following requirements apply:

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statements are not pure dicta; they take some steps down the road in the "holding" direction. This is because the AADC Court's broad reading of Section 1252(b)(9) may have been a necessary element of the Court's actual holding, as to the scope of Section 1252(g). See 525 U.S. at 483. And logically necessary and explicitly invoked steps along the way to a holding can be binding. See, e.g., Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 67 (1996).

(1) Deadline

The petition for review must be filed not later than 30 days after the date of the final order of removal.

(2) Venue and forms

The petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings . . . .

(3) Service

(A) In general

. . . The petition shall be served on the Attorney General and on the officer or employee of the [federal immigration agency] in charge of the . . . district in which the final order of removal . . . was entered. . . .

(4) Scope and standard for review

Except as provided in paragraph (5)(B)--

(A) the court of appeals shall decide the petition only on the administrative record on which the order of removal is based, ...

[. . .]

(9) Consolidation of questions for judicial review

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas

> corpus . . . , or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

Looking to the full statute is required, and always has been.[22]

Doing so here makes clear that Section 1252(b)(9) has no bearing on this case.

Section 1252(b)(9) speaks to cases in which judicial review goes forward after the immigration courts enter a final order of removal.

But Section 1252(b)(9) does not purport to say anything about what happens when --- as here --- judicial review takes place before an order of removal is entered.

* * *

The point is clear from the get-go.

The title of Section 1252(b) says that the Section, which includes Section 1252(b)(9), is about "Requirements for review of orders of removal."

These words assume that an order of removal has already been entered. After all, "review" means to "look at a thing again." Review, v., sense 1, Merriam-Webster, https://www.merriam-webster.com/dictionary/review (accessed Apr. 17, 2025); accord, e.g., Review, v., sense 2, Oxford English Dictionary (2d ed. 1989) ("view, inspect, or examine a second time or again").

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[22] See The Mary Ann, 21 U.S. 380, 387 (1823) ("[T]hose rules for construing statutes, which are dictated by good sense, and sanctioned by immemorial usage, . . . require that the intent of the Legislature shall have effect, which intent is to be collected from the context[.]"); United States v. Fisher, 6 U.S. (2 Cranch) 358, 386 (1805) ("It is undoubtedly a well established principle in the exposition of statutes, that every part is to be considered, and the intention of the legislature to be extracted from the whole."); accord Gundy v. United States, 588 U.S. 128, 141 (2019); Nat'l Broad. Co. v. United States, 319 U.S. 190, 214-16 (1943); Durousseau v. United States, 10 U.S. (6 Cranch) 307, 314 (1810); Oneale v. Thornton, 10 U.S. (6 Cranch) 53, 68 (1810); see also 1 William Blackstone, Commentaries *59.

And there can be no looking "again" at a thing (here, an order of removal) that does not already exist. If a movie is not out until next year, a newspaper might run a preview. But the review comes after the fact --- after the filming and editing are wrapped up and someone can sit and watch the final product.

Bottom line: Section 1252(b)'s heading ("Requirements for review of orders of removal") shows that Section 1252(b)(9) kicks in after a final order has been entered, not before.[23]

* * *

Other parts of Section 1252(b) point in the same direction.

Start from the top, with the Section 1252(b) lead-in.

It says that "[w]ith respect to review of an order of removal . . . , the following requirements apply." 8 U.S.C. § 1252(b) (emphasis added). And as noted, one of those "requirements" listed under that Section is 1252(b)(9).

The clear implication: Section 1252(b)(9) is about "review of an order of a removal," not about a situation in which review might take place before such an order exists.

Move now to the first substantive part of Section 1252(b), Section 1252(b)(1).

Section 1252(b)(1) lays down a deadline for when a person must act if he or she wants to seek out the judicial review that is the subject of Section 1252(b): "The petition for review [in the

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[23] And note: in the context of Section 1252(b), courts routinely reason from the language Congress used in the various statutory headings. See EOHC v. Sec'y U.S. Dep't of Homeland Sec., 950 F.3d 177, 186 (3d Cir. 2020) ("That is also why the provision is captioned 'Consolidation of Questions for Judicial Review.'") (cleaned up); see also Gonzalez v. U.S. Immigr. & Customs Enf't, 975 F.3d 788, 810 (9th Cir. 2020); Aguilar v. U.S. Immigr. & Customs Enf't Div. of Dep't of Homeland Sec., 510 F.3d 1, 9 (1st Cir. 2007); Singh v. Gonzales, 499 F.3d 969, 977 (9th Cir. 2007); Saint Fort v. Ashcroft, 329 F.3d 191, 198 (1st Cir. 2003); Mahadeo v. Reno, 226 F.3d 3, 12 (1st Cir. 2000); Flores-Miramontes v. INS, 212 F.3d 1133, 1139 (9th Cir. 2000); Cath. Soc. Servs., Inc. v. INS, 182 F.3d 1053, 1060 (9th Cir. 1999), on reh'g en banc, 232 F.3d 1139 (9th Cir. 2000); cf. Cunningham v. Cornell Univ., 2025 WL 1128943, at *6 (U.S. Apr. 17, 2025) (in a different context, looking to statutory headings to resolve possible doubt about statutory construction).

court of appeals] must be filed not later than 30 days after the date of the final order of removal."

This timeline assumes that a final order of removal has been entered. It happened. It was done on a certain "date," and the 30-day countdown goes from there.

And note: Section 1252(b) provides no deadline for a court challenge that might be brought before the entry of a final order of removal. Why not? Because Section 1252(b) does not cover those sorts of challenges.

Walk through the statute and see more of the same.

Under Section 1252(b), the court challenge is to go forward in "the judicial circuit in which the immigration judge completed the proceedings." Id. § 1252(b). That makes sense if Section 1252(b) covers situations in which an order of removal has been entered. But not if it also speaks to the period before an order has been entered. At that point, the "proceedings" before the immigration judge are not "completed." They are underway.

And along the same lines:

Why would Congress require service where "the final order of removal . . . was entered," id. § 1252(b)(3), if it meant for Section 1252(b) to cover situations in which there was not yet a final order of review that had been "entered"?

Why would Congress limit review "only" to "the administrative record on which the order of removal is based," 8 U.S.C. § 1252(b)(4)(A), if the review takes place before an order of removal, "based" on the record, has been entered?

In sum, a broader look shows that Section 1252(b)(9) comes online after an order of removal has been entered by the immigration courts.

Therefore, Section 1252(b)(9) does not purport to say anything about what might happen in cases like this one, cases that are brought before a final order of removal is entered.

The upshot: Section 1252(b)(9) has no role to play here, and so it cannot strip this Court of jurisdiction.

* * *

A final note.

On the understanding sketched out just above, Section 1252(b)(9) has an important role to play.

It tells federal district courts that, after an order of removal is finalized, they are not part of the mix. The immigration courts will do the front-line work. And the work of Article III judicial review belongs to the court of appeals, and fully. An issue here or there --- those cannot be plucked out by a district court for its own review.

By conveying this message, Section 1252(b)(9) "streamlines" review, as courts have observed that it aims to. See Nken v. Holder, 556 U.S. 418, 424 (2009); F.J.A.P. v. Garland, 94 F.4th 620, 628 (7th Cir. 2024); Patel v. U.S. Att'y Gen., 971 F.3d 1258, 1269 (11th Cir. 2020), aff'd sub nom. Patel v. Garland, 596 U.S. 328 (2022); Cooper Butt ex rel Q.T.R. v. Barr, 954 F.3d 901, 906 (6th Cir. 2020).

And it also cuts off "piecemeal" litigation, another of its core purposes. See Gicharu v. Carr, 983 F.3d 13, 18 (1st Cir. 2020); Jama v. Dep't of Homeland Sec., 760 F.3d 490, 496 (6th Cir. 2014); Chehazeh v. Att'y Gen. of U.S., 666 F.3d 118, 131 (3d Cir. 2012); Aguilar v. U.S. Immigr. & Customs Enf't, 510 F.3d 1, 9 (1st Cir. 2007).

But Section 1252(b)(9) does those things only where it applies --- and that is after orders of removal have been entered, not, as here, before.[24]

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[24] But it might be argued: this cannot be all. Even without Section 1252(b)(9), few district judges would have imagined that they could review an issue that is brought to them while a court of appeals is already handling the overall case. But this ignores the state of the law before Section 1252(b)(9) was passed in 1996. See, e.g., Delligatti, 145 S. Ct. at 806–07 (looking to a "[legal] principle [that] was well established" when a statute was enacted to inform interpretation of the statute). In 1983, the Supreme Court held that "final orders" of removal "include[] all matters on which the validity of the final order is contingent, rather than only those determinations actually made at the hearing." INS v. Chadha, 462 U.S. 919, 938 (1983) (cleaned up). This leaves behind a good many issues. It might have been taken to imply that the court of appeals, when it reviews a final order of removal, takes up only a subset of

* * *

Here, the Petitioner does not seek judicial review of an order of removal. None has been finalized. And therefore, Section 1252(b)(9) does not prevent this Court from considering the Petitioner's claim that the Secretary's determination must be set aside as unconstitutional.

"Jurisdictional rules . . . should be 'clear and easy to apply.'" Axon Enter., Inc. v. FTC, 598 U.S. 175, 212 (2023) (Gorsuch, J., concurring) (quoting Hamer v. Neighborhood Housing Servs. of Chi., 583 U.S. 17, 25 (2017)). This one is.

C. Chehazeh

Do cases support the reading of Section 1252(b)(9) laid out just above?

At the Supreme Court, there is no binding authority. A majority of Justices has not directly passed on the question one way or another.[25]

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questions ("all matters on which the validity of the final order is contingent") --- with room left for a district court to look into other issues related to a case that is brought before it. See Nasrallah v. Barr, 590 U.S. 573, 582 (2020) (making a closely similar point in another immigration-law context). Section 1252(b)(9), where it applies, shuts the door on that sort of thinking --- because it says that review in the court of appeals occupies virtually the whole playing field of possible issues, well beyond those that the order of removal was "contingent" on. Court of appeals review covers "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien." 8 U.S.C. § 1252(b)(9).

[25] In short passages here and there, various Justices have weighed in. A dissent from Justice Breyer, joined by Justices Ginsburg and Sotomayor, suggests that Section 1252(b)(9) applies only to review of orders of removal that have already been entered. "Jurisdiction . . . is unaffected by 8 U.S.C. § 1252(b)(9), which by its terms applies only 'with respect to review of an order of removal under § 1252(a)(1).' The

But the Supreme Court addressed Section 1252(b)(9) in passing in an earlier case.

And based on that Supreme Court case, and based on an earlier decision of its own, the Third Circuit has held that Section 1252(b)(9) applies only after a final order of removal has been entered --- and such an order, as noted, has not been entered here as to the Petitioner.

The Third Circuit's analysis and holding as to Section 1252(b)(9) is quoted here in full:

> [T]he Supreme Court has noted that § 1252(b)(9) is subject to the limitations of § 1252(b), and, therefore, "applies only 'with respect to review of an order of removal under subsection (a)(1).'" INS v. St. Cyr, 533 U.S. 289, 313, (2001) (quoting 8 U.S.C. § 1252(b)). Section 1252(b)(9), "by its own terms," does not bar review of an order "not subject to judicial review under § 1252(a)(1)," St. Cyr, 533 U.S. at 313, and § 1252(a)(1) describes only "review of a final order of removal." See 8 U.S.C. § 1252(a)(1) ("Judicial review of a final order of removal . . . is governed only by chapter 158 of title 28, except as provided in sub[s]ection (b) of this section . . . ."). Section 1252(b)(9), therefore, requires only that, when there is

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respondents challenge their detention without bail, not an order of removal." Jennings, 583 U.S. at 355 (Breyer, J., dissenting) (cleaned up). On the other hand, a dissent from Justice Thomas, joined by Justice Alito, seems to suggest the opposite view, that Section 1252(b)(9) limits district-court review even before an order of removal has been entered. "[Section] 1252(b)(9) covers all 'questions of law and fact' that an immigration judge must decide as a result of the Government's decision to initiate removal proceedings against an alien." Nasrallah, 590 U.S. at 590 (Thomas, J., dissenting). And note that a concurrence from Justice Thomas, joined by Justice Gorsuch, necessarily rests on the idea that Section 1252(b)(9) applies even before orders of removal are entered. See Jennings, 583 U.S. at 319–21 (Thomas, J., concurring). For more on Jennings, see Part IV.A.3(d).

an order of removal under subsection (a)(1), review of any issues related to that order must be consolidated into a single petition for review and cannot be brought piecemeal. One may not, for instance, follow a petition for review with a habeas petition or a petition for a writ of mandamus.

Although St. Cyr issued prior to the REAL ID Act, the REAL ID Act did not modify § 1252(b) or the instruction that § 1252(b)(9) "applies only 'with respect to review of an order of removal under subsection (a)(1).'" St. Cyr, 533 U.S. at 313 (quoting 8 U.S.C. § 1252(b)). Since that time, both the Ninth and Eleventh Circuits have held that, when a person is not seeking review of "an order of removal under subsection (a)(1)," the limitations of § 1252(b)(9) do not apply. See Singh v. Gonzales, 499 F.3d 969, 978 (9th Cir. 2007) ("By virtue of its explicit language . . . 1252(b)(9) applies only to those claims seeking judicial review of orders of removal."); Madu v. Att'y Gen., 470 F.3d 1362, 1367 (11th Cir. 2006) (explaining that "section 1252(b)(9) applies only with respect to review of an order of removal" and that the REAL ID Act "did not expand the scope of § 1252(b)(9) by making it applicable to cases other than those involving 'review of an order of removal'" (internal quotation marks omitted)); cf. House Conference Report on the REAL ID Act, H.R. Rep. No. 109-72, at 175, 2005 U.S.C.C.A.N. 240, 300 ("Section 106 would not preclude habeas review over challenges to detention that are independent of challenges to removal orders. Instead, the bill would eliminate habeas review only over challenges to removal orders.").

While we have not written precedentially on the scope of § 1252(b)(9) after the REAL ID Act, we have addressed the effect of nearly

identical language in § 1252(a)(5). In Kumarasamy v. Attorney General, we considered whether a habeas petition that was before us on appeal when the REAL ID Act came into effect should be converted into a petition for review pursuant to 8 U.S.C. § 1252(a)(5). 453 F.3d 169, 172 (3d Cir. 2006). That subsection states that a "petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. § 1252(a)(5). The petitioner in Kumarasamy had not been seeking review of an order of removal but was seeking habeas relief, claiming that his deportation was illegal "because there was no order of removal." 453 F.3d at 172 (emphasis in original). We held that § 1252(a)(5) did not apply, because that provision pertained only to "judicial review of an order of removal." Id. (emphasis in original). Our holding in Kumarasamy supports the conclusion that, because § 1252(b) refers only to "review of an order of removal under subsection (a)(1)," it, and its subsections, are inapplicable when there is no such order.

Not all courts agree with the conclusion reached by the Ninth and Eleventh Circuits and suggested by us in Kumarasamy. The First Circuit held in Aguilar v. United States Immigration & Customs Enforcement that "the reach of section 1252(b)(9) is not limited to challenges to singular orders of removal." 510 F.3d 1, 9 (1st Cir. 2007). The reasoning of Aguilar, however, appears to conflict with the Supreme Court's explicit instruction in St. Cyr, 533 U.S. at 313 ("Section 1252(b)(9) applies only 'with respect to review of an order of removal under subsection (a)(1).'"), and with the language of § 1252(b) ("With respect to review of an order of removal under

> subsection (a)(1) of this section, the following requirements apply . . . .”). We therefore join with the Ninth and Eleventh Circuits and hold that § 1252(b)(9) applies only “with respect to review of an order of removal under subsection (a)(1).” 8 U.S.C. § 1252(b). Because Chehazeh is not seeking review of any order of removal --- as there has been no such order with respect to him --- § 1252(b)(9) does not preclude judicial review.

Chehazeh, 666 F.3d at 131–33 (cleaned up).

This is all but dispositive.

There is no order of removal in this case. And so Section 1252(b)(9) does not apply under Chehazeh. “Because [the Petitioner] is not seeking review of any order of removal --- as there has been no such order with respect to him --- § 1252(b)(9) does not preclude judicial review.” Id.

* * *

Might Chehazeh be distinguished from this case on factual grounds?

Chehazeh, after all, was an “unusual” case, id. at 121, focused on the Board of Immigration Appeals’ decision to sua sponte reopen a decision. See id.

Perhaps, it might be argued, Chehazeh does not apply to the more typical case, where a person in a removal proceeding seeks federal district court review before the immigration court proceedings have run their course.

But that sort of distinction seems to have been considered and rejected by the Third Circuit in EOHC v. Secretary United States Department of Homeland Security, 950 F.3d 177 (3d Cir. 2020).

There, people in removal proceedings went to the district court. See id. at 180. Up against Chehazeh, the federal-government appellees argued that that case should be limited to its facts. See Brief for Appellees at 37, EOHC, 950 F.3d 177 (No. 19-2927). But the Third Circuit did not seem to accept this position. This was the EOHC court’s only mention of Chehazeh:

> [Section 1252(b)(9)] does not reach "claims that are independent of, or wholly collateral to, the removal process," like "claims that cannot effectively be handled through the available administrative process." Aguilar, 510 F.3d at 11; accord J.E.F.M. v. Lynch, 837 F.3d 1026, 1032 (9th Cir. 2016) (collecting cases); Reply Br. 16 (interpreting Chehazeh v. Att'y Gen. of the U.S., 666 F.3d 118 (3d Cir. 2012)); Oral Arg. Tr. 20–21.

EOHC, 950 F.3d at 186.

Now look to the page of the Reply Brief that was cited as "interpreting" Chehazeh. It reads, in part: "the government's argument that this Court should 'limit Chehazeh to its facts' . . . is misplaced. Instead, . . . the applicability of section 1252(b)(9) depends on the nature of the claim being considered." Reply Brief for Appellants at 16, EOHC, 950 F.3d 177 (No. 19-2927).

It appears that the EOHC court, by citing this page of the brief, meant to signal that it rejected any cabining of Chehazeh to its facts.

* * *

Might it be argued that Chehazeh has been implicitly overruled by the Supreme Court's decision in Jennings?

This seems unlikely.

The Third Circuit in EOHC referenced Chehazeh, as noted. See EOHC, 950 F.3d at 186. And it also discussed Jennings at length. See id. at 185–86. If Jennings overruled Chehazeh, would EOHC not have said so?

And more directly: there is no reason to think Jennings pushed aside Chehazeh.

To see why, look first to the facts of Jennings.

Noncitizens in immigration custody had been detained for more than six months without bond hearings, and they argued this was illegal under various statutes. See id. at 290. Those statutes

applied to certain noncitizens --- those who had not received a final order of removal. See id. at 291, 299, 303.[26]

Jennings, then, was like Chehazeh --- a pre-order-of-final-removal case.

As to jurisdiction, what did the Supreme Court rule in Jennings? Did Section 1252(b)(9) strip jurisdiction or not?

The answer is not straightforward, because the Jennings Court fragmented on the jurisdictional question. See id. at 284. Eight justices took part and there were three opinions; none commanded a majority. See id. at 284, 292.

How to decide what to take away from this? When "a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." Marks v. United States, 430 U.S. 188, 193 (1977) (cleaned up); see generally Richard M. Re, Beyond the Marks Rule, 132 Harv. L. Rev. 1942 (2019).

But this "Marks rule" is not clarifying here.[27]

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[26] In the district court, one of the noncitizens sought certification of a subclass under 8 U.S.C. § 1231(a), which governs the "[d]etention . . . of aliens ordered removed." See Jennings, 583 U.S. at 291. But the court of appeals held that this subclass could not be certified, see id., and the Supreme Court did not revisit that decision. See id. at 291–92. So the case before the Court concerned only detention of people who had not been ordered finally removed.

[27] As a general matter, the Marks rule can apply to jurisdictional holdings. See, e.g., United States v. Donovan, 661 F.3d 174 (3d Cir. 2011); United States v. Johnson, 467 F.3d 56 (1st Cir. 2006); United States v. Gerke Excavating, Inc., 464 F.3d 723 (7th Cir. 2006). It just does not shed light here, as will be seen in a moment. (Note that the Marks rule may be especially hard to apply to a jurisdiction-stripping statute, because it is not obvious what the right baseline is. Are the "narrower grounds" those that narrow the reach of the statute (and therefore expand federal court jurisdiction)? Or are the "narrower grounds" those that expand the reach of the statute (and therefore narrow federal court jurisdiction)? Cf. Johnson, 467 F.3d at 63–64.)

Chehazeh held that, as a categorical matter, Section 1252(b)(9) does not apply before entry of an order of removal. See 666 F.3d at 133.

But on that question, there is no Jennings majority to cobble together using Marks.

As noted, eight Justices took part in Jennings. See 583 U.S. at 284.

Two Justices, with Justice Thomas writing, held that Section 1252(b)(9) can apply before a final order of removal exists. See id. at 317–18 (Thomas, J., concurring).

Three Justices, with Justice Breyer writing, suggested that it cannot apply before a final order of removal exists. See id. at 355 (Breyer, J., dissenting).

And three Justices, with Justice Alito writing, took no explicit stance on the question.

Rather, Justice Alito's opinion held that Section 1252(b)(9) did not control the particular case before the Court --- because detention without a bail hearing did not "aris[e] from" actions to remove the noncitizens, as Section 1252(b)(9) requires. See id. at 292–95.

But nothing can be read into Justice Alito's opinion as to whether Section 1252(b)(9) might otherwise apply before an order of removal; therefore, no holding of his can join that of another opinion, via the Marks rule, to make a majority.

This is for two reasons.

First, "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." Cooper Indus., Inc. v. Aviall Servs., Inc., 543 U.S. 157, 170 (2004); see also, e.g., United States v. More, 7 U.S. (3 Cranch) 159, 172 (1805) (Chief Justice Marshall making this point at oral argument as to jurisdiction).

Justice Alito took no "position," Marks, 430 U.S. at 193, on whether Section 1252(b)(9) could or could not categorically have applied if the statute's "arising from" language had fit the case before the Court.

So why impute a position to him?

And all the more so because Justice Alito's opinion noted that the parties had not briefed "the scope" of Section 1252(b)(9), see Jennings, 583 U.S. at 294, and so, as Justice Alito put it, his opinion declined "to provide a comprehensive interpretation" of Section 1252(b)(9), ruling only that the statute did not apply given the facts at hand. See id. at 294.

To see the second point, start by noting that when an explicit ruling (call it "CD") necessarily rests on an implicit logical proposition (call it "AB") --- then both CD and AB can count as rulings. See footnote 21 (discussing this).

If Justice Alito's explicit ruling (CD) was that jurisdiction was stripped in Jennings because of Section 1252(b)(9)'s language, then that would logically rest on the implicit idea (AB) that Section 1252(b)(9) applied in the first place.

But that is not where Justice Alito's opinion came down.

It held that, because of Section 1252(b)(9)'s language, jurisdiction was not stripped --- and that ruling does not rest on a logically necessary sense that Section 1252(b)(9) applied. After all, Justice Alito could have reached the same result (no jurisdiction strip) regardless of his answer to the question of whether Section 1252(b)(9) does or does not categorically apply to pre-order-of-removal cases.[28]

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[28] The second point in the text is abstract. Unpack it a bit more here. The complexity is this: AB may typically get analyzed before conclusion CD is reached; but whether AB is necessary to conclusion CD --- that depends. To see why, imagine this statute: "if a person is an employee, she cannot be discriminated against --- and if she is discriminated against, the employer is liable and must pay." Under the statute, whether a person is an employee will usually be analyzed before deciding whether she has been discriminated against. But is a holding as to whether she is an employee logically implicit in a holding as to whether the employer must pay? Sometimes yes, sometimes no. If the court holds she was discriminated against and that the employer must pay, then that must logically rest on a particular resolution of the prior question, as to whether the person was an employee. After all, if she was not an employee, how could the employer have broken the statute and now be expected to pay? But if the court holds she was not discriminated against, and the employer need not pay, that does

* * *

In sum: even after deploying the Marks rule, it cannot be said that a Jennings majority spoke to the Chehazeh question --- let alone implicitly overruled the Third Circuit's Chehazeh opinion.

V. If Section 1252(b)(9) Applies Here

Where things stand:

The Respondents argue that Section 1252(b)(9) pulls away jurisdiction, such that this Court cannot consider the Petitioner's motion to enjoin the Secretary's determination.

That argument looks solid at first. See Part IV.A. But look to all of Section 1252(b), and the argument melts away. Section 1252(b)(9) is in play only when an order of removal has been entered. That is what the statute says. See Part IV.B. And that is what the Third Circuit has held. See Part IV.C.

Therefore, Section 1252(b)(9) does not apply here --- there is no order of removal.

But there is an important difficulty.

To see it, compare (a) Chehazeh and (b) EOHC, two Third Circuit cases that have been mentioned at various points above.

* * *

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not logically need to have been based on any particular decision on the question of whether the person was an employee. Why not? Because the ruling (no pay) would come out the same way regardless of how the employee question was answered. Another way to see this is to think about arguments made arguendo. Justice Alito in Jennings could have said "assuming arguendo that Section 1252(b)(9) can generally apply to pre-order-of-removal cases, the statute's language does not apply to this case --- and so there is no jurisdiction strip here." But for his part, Justice Thomas in Jennings could not have said "assuming arguendo that Section 1252(b)(9) can generally apply to pre-order-of-removal cases, its language applies to this case --- and so there is a jurisdiction strip here." For Justice Alito's bottom-line conclusion, the categorical question of whether Section 1252(b)(9) applies is not logically necessary and therefore can be assumed away arguendo; for Justice Thomas' bottom-line conclusion, the categorical question is logically necessary --- and therefore cannot be bracketed for later.

Chehazeh holds that Section 1252(b)(9) applies only when an order of removal has been entered. The long excerpt above, see Part IV.C, shows that.

Move now to EOHC.

It, too, was an immigration case. And it held that Section 1252(b)(9) precluded the district court from hearing a particular claim --- even though no order of removal had been entered. See EOHC, 950 F.3d at 180.

Chehazeh and EOHC appear to pull in opposite directions.

Does Section 1252(b)(9) apply when there is, as here, no order of removal?

Chehazeh seems to say no. EOHC seems to say yes.

If Chehazeh controls, then Section 1252(b)(9) is not on the table in this case. It is categorically irrelevant. Jurisdiction is not affected by it. See Part IV.B and IV.C.

But if EOHC controls, Section 1252(b)(9) potentially does apply here --- and if it does, there is a solid textual case, see Part IV.A, that it strips this Court of jurisdiction.

* * *

How to proceed?

The Court closely reviews EOHC, and concludes that it stands for this principle: the question of whether Section 1252(b)(9) allows a federal district court to hear a claim that has been brought to it depends on whether the claim could get "meaningful review" if federal court review is delayed out into the future --- as will happen if the federal district court is divested of jurisdiction by Section 1252(b)(9), and the case is then sent the immigration courts route. See Part V.A.[29]

In other words:

Under EOHC, Section 1252(b)(9) strips jurisdiction if later review in the federal court of appeals, after the immigration courts are done, would be meaningful. But Section 1252(b)(9)

[29] Recall: if a claim must first go to the immigration courts, federal court review of the claim will happen only later, in a federal court of appeals, after the immigration courts have done their work.

does not strip jurisdiction if post-immigration-courts review would not be meaningful.

On this reading, EOHC essentially applies the Supreme Court's general administrative law jurisprudence in the particular context of immigration law --- and that makes sense, given that immigration law, in this area, is a part of the administrative law family. See Part V.B.

And on this reading, EOHC is fully consistent with one of the Third Circuit's key relevant precedents --- the opinion authored by then-Judge Alito in Massieu v. Reno, 91 F.3d 416 (3d Cir. 1996). Massieu applied the same body of general administrative law jurisprudence that EOHC does. See Part V.C.

* * *

The question of how the referenced "meaningful review" issue plays out in this case is taken up in Part VI.

For now, though, start with EOHC, and move on to administrative law more generally and then to Massieu.

A. EOHC

This is what the EOHC case was about:

A father and his minor daughter came to the United States from Guatemala. See EOHC, 950 F.3d at 181.

Federal officials began removal proceedings. See id. The Board of Immigration Appeals eventually entered a stay of removal, see id., but the father and his daughter became concerned that they would be moved to Mexico, see id., to wait things out there while American immigration courts assessed whether they should be removed back to Guatemala.[30] See id.

The father and his daughter filed a habeas petition in Pennsylvania. See id. They pressed a set of claims, and as to each one the Third Circuit asked the same question: can this claim go forward in the federal district court? Or do jurisdiction-stripping statutes take away that possibility,

[30] This was during the period when the federal government applied a protocol to send noncitizens to Mexico while they waited for removal proceedings. See EOHC, 950 F.3d at 181.

requiring the claim to run down the immigration-court track? See id. at 184.

To answer these questions, EOHC relied on this principle: that Section 1252(b)(9) allows claims to be brought in a federal district court now if there could not be "meaningful" judicial review of those claims later --- after the immigration courts have finished their work and a federal court (the court of appeals) then gets involved. See id. at 180 ("When a detained alien seeks relief that a court of appeals cannot meaningfully provide on petition for review of a final order of removal, § 1252(b)(9) does not bar consideration by a district court."); see also id. at 186–87 (invoking meaningful review as to Section 1252(b)(9); cf. id. at 189-90 (invoking meaningful review as to other jurisdiction-stripping provisions).

In immigration law, involvement by an Article III federal court is typically a late-in-the-process thing. See id. at 180. Immigration courts handle the case at Time 1, and a federal court (a court of appeals) gets involved for the first time only at Time 2. See id.

But, EOHC holds, if waiting until Time 2 would undermine "meaningful" federal court review --- then that review can be hurried up, and a "detained alien" can first go to a federal court, a federal district court, at Time 1, rather than have the immigration courts take the initial look, with federal court review to take place only afterwards (in a federal court of appeals).

In that circumstance, Article III judicial review --- usually pushed out into the future as a job for a federal court of appeals --- is pulled back into the present, and is undertaken by a federal district court (whose work is later reviewed by a federal court of appeals).

* * *

How does this principle work in practice?

The EOHC father and daughter claimed that they would be temporarily moved to Mexico, to wait there for the immigration courts' decision in their removal proceedings. See id. at 181. Such a claim, EOHC held, can be taken up right away by a federal district court, consistent with Section 1252(b)(9). See id. at 187.

Why?

Because, per EOHC, there can be no "meaningful" consideration later of such a claim by a court of appeals, after the immigration courts have wrapped up their work. By then, the father and daughter could already have been in Mexico for years, and those years would have been lost. See id. at 186-87. "Now-or-never" claims, id. at 186, as that one was, can go forward now in a federal district court because they fit into a broader umbrella category --- claims that cannot later be "meaningful[ly]" reviewed when they would ordinarily make their way to a federal court of appeals.

And take a second example, to see the flip side of the coin.

The EOHC father and daughter also claimed that being moved to Mexico would fray their relationship with their lawyer, which would violate their statutory right to counsel at an eventual removal hearing. See id. at 187–88.

EOHC, citing Section 1252(b)(9), held that this claim could not be brought right away in federal district court.[31]

Why not?

Because the claim could get "meaningful" review later --- as the court of appeals looked back on what happened at the removal hearing, with an eye on any damage that may have been done to the attorney-client relationship. See id. at 188 ("[T]he court of appeals can redress any deprivation of counsel in the removal proceedings before the alien is removed.").

B. Administrative Law

In a nutshell, EOHC held that Section 1252(b)(9) does not take jurisdiction away from federal district courts when the alternative --- going the standard route, to the immigration courts and then to a federal court of appeals --- would undermine "meaningful" judicial review.

EOHC indicated that its approach flowed from a broad range of sources --- statutory text, a recent Supreme Court decision, and a set of presumptions. See id. at 184–86.

[31] This was a pre-order-of-removal claim.

And that approach is also closely consistent with broader principles of administrative law --- the legal family that, in this context, immigration law is part of.

1. Structure

To begin seeing this, start with the classic picture of adjudication in the federal system.

On the ground floor is a federal district court. Then the next level up is a federal court of appeals. And finally the Supreme Court sits atop the pyramid.

But the classic picture is not everywhere the current one.

In administrative law, for example, the federal district court is often swapped out, its place taken by an administrative court.

In cases related to the SEC, the FTC, the EPA, the FDA, and the FCC, the rungs on the ladder often look like this: an agency administrative judge (or an administrative law judge, or some other non-Article III official), does the front-line dispute resolution. And after that is done, the case plugs back into the standard system --- with the administrative judge's decision then reviewed by an Article III court, the federal court of appeals. See Federal Appeals Jurisdiction and Practice § 15:1 (2025 ed.); 2 Charles H. Koch & Richard Murphy, Admin. L. & Prac. § 5:10 (3d ed. 2024).

* * *

There was a time when immigration detention was commonly reviewed using the classic tools of American adjudication.

A person in custody typically (though not always) started off in the federal district court, seeking a habeas corpus writ. See Carlson v. Landon, 342 U.S. 524, 531-32 (1952); Fong Haw Tan v. Phelan, 333 U.S. 6, 8 (1948); U.S. ex rel. Tisi v. Tod, 264 U.S. 131, 132-33 (1924) Chin Yow v. United States, 208 U.S. 8, 13 (1908); Yamataya v. Fisher, 189 U.S. 86, 87 (1903).

But the plates began to shift during the mid-20th century.

New jurisdictional statutes became law.[32]

And now, immigration law looks in some basic ways like a branch of administrative law.

Cases generally go in the first instance to immigration judges, see 8 C.F.R. § 1003.10, and immigration judges are roughly akin to other administrative judges. See footnote 2; 2 Fed. Proc., L. Ed. § 2:159. And as with administrative judges, immigration judges' decisions are ultimately funneled out of the agency --- for relatively late-in-the-process review by a federal court, a courts of appeals. See 8 U.S.C. § 1252(a)(5).

Bottom line: immigration disputes are resolved using many of the same basic structures as bread-and-butter administrative disputes, like those involving the SEC, FTC, or FDA.

The next section begins to explain why this similarity matters.

2. Thunder Basin

The key question covered by this Opinion is this: under Section 1252(b)(9), must the Petitioner's constitutional challenge to the Secretary of State's determination go forward in the first instance before this Court or before the immigration courts?

At its core, this question is a variant on an everyday set of administrative law questions --- questions that are spun off by administrative-agency adjudication that, as the prior section shows, makes use of the same basic structure (agency adjudication, followed by federal court of appeals review) as modern immigration law.

Look here at how administrative law generally handles issues of this sort, and then return, later, to immigration law and to EOHC.

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[32] After the passage of the Immigration and Nationality Act of 1952, there was some back and forth over where deportation orders might be reviewed. See Brownell v. We Shung, 352 U.S. 180, 186 (1956); Shaughnessy v. Pedreiro, 349 U.S. 48, 51 (1955); Heikkila v. Barber, 345 U.S. 229, 235-36 (1953). But this was mostly smoothed out by the passage of the 1961 amendments to the INA, which made review in the federal courts of appeals the "sole and exclusive procedure" for judicial review of final orders of deportation. See Act of Sept. 26, 1961, Pub. L. No. 87-301, 75 Stat. 650, 651.

* * *

As a matter of administrative law:

What to do if a litigant tries to sue in federal district court, but a separate system of administrative-agency courts has been set up? Does she get to stay in the federal district court, or must she move over to the agency's courts, and await federal court review in the court of appeals?

The Supreme Court has answered these questions in a string of cases involving the Mine Safety and Health Administration, the Public Company Accounting Oversight Board, the Merit Systems Protection Board, and the Federal Trade Commission.

The anchor case in the chain is Thunder Basin Coal Co. v. Reich, 510 U.S. 200 (1994), and so the law in this area often goes by the shorthand of "Thunder Basin."

Thunder Basin law in a nutshell:

If Congress has explicitly pulled jurisdiction away from the federal district courts, the case goes to the agency for first-cut adjudication there. See Axon, 598 U.S. at 185; Adorers of the Blood of Christ v. FERC, 897 F.3d 187, 195 (3d Cir. 2018); accord, e.g., Jarkesy v. SEC, 803 F.3d 9, 15 (D.C. Cir. 2015); Cochran v. SEC, 20 F.4th 194, 205 (5th Cir. 2021); Bank of La. v. FDIC, 919 F.3d 916, 923 (5th Cir. 2019); Jones Brothers, Inc. v. Sec'y of Lab., 898 F.3d 669, 675 (6th Cir. 2018); E. Bridge, LLC v. Chao, 320 F.3d 84, 88 (1st Cir. 2003).

But if Congress has not explicitly pulled jurisdiction away from the federal district courts, ask: is it "fairly discernible" that Congress intended for claims to go to administrative courts as opposed to federal district courts? See Elgin v. Dep't of Treasury, 567 U.S. 1, 10 (2012); Free Enter. Fund v. Pub. Co. Acct. Oversight Bd., 561 U.S. 477, 489 (2010); see also Axon, 598 U.S. at 185.[33]

[33] This question is mainly answered as matter of statutory interpretation --- with an eye, for example, on text and purpose. See Elgin, 567 U.S. at 10; Free Enter. Fund, 561 U.S. at 489; Thunder Basin, 510 U.S. at 207; Adorers, 897 F.3d at 195; accord, e.g., Cochran, 20 F.4th at 199–205; Bank of La., 919 F.3d at 923; Hill v. SEC, 825 F.3d 1236, 1242 (11th Cir. 2016); Tilton v. SEC, 824 F.3d 276, 281 (2d Cir. 2016); Bennett

If the answer to the step-one "fairly discernible" question is "no," then the case stays in federal district court.

If the answer to the "fairly discernible" question is "yes," then the focus narrows, to the particular "type" of claim that is in play --- and whether (now, step-two) Congress wanted that type of claim to make its first stop in a federal court or before an administrative adjudicator. See Axon, 598 U.S. at 186; Elgin, 567 U.S. at 22; Free Enter. Fund, 561 U.S. at 489; Thunder Basin, 510 U.S. at 208; Adorers, 897 F.3d at 195; Kreschollek v. S. Stevedoring Co., 78 F.3d 868, 873 (3d Cir. 1996); accord, e.g., Cochran, 20 F.4th at 206; Tilton v. SEC, 824 F.3d 276, 281 (2d Cir. 2016); Bennett v. SEC, 844 F.3d 174, 181 (4th Cir. 2016); Bebo v. SEC, 799 F.3d 765, 769 (7th Cir. 2015); Ne. Erectors Ass'n of BTEA v. Sec'y of Lab., Occupational Safety & Health Admin., 62 F.3d 37, 40 (1st Cir. 1995).

To answer this "type" question, courts are to look to whether agency-first adjudication would: (1) supply "meaningful review"; (2) draw on agency expertise; and (3) run through issues that are core, rather than collateral. See Axon, 598 U.S. at 184–85; Elgin, 567 U.S. at 15; Free Enter. Fund, 561 U.S. at 489; Thunder Basin, 510 U.S. at 212–13; accord, e.g., Bank of La., 919 F.3d at 923; Hill v. SEC, 825 F.3d 1236, 1241 (11th Cir. 2016); Tilton, 824 F.3d at 281; Bennett, 844 F.3d at 181; Jarkesy, 803 F.3d at 17; Bebo, 799 F.3d at 769.

Of these three, "meaningful review" is by far the most important. See Bennett, 844 F.3d at 183 n.7; Hill, 825 F.3d at 1245; Tilton, 824 F.3d at 282; Bebo, 799 F.3d at 774.

Can there be "meaningful review" if Article III review is deferred until after the administrative court finishes its work and hands things over to the federal court of appeals?

Or does "meaningful review" require that the claim be heard, now, in the federal district court?[34]

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v. SEC, 844 F.3d 174, 181 (4th Cir. 2016); Bebo v. SEC, 799 F.3d 765, 769 (7th Cir. 2015).

[34] Saying yes to this question would bypass Congress' broader choice to send claims to the agency's courts. But it would do so on the theory that Congress would have wanted a particular "type" of claim to go forward first in the federal district

C. EOHC In Context

Come back now to the EOHC case, and see it in light of the broader administrative law principles laid out just above.

EOHC was an immigration-adjudication case.

And as discussed, the basic structure of immigration adjudication is closely similar to the structure of administrative adjudication more generally. See Part V.B.1.

No surprise, then, that in those closely related contexts, similar questions are answered in roughly the same way.

The questions:

Do the relevant statutes mean that a case stays in federal district court? Or do they mean that a case is channeled in the first instance to agency tribunals, like SEC, FTC, or immigration courts --- and only after they are done with their work does the case potentially go to federal court, a federal court of appeals?

The answer:

Under Thunder Basin (for administrative law in general) and under EOHC (for immigration law in particular) the answer is largely the same: it depends on whether delayed federal court review is consistent with the imperative of "meaningful review."

The key point: EOHC was, in essence, applying general administrative law rules (the Thunder Basin rules) to closely related immigration law questions.

And EOHC applied Thunder Basin systematically.

EOHC precisely invoked Thunder Basin's step-one test. Compare Thunder Basin, 510 U.S. at 207 ("In cases involving delayed judicial review . . . , we shall find that Congress has allocated initial review to an administrative body where such intent is fairly discernible.") (emphasis added) (cleaned up), with EOHC, 950 F.3d at 188 ("We look to whether the congressional intent to preclude judicial review is fairly discernible in the statutory scheme.") (emphasis added) (cleaned up).

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court if that is the way to get "meaningful review." See Thunder Basin, 510 U.S. at 212–13.

EOHC undertook the basic step-one analysis prescribed in Thunder Basin. Compare Thunder Basin, 510 U.S. at 207 (to get at the question of Congressional intent, looking to a "statute's language, structure, and purpose"), with EOHC, 950 F.3d at 188 ("In discerning that intent, we look at the statute's 'text, structure, and purpose.'") (quoting Elgin, 567 U.S. at 10).

And, as has been noted, EOHC focused on the main Thunder Basin step-two concern --- "meaningful" judicial review. Compare Thunder Basin, 510 U.S. at 207 ("Whether a statute is intended to preclude initial judicial review is determined from . . . whether the claims can be afforded meaningful review."), with EOHC, 950 F.3d at 180, 186, 189-90.[35]

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In applying the Thunder Basin rules,[36] why did EOHC land on the "meaningful review" rule?

Per the Thunder Basin line of cases, that is the standard to use when Congress has not said in an "explicit" way that certain

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[35] EOHC also cited a source that mentioned one of the other two Thunder Basin factors. Compare Thunder Basin, 510 U.S. at 212 ("[t]his Court previously has upheld district court jurisdiction over claims considered wholly collateral to a statute's review provisions"), with EOHC, 950 F.3d at 186 (citing the appellants' reply brief at 16 --- which noted that "claims independent of or collateral to the removal process are excluded").

[36] Too much should not be made of the fact that EOHC did not cite Thunder Basin or explicitly invoke its two-step analysis. EOHC cited Elgin, see EOHC, 950 F.3d at 188, and that is a key case in the Thunder Basin line. More fundamentally, the question of whether review will be "meaningful" --- and therefore whether federal court review should be deferred in favor of agency review --- has long been a part of administrative law's DNA. See Axon, 598 U.S. at 192; McNary v. Haitian Refugee Ctr., 498 U.S. 479, 496 (1991); Mathews v. Eldridge, 424 U.S. 319, 341 (1976); Goldberg v. Kelly, 397 U.S. 254, 262-63 (1970). It long predates Thunder Basin and was clearly part of the EOHC court's thinking. Compare EOHC, 950 F.3d at 186 (citing McNary for the proposition that there was no jurisdiction-stripping over certain claims when "meaningful judicial review . . . would [otherwise] be foreclosed"), with Thunder Basin, 510 U.S. at 213-14 (reasoning from McNary).

types of cases must go to an administrative court. See Part V.B.1.

Presumably, the EOHC court did not view Congress as having provided sufficiently "explicit" direction as to whether certain cases must first go to immigration courts.[37]

* * *

In a nutshell: to determine whether to apply Section 1252(b)(9) to a given claim, EOHC applied Thunder Basin, and in particular its "meaningful review" test.

D. Massieu

EOHC sits atop Thunder Basin --- and foregrounding this only emphasizes the close continuity between EOHC and one of the Third Circuit's key precedents in this area, Massieu.

To see the point, look now to Massieu.

During the mid-1990s, the federal government sought to remove a Mexican national, Mario Ruiz Massieu, from the United States. See Massieu v. Reno, 91 F.3d 416, 417-19 (3d Cir. 1996).

This was to be done based on a determination made by Secretary of State Warren Christopher, using the same law invoked in this case to seek the removal of the Petitioner. See id. at 418.

Massieu sued, and Judge Barry, then of this Court, ruled that she had jurisdiction over the case. See Massieu v. Reno, 915 F.

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[37] And such a conclusion is not surprising. After all, the argument that there is an "explicit" congressional directive as to where cases should go rests largely on Section 1252(b)(9). But Chehazeh held that in this "type" of case, a pre-order-of-removal case, Section 1252(b)(9) is inapplicable. And in any event, the Justices have suggested a range of different views as to whether Section 1252(b)(9) applies before entry of an order of removal. See footnote 25. That suggests that the explicitness test is not met, especially against the backdrop of the various presumptions against jurisdiction-stripping that EOHC leaned on. See 950 F.3d at 184.

Supp. 681, 697 (D.N.J. 1996), rev'd, 91 F.3d 416 (3d Cir. 1996).[38]

The Third Circuit, per then-Judge Alito, reversed. See Massieu, 91 F.3d at 425. It held that the case needed to first go to the immigration courts. See id.

The Third Circuit in Massieu came to that conclusion by analyzing the case using the two-step Thunder Basin doctrine described above in Part IV.B.

First, Judge Alito looked to text, purpose, and other sources to decide if Congress had expressed a "fairly discernible" intent to send the case to an immigration judge in the first instance, and not to a federal district judge. See id. at 420.

And the Massieu court then went to the second step, moving through each of the required Thunder Basin factors --- the critical "meaningful review" factor, plus the "collateral" and "expertise" factors. See id. at 422.

* * *

Massieu is relevant here in three main ways.

* * *

First, Massieu is very similar to this case.

The Respondents go so far as to say it is "on all fours." See Opposition Brief at 12. And there is a lot to that. Massieu involved the same statute as this case (what is now 8 U.S.C. § 1227(a)(4)(C)(i)) and the same question as this case (in what court should the claim start?).

Whether Massieu controls the outcome here is taken up in the next Part.

* * *

Second, Massieu, as noted, is closely consistent with EOHC.

EOHC and Massieu land in the same place --- on a concern for "meaningful review" as a key touchstone for deciding whether a

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[38] On the merits, Judge Barry held that 8 U.S.C. § 1251(a)(4)(C)(i) (now 8 U.S.C. § 1227(a)(4)(C)(i)) is unconstitutionally vague. See Massieu, 915 F. Supp. at 703. The Petitioner here has not made that argument. See footnote 7.

case must go to the immigration courts before a federal district court.

EOHC and Massieu thus point in the same direction.

Each suggests that, on the assumption that Section 1252(b)(9) applies here,[39] this Court must conduct a Thunder Basin-type analysis, and with an emphasis on Thunder Basin's most important factor --- "meaningful" judicial review.[40]

* * *

Third and finally, Massieu undermines any argument that the immigration laws in some "explicit" way require that this case be sent now to the immigration courts.

After all, if the immigration laws were explicit on that point, then Judge Alito's opinion would not have done what it did. It would not have conducted a Thunder Basin analysis --- because that is called for only when the relevant laws are not explicit.[41]

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[39] See Part IV.B and Part IV.C.

[40] EOHC and Massieu are no outliers. Federal courts often rely on Thunder Basin to decide whether a claim should be heard in immigration courts or in the federal district court. See, e.g., Miriyeva v. U.S. Citizenship & Immigr. Servs., 9 F.4th 935, 939 (D.C. Cir. 2021); Adi v. Mayorkas, 2022 WL 267989, at *7 (N.D. Ill. Jan. 28, 2022); O.A. v. Trump, 404 F. Supp. 3d 109, 136 (D.D.C. 2019); Ramirez v. U.S. Immigr. & Customs Enf't, 338 F. Supp. 3d 1, 37 (D.D.C. 2018); Jafarzadeh v. Nielsen, 321 F. Supp. 3d 19, 30–31 (D.D.C. 2018); Jafarzadeh v. Duke, 270 F. Supp. 3d 296, 308 (D.D.C. 2017); see also J.E.F.M. v. Lynch, 837 F.3d 1026, 1035–36 (9th Cir. 2016); Aguilar, 510 F.3d at 11; cf. Duron v. Johnson, 898 F.3d 644, 647 (5th Cir. 2018).

[41] And the point can be seen more directly, too. For the key proposition, Massieu cited a federal-common-law rule and a treatise, not an explicit statutory provision.

> Even where an alien is attempting to prevent an exclusion or deportation proceeding from taking place in the first instance and is thus not, strictly speaking, attacking a final order of deportation or exclusion, it

To be sure, the immigration laws have changed a good deal since Massieu was handed down in 1996.

But the three main statutes that Judge Alito reasoned from remain on the books, and in substantively similar form.

The main one was 8 U.S.C. § 1105a(c) (1996) ("[A]n order of deportation . . . shall not be reviewed by any court if the alien has not exhausted the administrative remedies[.]").

It has since been revised, with the current version at 8 U.S.C. § 1252(d)(1) ("A court may review a final order of removal only if . . . the alien has exhausted all administrative remedies.").

But the two statutes "state[] the same requirements in essentially the same language." Duvall v. Elwood, 336 F.3d 228, 231 (3d Cir. 2003). Indeed, the Third Circuit has held that Massieu's analysis still governs Section 1252(d)(1). See id. at 232.

And the two other statutes that Massieu relied on also remain on the books, tweaked here and there but substantively the same. Compare 8 U.S.C. § 1105a(a) (1996) ("the sole and exclusive procedure for . . . the judicial review of all final orders of deportation" is through a petition for review), and 8 U.S.C.

> is well settled that "judicial review is precluded if the alien has failed to avail himself of all administrative remedies," one of which is the deportation or exclusion hearing itself. See, e.g., Xiao v. Barr, 979 F.2d 151, 153 (9th Cir. 1992); see also 3 Charles Gordon & Stanley Mailman, Immigration Law and Procedure § 81.02[2], at 81-26-28 (1996) ("A person against whom a deportation proceeding is brought may feel that the proceeding is unjustified and illegal but generally has no right to go to court immediately to stop the proceeding. Congress has provided an administrative device for passing upon an alien's deportability, and generally there must be a final administrative ruling before judicial review can be initiated.").

Massieu, 91 F.3d at 421.

§ 1252(b) (1996) ("[T]he [administrative] procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section."), with 8 U.S.C. § 1252(a)(5) ("[A] petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review[.]"), and 8 U.S.C. § 1229a(a)(3) ("[A] proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be . . . removed from the United States.").

And the most relevant new, post-Massieu statute --- Section 1252(b)(9) --- either does not apply to this case, per Chehazeh, or does not provide explicit enough direction. See footnote 37.

E. Conclusion

Pause now briefly to see where things stand:

The Third Circuit in Chehazeh held that Section 1252(b)(9) does not apply to cases like this one, in which no order of removal has been entered. Therefore, Section 1252(b)(9) is irrelevant here, and does not strip this Court of jurisdiction. See Part IV.

But even if Section 1252(b)(9) were understood to apply here, as EOHC might suggest, see Part V.A, that Section would apply only when sending a case to the immigration courts is consistent with the Thunder Basin requirement of "meaningful review."

That was the approach the Third Circuit took in EOHC, see Part V.B and Part V.C, and that is consistent with the Third Circuit's approach in Massieu. See Part V.D.

So assuming arguendo that Section 1252(b)(9) applies here, the question is this: would this case get the required "meaningful review" if it starts out in immigration court, as opposed to here?

Take that up in the next Part.

VI. Meaningful Review

Immigration courts are tasked with doing important work on behalf of our country. According to recent statistics, for example, there are almost four million pending immigration cases spread out across 700 or so immigration judges. See Pending

Cases, New Cases, and Total Completions, Exec. Off. for Immigr. Rev., https://perma.cc/L659-S8P5 (accessed on Apr. 29, 2025); Office of the Chief Immigration Judge, Exec. Off. for Immigr. Rev., https://perma.cc/8H5S-EPW6 (accessed on Apr. 29, 2025).

But different institutions are built for different tasks and given different tools.

Immigration courts are not legally permitted to provide the relief (striking down the Secretary of State's determination) that the Petitioner seeks here. See Part VI.A.

And immigration courts cannot be expected to undertake the fact-finding that may potentially be required to evaluate the Petitioner's claim that the Secretary's determination is unconstitutional. See Part VI.B.

To be sure, immigration courts routinely tee up constitutional issues for eventual review by federal courts of appeals --- even when the immigration courts themselves lack the power to remedy the alleged violation.

But the immigration courts cannot do that here --- in part because of a prior Board of Immigration Appeals decision. See Part VI.C.

What this adds up to: the immigration courts could not meaningfully develop this case, legally or factually. Therefore, the period that might be spent before those courts will not advance the ball.

In some circumstances, that may be just how it has to be. Cases can take a while to resolve. And sending cases to the immigration courts is typically required even when doing so will accomplish only a modest amount.

But in this case, what can be accomplished is much less than that.

And a period of delay while this case is pending before the immigration courts, knowing that there will be little or nothing to show for it --- that does not work.

The reason is this: the Petitioner's core argument is that his free speech rights are being violated, now. See Part VI.D.

And the Supreme Court has held over and over again, in numerous contexts, that meaningful review of First Amendment claims generally means rapid, prioritized review. See id.

That is not consistent with postponing federal court consideration of the Petitioner's First Amendment claims.

Begin seeing all of this just below.

A. Legal Remedies

As has been discussed, the Petitioner claims that the Secretary of State's determination is a product of First Amendment retaliation, and that this Court should therefore enter an order to vacate it. See Motion for Preliminary Injunction at 9–10; see also Petition ¶¶ 88–90.

Can the immigration courts do this?

The Respondents say the answer is no.[42]

Under the heading "The IJ Cannot Vacate the Secretary of State's Determination or Issue the Requested Injunction," they say:

> The authority of immigration judges comes from the INA and regulations. The INA provides that an immigration judge "shall conduct proceedings for deciding the inadmissibility or deportability of an alien." The immigration judge has the authority to determine removability and to adjudicate requests for certain forms of relief from removal. The INA and implementing regulations do not provide the immigration judge with general injunctive or equitable authority. Thus, an immigration judge cannot order the Secretary of State to

[42] Were the Petitioner seeking to invalidate Section 1227(a)(4)(C)(i) on constitutional grounds, which he is not, see footnotes 7 and 38, the immigration courts would lack the power to do that, too. See In re Salazar-Regino, 23 I. & N. Dec. 223, 231 (BIA 2002) ("We have long declared that we lack authority to rule on the constitutionality of the statutes we administer."); see also Johnson v. Robison, 415 U.S. 361, 368 (1974) ("[A]djudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies."); accord, e.g., Breinza-Schettino v. Att'y Gen. of U.S., 221 F. App'x 140, 144–45 (3d Cir. 2007); Nehme v. INS, 252 F.3d 415, 421 (5th Cir. 2001); Liu v. Waters, 55 F.3d 421, 426 (9th Cir. 1995).

> take or not take any action regarding the type of foreign policy determination at issue here.

Respondents' Letter (Apr. 11, 2025) (ECF 190) at 2 (cleaned up).

* * *

But this way of thinking is too formalistic.

When a court is asked to put a stop to allegedly illegal behavior that is happening out in the world, the request is usually framed as an ask for an injunction.

But things are different when a judge is asked to issue an order as to a matter happening right before her, in her own courtroom.

Imagine a judge overseeing a criminal prosecution. Drugs were seized (but there was no warrant), and a confession was made (but there were no Miranda warnings).

The defendant might want an order from the court suppressing the evidence, so that the jury cannot learn of it. Order that the drugs be excluded as the fruit of a Fourth Amendment violation, the defendant will say. And order that the confession be put aside, as the product of a Fifth Amendment breach.

But the defendant, seeking an order, will not describe this as a request for an injunction (which is, after all, a kind of order).[43]

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[43] One reason is this: an injunction generally issues only based on a sense, among other things, that the public interest demands it. See, e.g., Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 156–57 (2010); Winter v. Nat'l Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); eBay, Inc. v. MercExchange, LLC, 547 U.S. 388, 391 (2006); see also Samuel L. Bray, The System of Equitable Remedies, 63 UCLA L. Rev. 530, 585–86 (2016). A defendant wants to argue that drugs should be suppressed because the search was illegal. He does not want to also have to argue that suppressing the drugs is a good from the perspective of the public interest. (And equitable claims are especially difficult to make out in any number of other ways, too. For example, at least some suppression orders likely could not issue as injunctions because the defendant, seeking to suppress what is his own contraband, see Rakas v. Illinois, 439 U.S. 128, 133–34

All of this implies that the right question here is not whether the immigration courts can enjoin the Secretary's determination as being the result of a violation of the First Amendment --- but rather whether the immigration courts can suppress the Secretary's determination as a violation of the First Amendment.

And a suppression framing makes sense on the facts of this case.

After all, the Secretary of State's determination is evidence (indeed, the only evidence) put forward in support of the Department of Homeland Security's effort to remove the Petitioner under Section 1227(a)(4)(C)(i).

And evidence obtained at Time 2 is sometimes ordered suppressed at Time 3 because it was gathered at Time 1 in violation of the Fourth Amendment or the Fifth. So why not the First?

The immigration courts, as noted, do not have power to enjoin the Secretary of State's determination on the grounds that it violates the First Amendment.

But do they have the power to suppress the Secretary's determination on those same grounds?

* * *

Shifting the framing clarifies the question to ask. But it does not change the answer.

The reason: with a caveat taken up below in footnote 46, the Supreme Court has held that in removal proceedings the Fourth Amendment exclusionary rule is not available; evidence obtained in violation of the Fourth Amendment can come in. See INS v. Lopez-Mendoza, 468 U.S. 1032, 1034 (1984).

Part of the explanation is that the immigration courts, per the Supreme Court in Lopez-Mendoza, were built to quickly determine whether someone is removable --- not to ask and answer broader questions, such as whether someone else violated the Constitution. Lopez-Mendoza:

(1978), could not make the "clean hands" showing that equity typically requires. See Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co., 324 U.S. 806, 814 (1945); Johnson v. Yellow Cab Transit Co., 321 U.S. 383, 387 (1944); see also Bray at 581.)

> The INS currently operates a deliberately simple deportation hearing system, streamlined to permit the quick resolution of very large numbers of deportation actions, and it is against this backdrop that the costs of the exclusionary rule must be assessed. The costs of applying the exclusionary rule, like the benefits, must be measured at the margin.
>
> [In 1984] [t]he average immigration judge handles about six deportation hearings per day. Neither the hearing officers nor the attorneys participating in those hearings are likely to be well versed in the intricacies of Fourth Amendment law. The prospect of even occasional invocation of the exclusionary rule might significantly change and complicate the character of these proceedings.

Id. at 1048.

In support of its approach, the Lopez-Mendoza Court quoted the Board of Immigration Appeals, which was also opposed to Fourth Amendment exclusion remedies in immigration courts. The Board, as quoted by the Supreme Court:

> Absent the applicability of the exclusionary rule, questions relating to deportability routinely involve simple factual allegations and matters of proof. When Fourth Amendment issues are raised at deportation hearings, the result is a diversion of attention from the main issues which those proceedings were created to resolve, both in terms of the expertise of the administrative decision makers and of the structure of the forum to accommodate inquiries into search and seizure questions. The result frequently seems to be a long, confused record in which the issues are not clearly defined and in which there is voluminous testimony. . . . The ensuing delays and inordinate amount of time spent on such cases at all levels has an adverse impact on the effective

> administration of the immigration laws. . . . This is particularly true in a proceeding where delay may be the only "defense" available and where problems already exist with the use of dilatory tactics.

Id. at 1048-49 (quoting Matter of Sandoval, 17 I. & N. Dec. 70, 80 (BIA 1979)).

Building the record for a Fourth Amendment suppression challenge would not always very dramatically "change and complicate" removal hearings. See id. at 1048.

After all, in many cases the Fourth Amendment suppression evidence would come in wholly through the immigration agents who made the relevant arrest in the first place. See id. at 1043 ("[T]he agency officials who effect the unlawful arrest are the same officials who subsequently bring the deportation action.").

But even given that, the Supreme Court determined in Lopez-Mendoza that the "diversion of attention" implicit in Fourth Amendment suppression hearings weighed against allowing Fourth Amendment suppression motions to be made in immigration proceedings. See id. at 1048-49.

But if Fourth Amendment suppression motions cannot generally be made --- then surely First Amendment suppression motions have no place, either.

If a Fourth Amendment suppression hearing (typically involving testimony from arresting immigration agents) is a bridge too far, then a First Amendment suppression hearing (which in this case could conceivably seek testimony from our country's top officials) is also a bridge too far --- and then some.

* * *

The conclusion set out just above is buttressed from two sides.

First, look to the one on-point case in this area. The Second Circuit was asked whether immigration courts can consider a First Amendment suppression argument. Its answer was no. See Montero v. INS, 124 F.3d 381 (2d Cir. 1997) ("We decline [the] invitation to fashion an exclusionary rule for evidence obtained in violation of an individual's First Amendment rights.") (citing Lopez-Mendoza).

And second, look to what the immigration judge in this case said about the scope of her powers.[44]

Before the immigration judge, the Petitioner made various motions to compel discovery. For example, he moved to issue a subpoena to the Secretary of State, as well as to compel the production of certain documents.[45]

But the immigration judge denied those motions.

She said the authority of immigration judges "is very limited to two things. Is [the Petitioner] removable from the United States, and does he have relief available to him from removal if he is found removable." Audio Recording of Hearing (April 8,

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[44] In deciding whether "meaningful review" can be conducted before an administrative court, federal courts routinely look to what the administrative court has in fact actually done. Take Jarkesy v. SEC, 803 F.3d 9 (D.C. Cir. 2015). There, an investment advisor filed suit in a federal district court, pressing constitutional claims. Could an SEC administrative law judge provide meaningful review? Yes, the D.C. Circuit answered. See id. at 28. How to know? Because the D.C. Circuit had read the administrative law judge's decisions and observed that she had "considered and rejected" the plaintiff's arguments. Id. Another example: in Aguilar v. U.S. Immigration and Customs Enforcement Division, 510 F.3d 1 (1st Cir. 2007), the First Circuit asked whether the petitioners could have gotten "effective relief" for their right-to-counsel claims through the immigration courts. Yes, the First Circuit held. Id. at 14. "The proof" was that during the removal proceedings "each petitioner who requested a continuance for the purpose of retaining counsel received one." Id. And a final example. The Fifth Circuit considered whether the Federal Deposit Insurance Corporation's administrative proceedings could adequately assess claims that the "enforcement proceedings were tainted by constitutional violations." See Bank of La., 919 F.3d at 926. Yes. Part of why: the administrative law judge, per the Fifth Circuit, had written a "lengthy, detailed, and well-reasoned opinion" on the claims, such that it was clear that the proceedings qualified as "meaningful judicial review." Id.

[45] It appears that this was likely understood as connected to a First Amendment issue. See April 11 Audio Recording at 23:50 to 25:24.

2025) ("April 8 Audio Recording") at 21:12 to 21:24; see Petitioner's Letter (Apr. 11, 2025), at 3 n.4.

And the immigration judge suggested that to the extent any constitutional issues were being raised, she could not take them on. See April 11 Audio Recording at 1:35:35 to 1:36:00 ("I understand . . . that you would like to challenge the authority of the Secretary of State . . . , but you will need to take that up with Congress. This court is without jurisdiction to entertain challenges to the validity of such laws under the Constitution."); see also April 8 Audio Recording at 21:12 to 21:24; Petitioner's Letter (Apr. 11, 2025), at 3 n.4.

Finally, as to seeking a subpoena for the Secretary of State, the immigration judge said of the Petitioner that he was "in the wrong court for that." April 8 Audio Recording at 20:55-58; see Petitioner's Letter (Apr. 11, 2025), at 3 n.4.

* * *

In a nutshell:

The Petitioner seeks here an injunction vacating the Secretary of State's determination. But the immigration courts cannot issue injunctions. And they cannot suppress evidence (like the Secretary's determination) on First Amendment grounds. That conclusion is based on an analogy to Fourth Amendment suppression, an on-point Second Circuit decision, and the immigration judge's approach here.[46]

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[46] A final note. In Lopez-Mendoza, a plurality of the Court, not a majority, said this: "we do not deal here with egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained." 468 U.S. at 1050-51. This left the door open, and a number of circuits have held that suppression is indeed available in immigration courts when the Fourth Amendment is violated in sufficiently "egregious" or "widespread" ways. See, e.g., Corado-Arriaza v. Lynch, 844 F.3d 74, 77 (1st Cir. 2016); Almeida-Amaral v. Gonzales, 461 F.3d 231, 235 (2d Cir. 2006); Yoc-Us v. Att'y Gen. U.S., 932 F.3d 98, 111 (3d Cir. 2019); Yanez-Marquez v. Lynch, 789 F.3d 434, 450 (4th Cir. 2015); Puc-Ruiz v. Holder, 629 F.3d 771, 778 (8th Cir. 2010); Martinez-Medina v. Holder, 673 F.3d 1029, 1033-34 (9th Cir. 2011). Other circuits have suggested openness to such an

B. Factual Development

As noted just above, the immigration courts cannot give the Petitioner the legal relief he seeks as to the Secretary of State's allegedly unconstitutional determination. Whether through injunction or suppression --- the immigration courts cannot push aside the Secretary's determination.

But in some cases, a person is suing to get a statute invalidated as it applies to him.

And most of the time (if not all of the time) that is not something that an agency court is legally empowered to do.

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exception. See, e.g., United States v. Navarro-Diaz, 420 F.3d 581, 587 (6th Cir. 2005). Maybe it could be argued that the "egregious" exception leaves room for First Amendment suppression in this case? The argument would presumably run like this: (a) the Lopez-Mendoza plurality allowed for the possibility of an "egregious" Fourth Amendment suppression exception, (b) the exception does in fact exist, (c) it should be extended to the First Amendment suppression context in general, and (d) to this "egregious" case in particular. If this argument is persuasive, then maybe the immigration courts could provide a First Amendment suppression remedy here. But the argument does not work. The reason: link (b) in the chain cannot hold up. The immigration judge here is in Louisiana, so any review will be to the Fifth Circuit, see 8 U.S.C. § 1252(b)(2), whose precedent will control. See Ballesteros v. Ashcroft, 452 F.3d 1153, 1157 (10th Cir. 2006). And the Fifth Circuit has flatly held that "[i]t is well established that the fourth amendment exclusionary rule is not to be applied in deportation proceedings." Mendoza-Solis v. INS, 36 F.3d 12, 14 (5th Cir. 1994). (Some other Fifth Circuit cases seem to go the other way, and to treat an "egregious" Fourth Amendment suppression exception as a part of the law. But one is dicta in a Bivens case. See De La Paz v. Coy, 786 F.3d 367, 376 (5th Cir. 2015). And the rest are cases not selected for publication. See Escobar v. Holder, 398 F. App'x 50, 53 (5th Cir. 2010); Gonzalez-Reyes v. Holder, 313 F. App'x 690, 695 (5th Cir. 2009); Verduzco-Contreras v. Gonzalez, 160 F. App'x 406, 408 (5th Cir. 2005). Under the Fifth Circuit's rules, see 5th Cir. R. 47.5, unpublished cases are out of bounds.)

But even in those sorts of circumstances, federal courts often require that the case be sent first to an administrative court. See Elgin, 567 U.S. at 17; Thunder Basin, 510 U.S. at 215; Massieu, 91 F.3d at 426; accord, e.g., Hill, 825 F.3d at 1245; Tilton, 824 F.3d at 279, 290; Bennett, 844 F.3d at 176, 184; Bebo, 799 F.3d at 767, 771; Nat'l Taxpayers Union v. U.S. Soc. Sec. Admin., 376 F.3d 239, 243-44 (4th Cir. 2004).

There are a number of reasons why.

One of them: even if the agency's courts cannot themselves deliver the requested remedy, they can prepare the field --- by finding the facts, so that a federal court of appeals will have a solid record to work from when it gets the case. See Elgin, 567 U.S. at 19-20; accord, e.g., Bank of La., 919 F.3d at 927; Chau v. SEC, 665 F. App'x 67, 71 (2d Cir. 2016); Hill, 825 F.3d at 1249; Jarkesy, 803 F.3d at 21-22; Bebo, 799 F.3d at 773.

But in this case, the immigration courts would not be able to do the fact-finding that a federal court of appeals would need down the road.

The Court explains why here.

* * *

To see the limits of the immigration courts' fact-finding, try to peer around the corner --- to predict the sorts of factual issues that may possibly come up as the case unfolds.[47]

One of those issues is suggested by the Respondents, and it provides a helpful example of the fact-finding difficulties that the immigration courts would encounter in this case.

The Petitioner claims that his detention is the product of First Amendment retaliation. See Motion for Preliminary Injunction at 3; see also Petition ¶¶ 88-90. But the Respondents say that this argument "is likely to fail." Opposition Brief at 28.

The reason why: to make out a retaliatory-detention claim under the First Amendment, the Respondents say, the Petitioner must show that there was no probable cause for his arrest. See

[47] The discussion in this section assumes that fact-finding is necessary. But the Court has not developed views on whether this case can be resolved on the papers, or will require evidentiary development.

Nieves v. Bartlett, 587 U.S. 391, 402 (2019) (cited by the Opposition Brief at 28).

But, the Respondents argue, the Petitioner cannot make that showing. See Opposition Brief at 28. The Secretary of State's determination and the Petitioner's alleged failure-to-disclose on his lawful permanent resident application are said to be "facially valid reasons" to remove him from the country. Id. at 28.

Therefore, the Respondents' argument goes, federal officials had probable cause to detain the Petitioner --- and under Nieves, cited just above, his First Amendment argument hits a quick dead end. See id.

Moreover, the Respondents argue, the Petitioner has not tried to use the exception to all this that the Supreme Court suggested in Nieves. See id. at 28–29.

Under that exception, the Petitioner may not actually need to establish an absence of probable cause. Per the Nieves Court: "The no-probable-cause requirement should not apply when [the Petitioner] presents objective evidence that he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been." 587 U.S. at 407.

Look just a bit over the horizon, and it seems possible that the Petitioner could try to press a selective-enforcement defense --- contending, presumably, that other "similarly situated individuals" have not been the subject of a Section 1227(a)(4)(C)(i) determination by the Secretary of State.

To make out this defense, the Petitioner would potentially seek some discovery --- as to others, for example, against whom enforcement actions may not have been taken, and perhaps as to the decision-making process of senior federal officials.

Can the immigration courts provide "meaningful" factual development as to those issues?

It is hard to see how they could.

The Supreme Court, after all, has suggested that even narrow-gauge Fourth Amendment suppression hearings are not a good fit for the tight focus of the immigration courts. See Lopez-Mendoza, 468 U.S. at 1046–50.

And as noted above, the immigration judge in this case herself declined to permit any discovery. See April 8 Audio Recording at 20:55–58 (stating the Petitioner was "in the wrong court" for obtaining a subpoena of the Secretary).[48]

* * *

Given the limits of fact-finding in the immigration courts, federal courts have sometimes taken up immigration claims, rather than require them to wind their way through agency courts.

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[48] Selective enforcement can be raised as a kind of defense to a defense, as in Nieves: does selective enforcement undermine the probable cause defense to a First Amendment retaliation claim? But selective enforcement can also be raised in more garden-variety affirmative contexts: was a person targeted for immigration enforcement in the first place based on selective enforcement? See Ragbir v. Homan, 923 F.3d 53, 62, 67 (2d Cir. 2019), cert. granted, judgment vacated sub nom. Pham v. Ragbir, 141 S. Ct. 227 (2020); AADC, 70 F.3d at 1052; Massieu, 91 F.3d at 418. Can the immigration courts draw on their experience when it comes to building out the second sort of selective-enforcement case to develop a factual record as to selective enforcement that is raised in the first context? Not really. The reason is that affirmative selective-enforcement claims are very rarely handled by the immigration courts. For nearly 30 years, such claims have largely been unavailable to noncitizens without lawful status in the United States. See AADC, 525 U.S. at 488 ("[A]n alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation."). And even before AADC foreclosed many selective-enforcement claims, immigration courts generally steered clear of them --- largely to avoid trenching on federal immigration officials' discretion. See Matter of Merced, 14 I. & N. Dec. 644, 645 (BIA 1974); Matter of Lennon, 15 I. & N. Dec. 9, 12 (BIA 1974), overruled on other grounds by Matter of Esqueda, 20 I. & N. Dec. 850 (BIA 1994); Matter of Geronimo, 13 I. & N. Dec. 680, 681 (BIA 1971); see also Corredor v. Holder, 481 F. App'x 442, 444 (10th Cir. 2012); Cortez-Felipe v. INS, 245 F.3d 1054, 1057 (9th Cir. 2001); AADC, 70 F.3d at 1055; Johns v. Dep't of Just., 653 F.2d 884, 889 (5th Cir. 1981); Lopez-Telles v. INS, 564 F.2d 1302, 1304 (9th Cir. 1977) ("The immigration judge is not empowered to review the wisdom of the INS in instituting the proceedings. His powers are sharply limited[.]").

For example, in McNary v. Haitian Refugee Center, Inc., 498 U.S. 479 (1991), the respondents challenged certain INS amnesty procedures in a federal district court. See 498 U.S. at 487–88. But did they have to go through the immigration courts first?

No, the Supreme Court held.

The case was a "pattern and practice case," because it challenged "[a] pattern of . . . unconstitutional practices." Id. at 497 (cleaned up).

Pattern-and-practice cases require a "substantial amount of evidence," and an immigration judge adjudicating one particular case would not have been able to gather it. Id. This would leave the federal court of appeals in a bad spot; it "would be in [no] position to provide meaningful review of the type of claims raised." Id.

So the Supreme Court's decision: no need for the case to go to the immigration courts --- keep it in the federal district court. See id. at 494.

McNary is not directly on-point.

But it speaks to the idea that when it comes to "meaningful" development of the factual record --- and the knock-on question of whether adjudication in the immigration courts is required --- federal courts do not need to turn a blind eye to a common-sense reality.[49]

And that is this: immigration courts are mainly built for close-to-the-ground fact-finding. Not for fleshing out the record as to potentially sweeping claims --- related to "pattern and practice" issues, McNary, 498 U.S. at 497, for example, or selective enforcement.

And sweeping claims are plainly what the Petitioner is pressing here.[50]

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[49] See generally Tennessee v. Dep't of Educ., 104 F.4th 577, 606 (6th Cir. 2024) (suggesting that "practical realities" influence whether there is "meaningful review" under Thunder Basin).

[50] As briefly alluded to above, immigration courts are high-volume affairs. As of March 2025, there were around 3.9 million cases in the backlog. See Pending Cases, New Cases, and Total

* * *

As to the fact-finding difficulties here for the immigration courts, consider briefly a final added point.

One of the Petitioner's core arguments is that he is being retaliated against under a policy formulated by the most senior officials in the federal government. See Motion for Preliminary Injunction at 3; see also Petition ¶¶ 29–36.

More on that allegation later, in Part VIII.

For now, note that there is at least a potential argument under the Supreme Court's decision in Lozman v. Riviera Beach, 585 U.S. 87, 100–01 (2018), that the existence of such a policy could undo the argument the Respondents have made here --- namely, the argument that probable cause is a full defense to an arrest made in retaliation for First Amendment activity. See Opposition Brief at 28.

This means that the salience of the Nieves question (was there probable cause such that First Amendment retaliation may not matter?) could potentially turn under Lozman on the answer to an earlier and broader question (was there an official policy of retaliation?).

Completions, Exec. Off. for Immigr. Rev., https://perma.cc/L659-S8P5 (accessed on Apr. 29, 2025). Roughly 360,000 of those cases were added in 2025. See id. This has an everyday impact. Per a 2022 congressional report, some immigration judges reported having nearly 5,000 pending cases; others reported they heard 80 cases each day. Holly Straut-Eppsteiner, Cong. Rsch. Serv., R47077, U.S. Immigration Courts & the Pending Cases Backlog 22 (2022); cf. Malets v. Garland, 66 F.4th 49, 59 (2nd Cir. 2023) ("We have repeatedly recognized the extraordinary caseload burdens faced by IJs."); Abulashvili v. Att'y Gen. of U.S., 663 F.3d 197, 208 (3d Cir. 2011) ("We readily acknowledge that an IJ's position is an impossibly demanding and challenging one."). The typical fact-finding in these cases does not appear extensive. When a person is detained, the first hearing seems to typically be the only one. See Ingrid Eagly & Steven Shafer, Detained Immigration Courts, 110 Va. L. Rev. 691, 756 (2024). (Part of why: while discovery tools exist, see 8 C.F.R. §§ 1003.10(b), 1003.35, they are rarely used in practice. See Geoffrey Heeran, Shattering the One-Way Mirror: Discovery in Immigration Court, 79 Brook. L. Rev. 1569, 1582–84 (2014).)

If fact-finding is one day required as to such a policy --- whether it exists, what its scope might be, whether it led to the Petitioner's detention --- it cannot be done in a "meaningful" way by the immigration courts, for reasons that have already been discussed (and that were the focus of the Supreme Court's "pattern and practice" decision in McNary).

But that is only the tip of the iceberg.

Deciding, for example, whether Lozman applies to a case like this one, involving only federal officials, may require some complex legal judgments about constitutional questions that have not yet been resolved in all federal circuits. See, e.g., Novak v. City of Parma, 932 F.3d 421, 429 (6th Cir. 2019) (suggesting that Lozman is only relevant as to claims against municipalities).

And that question may need to be answered at the threshold of any fact-finding, to determine the scope of discovery.

If Lozman applies, the Petitioner may try to prove up a policy --- and to seek out evidence accordingly.

And if Lozman does not apply, then maybe what matters is only proof as to probable cause and selective enforcement --- which may imply a different (though still potentially wide) scope for discovery.

* * *

Bottom line: the immigration courts cannot be expected to supply sufficiently substantial fact-finding as to the allegations in this case.

And the threshold questions that may determine the scope of any possible discovery seem to themselves require knowledge as to complex areas of constitutional law, areas that are removed from the legal issues the immigration courts typically consider.[51]

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[51] The "meaningful review" test is designed to get a handle on what Congress' intent for a certain "type" of case might have been. See Thunder Basin, 510 U.S. at 212. In terms of how factual development might go forward --- would Congress have wanted a case like this one to be handled by the immigration courts? The first proposed subpoena here was to a cabinet official, and the allegations in this case quote statements made

C. Expertise

The focus to this point has been on what the immigration courts could accomplish in this case.

Could they grant the Petitioner the legal relief he seeks? Could they substantially develop the factual record?

The Court's answer has been no to each question. See Part VI.A and Part VI.B.

The implications of this are taken up in Part VI.D, which considers whether the Petitioner could get the required "meaningful review" of his claim if it first goes to the immigration courts.

Before getting there, though, take a quick detour --- to see the impact here of a decision of the Board of Immigration Appeals.

* * *

"Meaningful review" is the most important of the Thunder Basin factors. See Part V.B.2.

But there are two others.

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about the Petitioner by the President. See Petition ¶¶ 73, 74. It is unclear at this point whether discovery might be needed here. See footnote 47. But if it is, note that the federal courts have evolved any number of potentially relevant doctrines in this area. See, e.g., United States v. Morgan, 313 U.S. 409, 422 (1941) (as to an agency action, a cabinet secretary "should never have been subjected to" a deposition); In re U.S. Dep't of Educ., 25 F.4th 692, 700 & n.1 (9th Cir. 2022) (suggesting that "[t]he rules for when a court may allow the questioning of a cabinet secretary" "rest on a constitutional foundation") (cleaned up); see also In re United States, 985 F.2d 510, 512 (11th Cir. 1993); Simplex Time Recorder Co. v. Sec'y of Lab., 766 F.2d 575, 586 (D.C. Cir. 1985); Kyle Eng'g Co. v. Kleppe, 600 F.2d 226, 231 (9th Cir. 1979). These aim to strike a fine balance between the legitimate needs of parties seeking evidence and the legitimate needs of senior federal officials --- whose time is pressed and whose work files are likely to be especially sensitive, such that they will require special judicial protection as to any discovery. It seems unlikely that Congress would have thought that a case of this "type," raising these sorts of evidentiary issues, should go before the immigration courts, which lack experience with them.

* * *

The first is whether the claims in question are "wholly collateral to the statute's review provisions." Axon, 598 U.S. at 186 (cleaned up).

The claim as to the Secretary's determination is not collateral. It is "the vehicle by which [the Petitioner] seek[s] to" challenge his removal proceedings, Elgin, 567 U.S. at 22 --- and per the statutory "review provisions," those are the "challenge[s]" that are generally supposed to go before the immigration courts.

* * *

The second Thunder Basin factor relates to whether the agency's expertise can be brought to bear if a certain claim goes to it first. See Axon, 598 U.S. at 194; Elgin, 567 U.S. at 22; Free Enter. Fund, 561 U.S. at 491.

If agency expertise can be brought to bear, that is a reason to think Congress wanted claims of the relevant "type" to go to the agency's courts (here, the immigration courts).

But in this case, "agency expertise" would have virtually no role to play as to any immigration court assessment of the Secretary of State's determination.

This Part VI.C explains why.

* * *

Agency adjudicatory bodies are experts in the laws they routinely use, plus nearby bodies of law.

SEC adjudicators, for example, can be expected to be fluent in the Securities Act of 1933 and the Securities Exchange Act of 1934. And they are almost surely experts on related subjects, too. Common-law fraud, for example.

Immigration courts plainly have deep expertise in immigration law.

But the Petitioner claims that the Secretary of State's determination is the product of First Amendment retaliation. See Petition ¶¶ 8, 89; Motion for Preliminary Injunction at 10-18.

And First Amendment issues have little or no place on an immigration judge's docket. See Part VI.A. It follows that

there is no reason to think immigration courts have special expertise in First Amendment law. See Axon, 598 U.S. at 194 (describing constitutional claims as outside the administrative agency's area of expertise); Free Enter. Fund, 561 U.S. at 491 (similar).

But agency expertise can still potentially be brought to bear.

Indeed, the Thunder Basin "agency expertise" factor can weigh in favor of upfront adjudication in the agency's courts --- even when the legal theory that undergirds the claim is not one as to which an agency adjudicator has any expertise. See Elgin, 567 U.S. at 22-23; Rydie v. Biden, 2022 WL 1153249, at *8 (4th Cir. Apr. 19, 2022).

But while that is true in general, in this particular case the "agency expertise" factor does not point to the immigration courts.

* * *

To see why, start with the idea that an agency adjudicator's decision, informed by special expertise, can helpfully move the case along by eliminating the need for later federal court intervention.

Take as an example Elgin v. Department of Treasury, 567 U.S. 1 (2012).

There, federal employees were fired because they did not register for the draft, and they sued. See id. at 6-7. Their argument: their termination for failure to register was unconstitutional because, among other things, the draft discriminated against men based on sex. See id. at 7.

Analyzing the Thunder Basin factors, the Supreme Court ruled that the case needed to first be adjudicated by the relevant agency, the Merit Systems Protection Board.[52] See id. at 8.

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[52] "The Merit Systems Protection Board . . . is a[n] . . . agency in the executive branch charged with protecting federal employees against improper employment-related actions," including "favoritism, or engaging in reprisals against whistleblowers." Jon O. Shimabukuro & Jennifer A. Staman, Cong. Rsch. Serv., R45630, Merit Systems Protection Board (MSPB): A Legal Overview (2019) (summary page).

The Board did not have expertise on the underlying constitutional issue. See id. at 22. But the Court noted that the Board might be able to wrap up the case by applying its expertise to "threshold" issues, without the need for a court to later take up the constitutional question. See id.

For example, one of the fired employees had not been formally fired --- instead, he argued that he had been "constructive[ly] discharge[d]."[53] Id. at 23.

If this employee was not in fact constructively discharged, the constitutional challenge to his firing would no longer exist --- because it could no longer be said that he was fired. See id.

And that, per the Supreme Court, was a reason to let the case run down the agency-adjudication track. See id. After all, the question of whether a person is or is not constructively discharged is "unique to the employment context" and therefore "falls squarely within the [Board's] expertise." Id. at 22-23.[54]

* * *

With this background in mind, turn back now to this case.

Are there "threshold" issues here, id. at 22, that the immigration courts could resolve, and that might put an end to the Petitioner's First Amendment challenge?

Yes, it would seem.

After all, the Secretary of State determined that there were "reasonable ground[s] to believe [the Petitioner's presence or

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[53] Constructive discharge refers to "[a]n employer's creation of working conditions that leave a particular employee or group of employees little or no choice but to resign." Discharge, sense 7, Black's Law Dictionary (12th ed. 2024) (defining "constructive discharge").

[54] For other cases making this same point, see, for example, Bank of La. v. FDIC, 919 F.3d 916, 929 (5th Cir. 2019) ("[T]he [agency] could have mooted the [plaintiff's] constitutional claims by finding the [plaintiff] innocent of the statutory violations it was accused of committing."), and Jarkesy v. SEC, 803 F.3d 9, 29 (D.C. Cir. 2015) ("[T]he agency could moot the need to resolve [the constitutional question] by finding that he did not commit the securities-law violations of which [the plaintiff] stands accused.").

activities in the United States] would have potentially serious adverse foreign policy consequences for the United States." 8 U.S.C. § 1227(a)(4)(C)(i).

Maybe the immigration courts could hold that there were in fact not "reasonable grounds" --- and if so, the Petitioner's claim would be resolved on that basis, without the need for a federal court to decide whether the Secretary's determination amounted to First Amendment retaliation.

And indeed, after the Third Circuit sent Massieu's case to the immigration courts, that is precisely what happened.

The immigration judge looked behind the curtain of the Secretary of State's "reasonable grounds" determination --- and said the evidence was not there. See In re Ruiz-Massieu, 22 I. & N. Dec. 833, 835-36 (BIA 1999).

But that was not the end of the road.

The Board of Immigration Appeals took it from there, and held that what the immigration judge had done was not allowed. Per the Board, the Secretary's determination under 8 U.S.C. § 1227(a)(4)(C)(i) is like a prior criminal conviction --- it must be treated as a given if it seems solid-enough on its face, with no possibility of getting under the hood and examining its underlying factual basis.

> In the scheme adopted by Congress, the Secretary of State's determination as outlined in section 241(a)(4)(C)(i) [8 U.S.C. § 1227(a)(4)(C)(i)] of the Act is equivalent to a duly certified record of criminal conviction by a state or federal court. . . .
>
> [The alternative] would necessarily require the Immigration Judge and this Board to intrude into the realm of foreign policy. . . .
>
> For an example, we need only look to the opinion in the present case. The Immigration Judge held that the [Immigration and Naturalization] Service must produce more than clear, unequivocal, and convincing evidence that the Secretary of State held a

> facially reasonable opinion that the alien's presence would have adverse foreign policy consequences. She required the Service to convince her by clear, unequivocal, and convincing evidence that the Secretary's opinion is reasonable. The Immigration Judge found that the Service had not shown that the opinion of the Secretary of State is reasonable. Consequently, in the absence of further evidence, she substituted her judgment for that of the Secretary of State. This standard of inquiry would entangle the Immigration Court in matters of foreign policy and involve that court in weighing the importance of various factors in an area in which it has no special expertise. Such an in-depth examination could well require the Service to proffer secret or confidential information and expert witnesses, or involve a deposition of the Secretary of State. There is no indication that Congress contemplated an Immigration Judge, or even the Attorney General, overruling the Secretary of State on a question of foreign policy.

Id. at 844-45.[55]

In short: "it is . . . the opinion of the Secretary [of State] that decides the issue," id. at 845 n.13 --- and because of the above-quoted ruling from the Board of Immigration Appeals in Ruiz-Massieu, there would be next to nothing for an immigration court to do in this case. The reasonableness of the Secretary's determination might have been a "threshold" matter for the

[55] Ruiz-Massieu is binding on immigration judges, see 8 C.F.R. § 1003.1(g)(1), and serves as precedent for future Board of Immigration Appeals proceedings regarding the same issue. See id. § 1003.1(g)(2); see also April 11 Audio Recording at 1:34:30 to 1:36:00 (holding that Ruiz-Massieu bound the immigration court).

immigration courts. Elgin, 567 U.S. at 22. But after the Ruiz-Massieu decision, no longer.[56]

* * *

Are there other reasons why agency expertise might matter?

Yes. Take up here the main added possible reason, and then consider a second one below in footnote 57.

An agency's narrowing construction of a statute might potentially obviate the need for a federal court to later reach the relevant constitutional issues. See id. at 23 (a "challenged statute may be one that the [agency] regularly construes, and its statutory interpretation could alleviate constitutional concerns"); see also Jarkesy, 803 F.3d at 29 ("[T]he [agency] could offer an interpretation of the securities laws in the course of the proceeding that might answer or shed light on [the plaintiff's] [constitutional] challenge. As our court has previously observed, there are precious few cases involving interpretation of statutes authorizing agency action in which our review is not aided by the agency's statutory construction.") (cleaned up); Am. Fed'n of Gov. Emps., AFL-CIO v. Trump, 929 F.3d 748, 761 (D.C. Cir. 2019) (similar).

Imagine, for example, if the immigration courts took first crack at this case --- and construed 8 U.S.C. § 1227(a)(4)(C)(i) as providing a basis for removal only if the Secretary of State's

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[56] There might sometimes be fact-finding work for the immigration courts to do in cases like this one. For example, there may be a dispute as to whether the Secretary personally made the relevant determination. That could take fact-finding, and the immigration courts could do it. Cf. In re Ruiz-Massieu, 22 I. & N. Dec. at 845 n.13. And that possibility was part of why Judge Alito thought the Massieu case should be sent to the immigration courts. See Massieu, 91 F.3d at 426. But no one seems to be disputing the Secretary of State's personal involvement here. Indeed, the Petitioner goes the other way --- and affirmatively alleges that there was a good deal of personal involvement from the Secretary in this case. See Petition ¶¶ 2-3, 33, 75, 80, 83. (Note that the Secretary does not always need to be personally involved in passing on a determination. Only when his determination is based on speech that would be First Amendment-protected. See 8 U.S.C. §§ 1227(a)(4)(C)(ii), 1182(a)(3)(C)(iii). But the immigration courts have no special expertise on that First Amendment gating question.)

determination was not based on any sort of retaliation whatsoever.

That could switch things up, transforming a constitutional question into an immigration law question. The constitutional question (was the Secretary's determination the product of First Amendment retaliation?) would become one of immigration law (was the Secretary's determination the product of "any sort of retaliation," as defined by the immigration courts?).

And if so, it might make sense to allow the immigration courts to assess the case first --- under what will, by hypothesis, be their own standard.

But the Board of Immigration Appeals has already construed Section 1227(a)(4)(C)(i), and it has not opted to give it a limiting construction of any kind.

And in any event, a limiting agency construction would carry less weight now that the Board of Immigration Appeals decisions no longer get strong deference. Compare Bautista v. Att'y Gen. of U.S., 744 F.3d 54, 58 (3d Cir. 2014), abrogated on other grounds by Torres v. Lynch, 578 U.S. 452 (2016) (Board of Immigration Appeals decisions get Chevron deference), and Rodriguez-Avalos v. Holder, 788 F.3d 444, 448-49 (5th Cir. 2015) (same), with Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412 (2024) ("Chevron is overruled.").

* * *

Bottom line: the immigration courts would be unable to apply their expertise here to resolve any substantial threshold matter --- and they would be unable to interpret the immigration laws in a way that would later receive strong deference from a federal court.

In light of this, the Thunder Basin "agency expertise" factor tilts the scales toward the conclusion that Congress did not intend for immigration courts to handle this "type" of case in the first instance.[57]

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[57] Per the Supreme Court in Axon, the expertise factor "reflect[s] . . . the point of special review provisions --- to give the agency a heightened role in the matters it customarily handles, and can apply distinctive knowledge to." 598 U.S. at 186. But "the point" of the structure created by Congress for

D. Conclusion

As to the Secretary of State's determination, the immigration courts cannot provide the Petitioner with the legal relief he seeks. See Part VI.A. They cannot be expected to knock out any fact-finding that might potentially be necessary. See Part VI.B. And they cannot bring their special expertise to bear in a substantial way. See Part VI.C.

Does this mean that if this case starts off in the immigration courts, the Petitioner cannot get "meaningful review" --- and that, under Section 1252(b)(9), this Court should therefore retain jurisdiction?[58]

To answer, go back for a moment to the key cases.

* * *

Recall that, in Elgin, employees were fired for not signing up for the draft. See 568 U.S. at 6–7. The Supreme Court held that the employees could not sue first in the federal district court. They would have to go down the administrative track, per a statute --- even though they could not get constitutional relief there. See id. at 13–14.

Or look back to Massieu.

The underlying statute, essentially the same one that is at issue here, was challenged as unconstitutional.

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immigration claims was not just to build up and lean on expertise --- but also to keep the tide of immigration cases from swamping the federal courts and displacing a good deal of their work on other cases. See Robbie Clarke, Reaffirming the Role of the Federal Courts, 17 Wash. & Lee J. Civ. Rts. & Soc. Just. 463, 474–75 & n.65 (2011). But any precedent that might be set by this case does not implicate such concerns. It is much too unusual for that. Because of the Board of Immigration Appeals' Ruiz-Massieu decision, for example, there is virtually nothing for the immigration courts to do here. And the sensitive and sprawling nature of the discovery that might potentially be required makes this case an especially serious misfit for immigration courts fact-finding.

[58] Recall: the Court here is proceeding on the assumption that Section 1252(b)(9) applies in the first place. See Part IV.

But the immigration judge's hands were tied. She was "not authorized to consider the constitutionality of the statute." 91 F.3d at 424.

The result? Same as in Elgin. The Third Circuit held that the noncitizen would have to go to the immigration courts and then over to the court of appeals, rather than seek immediate relief in the district court. See id. at 422.

* * *

These precedents loom large. They suggest that going to the administrative courts is necessary --- even when they cannot be the litigation's main event.

But in the end, the Court's conclusion is this: neither the Supreme Court's Elgin decision nor the Third Circuit's Massieu decision dictates the outcome here.

Those cases are different than this one.

* * *

The first difference has already been discussed.

In Elgin and Massieu, the administrative courts could realistically be expected to push things forward.

They could gather facts. They could bring to bear their distinctive expertise.

The cases would take longer to make it to federal court --- a first trip there, to the federal court of appeals, could go forward only after the administrative adjudication was done.

But the time in Elgin and Massieu would have been well spent. The administrative courts' work (fact-finding, using their expertise) would have set the table for the federal court of appeals to make its constitutional decision.

But in this case, the time in the immigration courts cannot be expected to advance the ball.

If there needs to be fact-finding here, it may potentially be sprawling, and it may potentially involve sensitive evidence, or (renewed) requests to depose senior officials. See Part VI.B.

And the scope of discovery may depend not on questions of immigration law, but on questions of constitutional law, both procedural (for example: what are the limits on subpoenaing a

cabinet official?) and substantive (for example: is there a "policy" exception under Lozman to the Nieves First Amendment-retaliation framework?). See id.

This is not the kind of fact-finding work the immigration courts have been built for. See id.

And in this case, the immigration courts would also have no real chance to deploy their special expertise. The Board of Immigration Appeals has already held that the Secretary of State's determination is conclusive. This binds the immigration courts. And it means that, for those courts at least, there is no room to examine the underlying basis of the Secretary's determination. See Part VI.C.

There is, in short, little that the immigration courts can be expected to accomplish in this case.

The requirement of "meaningful review" under Thunder Basin, Elgin, and Massieu can accommodate a slower road to federal court. But those cases envision that along the way things will get done. Facts will be found, law will be interpreted, expertise will be used. See Thunder Basin, 510 U.S. at 214-15; Elgin, 567 U.S. at 22-23; Massieu, 91 F.3d at 426.

The work in the administrative court may end the case. And if not, then the time will have been used. The journey (in the administrative courts) will shape the final destination (review in federal court).

But Elgin and Massieu do not purport to speak to a case like this one. In those cases, the administrative court route meant that extra time would pass --- but for a purpose.

Here, the situation would be different. Time would pass, yes, and perhaps a great deal. But there would be little to show for it.

* * *

Take now a second way in which this case is different from Elgin or Massieu.

Start with the basic distinguishing point, see Part VI.D.1, and then look to its implications from three related perspectives. See Part VI.D.2 to Part VI.D.4.

1. Public Concern

The Petitioner alleges that the Secretary of State's determination amounts to retaliation for his First Amendment-protected statements.

There was nothing like that in Elgin. The petitioners there were federal employees who had not registered for the draft. See 567 U.S. at 6-7.

And there was nothing like that in Massieu, where the plaintiff was a former senior Mexican official whose presence had become a thorn in the side of U.S.-Mexico relations. See Massieu, 915 F. Supp. at 712 (quoting Letter from Warren Christopher, Sec'y of State, to Janet Reno, Att'y Gen.) (Oct. 2, 1995) (failure to return the plaintiff "to Mexico . . . would be a major setback for . . . our combined efforts to chart a new and effective course of U.S.-Mexican relations").[59]

Before getting to why this difference matters, note briefly the Petitioner's speech-related allegations.

That he had spoken at press conferences and on TV. See Petition ¶ 26. That he had helped lead two university student groups, at least one of which puts on public lectures. See id. ¶ 23. And that the subject of all this was the current violence in the Middle East and the Petitioner's views on it --- Israel has committed a "genocide," the Petitioner has said, id. ¶ 22; Columbia University, where he was a student, is "financing and in other ways facilitating it," he has said, id.; and the United States is on the wrong side of the line. See id. ¶ 29.

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[59] The Massieu complaint alleged that "the deportation proceeding evidence[d] selective enforcement in retaliation for Mr. Ruiz Massieu's exercise of his First Amendment right to criticize the Mexican political system." Massieu, 915 F. Supp. at 689. But that was the first and last appearance of the First Amendment in Massieu. It was not invoked in the opinion of the district court, in the appellants' or appellee's briefs on appeal, or in the opinion of the court of appeals. See generally Massieu, 915 F. Supp. 681; Massieu, 91 F.3d 416; Appellants' Brief, Massieu v. Reno, 91 F.3d 416 (3d Cir. 1996) (No. 96-5125), 1996 WL 33414627; Appellee's Brief, Massieu v. Reno, 91 F.3d 416 (3d Cir. 1996) (No. 96-5125), 1996 WL 33414626; Appellants' Reply Brief, Massieu v. Reno, 91 F.3d 416 (3d Cir. 1996) (No. 96-5125), 1996 WL 33414628.

Per the Supreme Court, speech on matters of public concern "occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." Snyder v. Phelps, 562 U.S. 443, 452 (2011).

Was the Petitioner's alleged speech about a "public concern"?

Speech "deals with matters of public concern when it can be fairly considered as relating to any matter of political . . . concern to the community." Id.

The Petitioner's public statements about the Middle East conflict meet that test. See, e.g., id. at 454 (holding that protest signs as to United States military policy were "political" and "of public import"); see also Rankin v. McPherson, 483 U.S. 378, 386 (1987); Navab-Safavi v. Glassman, 637 F.3d 311, 313, 316 (D.C. Cir. 2011); Dunn v. Carroll, 40 F.3d 287, 291–92 (8th Cir. 1994).

And speech can be a matter of public concern when it is "a subject of legitimate news interest," Snyder, 562 U.S. at 452, including as to "all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." Time, Inc. v. Hill, 385 U.S. 374, 388 (1967); accord, e.g., Lane v. Franks, 573 U.S. 228, 241 (2014); Amalgamated Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty., 39 F.4th 95, 103–04 (3d Cir. 2022); O'Laughlin v. Palm Beach Cnty., 30 F.4th 1045, 1051–52 (11th Cir. 2022).

The Petitioner's public statements meet that test, too

In short: the Petitioner's speech was on a subject of "public concern" --- and that sort of speech gets "special protection." Snyder, 562 U.S. at 452.

* * *

Moreover, the Petitioner alleges not only that he was detained by immigration officials because of his speech --- but also that this detention is having an effect now, in the present.

A direct effect --- because detention prevents the Petitioner from speaking publicly. See Petition ¶¶ 89, 99.[60]

[60] See generally Falcone v. Dickstein, 92 F.4th 193, 210 (3d Cir. 2024) ("There is no dispute that an arrest constitutes conduct sufficient to deter a person of ordinary firmness from

And an indirect effect --- because detention deters the Petitioner (and others) from speaking. See id. ¶ 89.[61]

This sort of here-and-now impact on speech weighs heavily.

That is because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976) (plurality opinion); see Ne. Pa. Freethought Soc'y v. Cnty. of Lackawanna Transit Sys., 938 F.3d 424, 442 (3d Cir. 2019); B.H. ex rel. Hawk v. Easton Area Sch. Dist., 725 F.3d 293, 323 (3d Cir. 2013); see also 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2948.1 (3d ed. 2025); cf. Tandon v. Newsom, 593 U.S. 61, 64 (2021); Roman Cath. Diocese of Brooklyn v. Cuomo, 592 U.S. 14, 19 (2020); Dombrowski v. Pfister, 380 U.S. 479, 485–86 (1965); Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly, 309 F.3d 144, 178 (3d Cir. 2002).

And this is because "[t]he timeliness of political speech" --- the type of speech at issue here --- "is particularly important." Elrod, 427 U.S. at 374 n.29 (citing Carroll v. President & Comm'rs of Princess Anne, 393 U.S. 175, 182 (1968); Wood v. Georgia, 370 U.S. 375, 391 (1962)).

Our law's response to a here-and-now impact on political speech has been the same across the board: no unnecessary delay.

Deal thoughtfully and thoroughly with the speech issue. But deal with it on a faster-than-usual timeline.

Begin seeing this below, and its import for this case.

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exercising her constitutional rights.") (cleaned up), cert. denied sub nom. Murray-Nolan v. Rubin, 144 S. Ct. 2560 (2024); cf. Speech First, Inc. v. Whitten, 145 S. Ct. 701, 703 (2025) (Thomas, J., dissenting from the denial of certiorari) (discussing various things that "may cause students to self-censor") (cleaned up).

[61] Since the 1960s, the law has called this sort of First Amendment deterrence a "chilling effect." See Dombrowski v. Pfister, 380 U.S. 479, 487 (1965); see also, e.g., Counterman v. Colorado, 600 U.S. 66, 75 (2023) (describing that certain rules may "chill, or deter, speech outside their boundaries").

2. First Amendment Speed

Move here through four separate legal contexts, each distinct from the next, in which the unifying thread was only this: here-and-now speech impacts cannot be left out there, waiting too long for judicial review.

a) Administrative Proceedings

Look first to Oestereich v. Selective Service System Local Board No. 11, Cheyenne, 393 U.S. 233 (1968).

There, a student protested against the Vietnam War. See id. at 234. Soon afterwards, the draft board withdrew an exception he was entitled to and called him up for induction into the military. See id. at 234–35.

The student sued to stop his enlistment; the district court dismissed his complaint, and the court of appeals affirmed. See id. at 235. The reason: judicial review would be available, if only later on. See Oestereich v. Selective Serv. Sys. Loc. Bd. No. 11, Cheyenne, 390 F.2d 100, 100 (10th Cir.).

The Supreme Court reversed. See Oestereich, 393 U.S. at 239.

A statute barred judicial review of the draftee's classification before he was inducted. That was "unambiguous," the Supreme Court said. Id. at 235.

And there was no doubt that judicial review would someday be available, as the court of appeals had said --- either as "a defense in a criminal prosecution" brought against the student for not registering, or on a "habeas corpus [petition] after induction." Id.

But the Supreme Court held that a literal reading of the law might be "out of harmony . . . with constitutional requirements." Id. at 238. The draft board's actions, the Court explained, were no different in this sense "from a case where induction of a[] . . . clearly exempt person is ordered . . . to retaliate against the person because of his political views." Id. at 237.

And given this concern about "retaliat[ion]" for "political views," the Supreme Court did not make the student wait for his day in court, either as a habeas petitioner after his enlistment or as a criminal defendant after his refusal to enlist. See id.

at 238. Rather, per the Court, he could go to court right away. See id.

b) State Prosecutions

The next example starts with this: a long-standing statute that tells federal courts that they cannot generally enjoin a state court proceeding. See 28 U.S.C. § 2283.

But sometimes, very rarely, to ward off a First Amendment chill --- they can.

In Dombrowski v. Pfister, 380 U.S. 479 (1965), civil rights activists faced criminal prosecution. See id. at 482. State prosecutors accused them of belonging to a Communist front --- allegations that allegedly "frightened off potential members and contributors." Id. at 488.

In federal district court, the activists sought an injunction against the officials. See id. at 482. The court dismissed their complaint, see id., but the Supreme Court reversed. See id. at 483.

There was good reason not to intervene in the prosecution. Federalism concerns, always important, were top of mind. See id. at 484. So too were less-intrusive ways of resolving the case. State courts and prosecutors, after all, are sworn to honor the Constitution, just as federal officials are, see id., and any miscarriage of justice could be promptly appealed, perhaps up to the Supreme Court. See id. at 485. In the meantime, a state court might moot the matter by acquitting the defendants. See id.

But all of that would come too late, the Supreme Court said. By then, the First Amendment harm would have been done.

"The chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure." Id. at 487. "Even the prospect of ultimate failure of such prosecutions by no means dispels their chilling effect on protected expression." Id. at 494. The Supreme Court ordered the district court to enjoin prosecution. See id. at 497.

To be sure, Dombrowski has been whittled a long way back.

Under Younger v. Harris, 401 U.S. 37 (1971), Dombrowski no longer means that a chilling effect can "by itself justify

federal intervention." Id. at 50. Nonetheless, Younger reiterated that intervention may be proper when there is bad faith or harassment on the part of a state.[62] See id. at 53. And even without that, "[t]here may, of course, be extraordinary circumstances in which the necessary irreparable injury can be shown." Id.

But Dombrowski and Younger remain relevant.

In those cases, as in Oestereich, the need in the First Amendment context for speed was a powerful counterweight --- heavy enough, at least sometimes, to overcome important countervailing concerns, including the need for federal courts to wait, out of respect for the judgment of state officials and judges (in Dombrowski); of federal draft boards (in Oestereich); and, in both cases, the judgment of Congress, which had passed on-point statutes that told the courts to hold back.

c) The Supreme Court

Turn now to the Supreme Court, and one of the statutes passed by Congress that shapes its jurisdiction, 28 U.S.C. § 1257.

Section 1257 allows the Supreme Court to hear "[f]inal judgments . . . rendered by the highest court of a State." Id. (emphasis added).

But when a First Amendment "chill" may be in the air, the Supreme Court has read Section 1257 as allowing review of a non-final judgment. See, e.g., Fort Wayne Books, Inc. v. Indiana, 489 U.S. 46, 55–57 (1989); Nat'l Socialist Party of Am. v. Vill. of Skokie, 432 U.S. 43, 44 (1977); Neb. Press Ass'n v. Stuart, 423 U.S. 1327, 1329 (1975) (Blackmun, J., in chambers); Mia. Herald Pub. Co. v. Tornillo, 418 U.S. 241, 246–47 & n.6 (1974); Mills v. Alabama, 384 U.S. 214, 221–22 (1966) (Douglas, J., concurring).

For an example, look to Fort Wayne Books.

There, two bookshops sold graphic magazines. See State v. Sappenfield, 505 N.E.2d 504, 504 (Ind. Ct. App. 1987), aff'd and

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[62] The Dombrowski Court did not define "bad faith" but suggested it includes "discriminatory enforcement or the use of impermissible criteria for prosecution, such as a defendant's . . . political beliefs." Owen M. Fiss, Dombrowski, 86 Yale L.J. 1103, 1115 (1977) (citing Dombrowski, 380 U.S. at 490).

remanded sub nom. Fort Wayne Books, Inc. v. Indiana, 489 U.S. 46 (1989). State prosecutors charged the shops' owner with distributing obscene material. And that provided a basis for state-law RICO charges. See Fort Wayne Books, Inc., 489 U.S. at 53.

The trial court threw out the racketeering counts for being unconstitutionally vague. See id. The Indiana Court of Appeals reversed --- and the Indiana Supreme Court decided not to take up the case. See id.

The federal Supreme Court granted certiorari and then paused to take stock of its jurisdiction. See id. at 54.

The jurisdictional question was a hard one. In criminal law, the rule of finality generally requires a conviction and a sentence before an appeal can be taken. See id. But neither box was checked. See id. Normally, then: no Supreme Court jurisdiction under the statute. See id.

But the Supreme Court determined that the First Amendment required "immediate review," meriting an exception to the general rule. See id. at 55.

A too-long wait, the Court explained, could chill speech. "Whichever way we were to decide on the merits, it would be intolerable to leave unanswered, under these circumstances, an important question of freedom of the press under the First Amendment." Id. at 56. Leaving the question unsettled "could only further harm the operation of a free press." Id.

d) Prior Restraints

One more example.

A prior restraint is government censorship that cuts off speech before it makes it to the public. It is a restraint (of speech) that is prior (to publication).

Prior restraints are "immediate and irreversible," Neb. Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976), and presumptively unconstitutional. See Se. Promotions, Ltd. v. Conrad, 420 U.S. 546, 558 (1975).

Nonetheless, the First Amendment allows for some prior restraints --- but only when judicial review is almost immediately available. See Vance v. Universal Amusement Co., 445 U.S. 308, 309 (1980); Se. Promotions, Ltd., 420 U.S. at 560;

Freedman v. Maryland, 380 U.S. 51, 58–59 (1965); Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963).

Why? To quickly dissipate any freedom-of-speech chill.

Take as the example the Freedman case.

A few years before, the Court had decided that the First Amendment allowed some prior restraints on movies. See Freedman, 380 U.S. at 54 (citing Times Film Corp. v. City of Chi., 365 U.S. 43 (1961)).

Now, in Freedman, the Court considered the constitutionality of a Maryland law that prohibited screening a disapproved movie "unless and until," in the Court's words, "the exhibitor undertakes a time-consuming appeal to the Maryland courts and succeeds in having the Board's decision reversed." Id. at 54–55.

That did not clear the bar.

The Court held that a movie-censorship scheme could survive constitutional scrutiny only under various conditions. One: fast recourse to a court. See id. at 58–59.

But the Maryland law "provide[d] no assurance of prompt judicial determination," id. at 60, and the only reported appeal of a movie-censorship decision at that point showed that it took six months --- longer than the two days the Court suggested was appropriate in another state's scheme. See id. at 55, 60. Fear of a "chilling effect" drove the Court's thinking. See id. at 59–61. And the Maryland statute was struck down as unconstitutional.

e) Implications

These cases are, intentionally, pulled from all over the map. They show something that suffuses our law, in many of its different corners --- that when it comes to here-and-now First Amendment injuries, the law requires a faster pace.

And note this: in many ways, the questions taken up by the Supreme Court in the cases set out above were harder than the issue before the Court today.

To accommodate the First Amendment's need for faster-than-usual judicial review, must a state law be struck down as

unconstitutional, as in the case of the Maryland licensing scheme?

Must an exception be carved into a federal law, like the "unambiguous" statute that determined when a federal court could take the draft-registration case? Or the Supreme Court's jurisdictional statute? Or the statute that tells federal courts not to enjoin state court proceedings?

These are big lifts.

Declaring a statute unconstitutional is always a fateful act, the very last resort. See, e.g., Mistretta v. United States, 488 U.S. 361, 384 (1989). And statutes are generally to be read as they were written, not with judge-made exceptions bored into them.

But as in the cases sketched out above, the Supreme Court time and again has done those very things, to accommodate the First Amendment's need for a quicker pace.

For the questions addressed in this Opinion, much less is at stake.

No one says here that too much delay means that a statute must be struck down as violating the First Amendment. And no one says that a law on the books must be re-read, so as to match up with constitutional values.

Rather, delay matters here only as a reason to do something much less intrusive than all that --- as a way of understanding how to apply the law that we already have.

That law requires consideration of whether later federal court review would still be "meaningful" enough. See Part V.

Here, it would not be.

Come back again to what the Supreme Court has said: "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod, 427 U.S. at 373. And: "[t]he timeliness of political speech" --- which is in play here --- "is particularly important." Id. at 374 n.29.

For judicial review to be "meaningful," it must hew to these principles.

But judicial review that tells the Petitioner to wait until the immigration courts are done does not do that.

Not because First Amendment concerns always compel this result. But because they do here, in this case.

One core reason why: for reasons that are particular to this case, see Part VI.A to Part VI.C, the time spent in the immigration courts would accomplish next to nothing.

The Petitioner would not be able to seek the legal relief he asks for. See Part VI.A. The factual record could not be substantially developed. See Part VI.B. The immigration courts' special expertise could not be brought to bear. See Part VI.C.[63]

Delay to ensure thoughtful consideration of hard issues is permissible. Necessary, even.[64]

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[63] A caveat. There is some relief that may be available to the Petitioner --- applying for asylum, for example, or the withholding of removal. If an immigration judge grants any of this relief, that could be "potentially dispositive," as Massieu suggested. 91 F.3d at 425. It is unclear how any such requests for relief might play out, or whether they would become unavailable if this Court retains jurisdiction. But one way or another, the possibility of asylum or withholding moves the needle, but not far enough to alter the conclusion here.

[64] See N.Y. Times Co. v. United States, 403 U.S. 713, 753 (1971) (Harlan, J., dissenting) (arguing that "difficult" First Amendment questions "should have led the Court to shun such a precipitate timetable"); id. at 752 (Burger, C.J., dissenting) ("We all crave speedier judicial processes but when judges are pressured as in these cases the result is a parody of the judicial function."); Tunick v. Safir, 209 F.3d 67, 88 (2d Cir. 2000) (certifying case to state court while acknowledging that "in many First Amendment cases . . . the constitutional rights involved are significantly damaged, if not altogether lost, by the delay entailed in certification"); cf. United States v. Coburn, 2025 WL 729969 (D.N.J. Mar. 6, 2025).

But not delay that may be long. That will serve little real practical purpose. And that we can see, now, will come and go with little to show for the wait.[65]

3. AADC

To see the "meaningful review" issue here from another angle, look to a case, AADC, that bubbled up through the federal courts during the 1980s and 1990s.

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[65] It is hard to say how long the immigration courts would take. See footnote 50. And averages would almost surely fail to tell the story, in part because courts tend to prioritize important constitutional cases. See, e.g., Care One, LLC v. NLRB, 680 F. Supp. 3d 540, 549 (D.N.J. 2023). But this much is clear: if this case does not go to the immigration courts, federal court review will continue now. If it goes to the immigration courts first, the process has more steps to it --- immigration judge, then Board of Immigration Appeals, and only then a federal court, a court of appeals. And in the end, the immigration courts route may be longer than that. The Respondents have suggested that one way to do any needed fact-finding here might be for the federal court of appeals, when it gets the case, to remand it to a federal district court --- which would then presumably send it back up to the court of appeals for a decision. See Respondents' Letter (Apr. 10, 2025) (ECF 185) at 3. It is not clear why the Respondents mention this possibility. Maybe because of a felt sense that, if this case requires fact-finding, the immigration courts may not be the right forum. See Part VI.B. But one way or another, a fact-finding remand only folds in another round of back and forth --- and therefore an extra dollop of delay. (And note another potential issue. When the factual record is not well developed coming out of the immigration courts, federal courts of appeals sometimes bounce the case back down for fact-finding by an immigration court or a federal district court. But the Supreme Court has suggested this may not be allowed in cases like this one --- and the problem may be jurisdictional. See AADC, 525 U.S. at 488 n.10. This might imply a serious, down-the-road issue with going the immigration courts route --- a lack of solid factual development by the time the case hits the federal court of appeals (because the immigration courts are not built for fact-finding in a case like this) but with no ready way to fix the problem (because a remand may encounter a non-waivable legal hurdle).)

Federal officials sought to deport eight noncitizens, at first on grounds related to their speech. See AADC, 525 U.S. at 473. But the speech-related charges were dropped. See id. And what was left behind included removal charges based on two of the noncitizens' membership in an alleged terror organization, plus six of the noncitizens' status violations, for issues like overstaying a visa and failing to maintain student status. See id. at 473. (There was evidence that all eight noncitizens were involved in helping to finance the terror group. See id. at 475.)

As here, various statutes seemed to require going to the immigration courts before a federal court could get involved.

But the noncitizens argued to the Supreme Court that federal court review "would come too late to prevent the 'chilling effect' upon . . . First Amendment rights" --- and so the statutes that funneled cases to the immigration courts should be read in light of the "doctrine of constitutional doubt,"[66] and "interpret[ed] . . . in such fashion as to permit immediate review of the[] [First Amendment] claims." Id. at 488.

But the Supreme Court, per Justice Scalia, rejected this argument.

How? By breaking new ground and resolving a consequential legal question --- holding that the eight noncitizens had no underlying First Amendment selective-enforcement claim because they had no legal status in the United States. See id. at 489.[67]

With that holding made, the doctrine of constitutional doubt could no longer impact how jurisdiction-channeling statutes might be interpreted --- because there was no longer any possibility of a constitutional violation.

Why did the Court choose to resolve the First Amendment selective-enforcement claim?

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[66] This doctrine "counsel[s] that ambiguous statutory language be construed to avoid serious constitutional doubts." FCC v. Fox Television Stations, Inc., 556 U.S. 502, 516 (2009).

[67] The selective-enforcement question was so new that no on-point precedents existed to guide the Court.

The answer is not crystal clear. But it seems likely to have been this: because the Court viewed the alternative on the table as presenting an even closer question of constitutional law.

And that brings things back to this case.

The alternative before the AADC Court was to hold that a federal court could not hear the noncitizens' here-and-now First Amendment claim until the immigration courts got first crack. Justice Ginsburg argued for this position in her concurrence, see id. at 492 (Ginsburg, J., concurring), based on a narrowed-down reading of some of the cases discussed above in Part VI.D --- narrowed readings that evidently did not convince the Court. Per the majority:

> Instead of resolving this constitutional question [about First Amendment selective enforcement], Justice Ginsburg chooses to resolve the constitutional question whether Congress can exclude the courts from remedying an alleged First Amendment violation with immediate effects, pending the completion of administrative proceedings. It is not clear to us that this is easier to answer than the question we address --- as is evident from the fact that in resolving it Justice Ginsburg relies almost exclusively on cases dealing with the quite different question of federal-court intervention in state proceedings. (Even in that area, most of the cases she cites where we did not intervene involved no claim of present injury from the state action --- and none involved what we have here: an admission by the Government that the alleged First Amendment activity was the basis for selecting the individuals for adverse action. Cf. Dombrowski v. Pfister, 380 U.S. 479, 487–488, n. 4 (1965).) The one case not involving federal-state relations in fact overrode a congressional requirement for completion of administrative proceedings --- even though, unlike here, no immediate harm was apparent. See Oestereich v. Selective Serv. System Local Bd. No. 11, 393

> U.S. 233 (1968). Justice Ginsburg counts the case as one for her side on the basis of nothing more substantial than the Court's characterization of the agency action at issue as "blatantly lawless," id., at 238. See post, at 948 (opinion concurring in part and concurring in judgment).
>
> Nor is it clear that the constitutional question Justice Ginsburg addresses has narrower application and effect than the one we resolve. Our holding generally deprives deportable aliens of the defense of selective prosecution. Hers allows all citizens and resident aliens to be deprived of constitutional rights (at least where the deprivation is not "blatantly lawless") pending the completion of agency proceedings.

Id. at 488 n.10 (cleaned up).

Justice Scalia's majority opinion, as quoted at length above, plainly rested on the idea that there was a real possibility that it is unconstitutional to divert people with here-and-now First Amendment claims into the immigration courts, at the cost of pushing off into the future their day in federal court.

And the question seemed vexed enough that the Supreme Court, rather than wade in, worked to skirt the issue, by resolving another novel constitutional claim --- whether noncitizens without lawful status can press a First Amendment selective-enforcement claim.

If, per the Supreme Court, delayed consideration in federal court of a First Amendment claim might be unconstitutional --- then that is a strong argument for taking what is a much smaller step, for opting not to delay federal court consideration of a First Amendment claim in the first place.

And all the more so in this case.

Not just because of how little can realistically be accomplished here in the immigration courts. See Part VI.A to Part IV.C.

But also because of how this case lines up against AADC.

In AADC, there were allegations of membership in a terror group and evidence of financial support to it. See 525 U.S. at 474–75. Here, no such information has been put before the Court.

And in AADC, the noncitizens did not have lawful status. See id. at 488, 491–92. Here, the Petitioner does, see Petition ¶¶ 1, 9, 21 --- and that could make a meaningful First Amendment difference, as the Court held in AADC. See 525 U.S. at 488, 491–92.

In short: if delayed federal court uptake of a First Amendment claim raised a serious constitutional issue in AADC, is that not a powerful reason to steer away from such delay here?

4. Axon

Finally, look to the Supreme Court's recent decision in Axon Enterprise, Inc. v. Federal Trade Commission, 598 U.S. 175 (2023).

Axon was a case like this one. It involved a set of statutes that seemed to require that the case be sent to the administrative courts, before any federal court involvement. See id. at 181.

To decide where the case should start off, the Supreme Court asked "whether preclusion of district court jurisdiction 'could foreclose all meaningful judicial review.'" Id. at 190 (quoting Thunder Basin, 510 U.S. at 212–13).

The Axon Court's answer: it depends.

Typically, a party can get meaningful judicial review even if a district court never becomes involved in the case. Review of agency action by a court of appeals, following an administrative proceeding --- that is generally enough. See id. at 190.

But not always.

Not, per the Supreme Court, when there is a "here-and-now" injury --- one that will be "impossible to remedy once the proceeding is over, which is when appellate review kicks in." Id. at 191.

In Axon, the plaintiffs argued that they were "being subjected to unconstitutional agency authority --- a proceeding by an unaccountable [FTC] ALJ." Id. (cleaned up). That was a here-and-now constitutional injury, the Supreme Court held. See id.

A court of appeals could later vacate any FTC order that might issue, but it could never unwind the clock and undo the harm of being subjected to the FTC proceeding in the first place. "Judicial review . . . would come too late to be meaningful." Id.

But is that not also true of having speech allegedly frozen (through detention) and chilled (because of the fear that detention causes)?

Yes.

If being subjected to proceedings before an allegedly unconstitutional decision-maker is a here-and-now injury, as Axon held --- then so too is it a here-and-now injury to allegedly lose out on core First Amendment rights.

* * *

To see the point in sharper relief, move away for a moment from First Amendment issues.

Administrative law has sometimes allowed claimants to bypass agency adjudicators and try to remedy harms now --- if those claims could not realistically be addressed later, at the moment when the federal court would ordinarily step in.

In Mathews v. Eldridge, 424 U.S. 319 (1976), for example, the Supreme Court allowed the respondent to bring a due-process challenge to the lack of a pre-termination hearing for disability benefits --- despite the Social Security Act requiring the exhaustion of administrative remedies. See id. at 327–28. In light of the respondent's physical state and need for benefits, the Court observed that "an erroneous termination would damage him in a way not recompensable through retroactive payments." Id. at 331.

And in Kreschollek v. Southern Stevedoring Co., 78 F.3d 868 (3d Cir. 1996), a longshoreman got hurt on the job and was cut off from his disability payments. Id. at 870. The Third Circuit allowed him to challenge the constitutionality of part of a federal statute in the district court, rather than wait to be heard in a court of appeals after the administrative process. See id. Making him wait would be like having no "effective judicial review" at all, since the longshoreman would be without any income in the meantime. Id. at 874–75.

These harms, which seem (and are) irreparable, opened the doors to federal courthouses, even though that meant skipping over agency adjudication.

What do harms of this sort have in common?

The underlying principles can be boiled down in a number of different ways.

But the First Circuit has captured part of the doctrine well. It noted that under Thunder Basin, "effective" judicial review becomes unavailable --- such that immediate judicial review makes sense --- "where the compliance costs are so onerous that complying with the regulation [while the administrative proceeding continues] will cause irreparable harm." E. Bridge, LLC, 320 F.3d at 90 (collecting cases).

If this is right, is not alleged suppression of political speech the archetypal "irreparable harm"? And if so, is that not an argument for allowing those sorts of claims to go straight to federal court?

* * *

The basic remedy for unconstitutional curbs on political speech is an injunction, and often an early one. The harm is irreparable. It needs to stop now. Letting the speech suppression go on, with only the promise of a delayed and after-the-fact damages remedy --- that does not cut it.

Cases routinely hold this. See N.Y. Times Co. v. United States, 403 U.S. 713, 714 (1971); Schrader v. Dist. Att'y of York Cnty., 74 F.4th 120, 128 (3d Cir. 2023); Amalgamated Transit Union Loc. 85, 39 F.4th at 108; Ctr. for Investigative Reporting v. Se. Pa. Transp. Auth., 975 F.3d 300, 317 (3d Cir. 2020); Ne. Pa. Freethought Soc'y, 938 F.3d at 442; Hawk, 725 F.3d at 323; K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist., 710 F.3d 99, 113 (3d Cir. 2013); Stilp v. Contino, 613 F.3d 405, 409 & n.4 (3d Cir. 2010); Swartzwelder v. McNeilly, 297 F.3d 228, 231, 242 (3d Cir. 2002); Abu-Jamal v. Price, 154 F.3d 128, 136 (3d Cir. 1998); In re Asbestos Sch. Litig., 46 F.3d 1284, 1294-95 (3d Cir. 1994); GJJM Enters., LLC v. City of Atl. City, 293 F. Supp. 3d 509, 520 (D.N.J. 2017); Am. Broad. Cos., Inc. v. Wells, 669 F. Supp. 2d 483, 489 (D.N.J. 2009); Child Evangelism Fellowship of N.J., Inc. v. Stafford Twp. Sch. Dist., 233 F. Supp. 2d 647, 666 (D.N.J. 2002), aff'd, 386 F.3d 514 (3d Cir. 2004); LCN Enters., Inc. v. City of Asbury Park, 197 F. Supp. 2d 141, 153

(D.N.J. 2002), as amended (Apr. 5, 2002); Lysaght v. State of N.J., 837 F. Supp. 646, 653–54 (D.N.J. 1993); Citizens United for Free Speech II v. Long Beach Twp. Bd. of Comm'rs, 802 F. Supp. 1223, 1237–38 (D.N.J. 1992); Telco Commc'ns, Inc. v. Barry, 731 F. Supp. 670, 684 (D.N.J. 1990); Gannett Satellite Info. Network, Inc. v. Twp. of Pennsauken, 709 F. Supp. 530, 535 (D.N.J. 1989); E-Bru, Inc. v. Graves, 566 F. Supp. 1476, 1480 (D.N.J. 1983).

And this is a core commitment of our law, at work in any number of other ways.[68]

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[68] Two examples. First, another part of the First Amendment, the Free Exercise Clause, works in much the same way. In Roman Catholic Diocese of Brooklyn v. Cuomo, 592 U.S. 14 (2020), for instance, the Supreme Court considered some of New York's Covid-era restrictions on First Amendment–protected religious activity. The Court explained that the harm was "unquestionably . . . irreparable." Id. at 18 (quoting Elrod, 427 U.S. at 373). So long as the state's rules were in place, religious obligations could not be properly fulfilled. See id. at 19. The plaintiffs might have later won on the merits; but their eventual win would have come too late to undo the harm suffered to their religious life while time passed. So the Court moved to preliminarily enjoin New York's restrictions on religious services, reaffirming along the way that First Amendment injuries are here-and-now injuries. See id. at 69. And a second example: in opinions on applications for emergency stays, Justices have routinely reiterated the urgency of First Amendment relief. See CBS, Inc. v. Davis, 510 U.S. 1315, 1318 (1994) (Blackmun, J., in chambers); Neb. Press Ass'n, 423 U.S. at 1329; Neb. Press Ass'n v. Stuart, 423 U.S. 1319, 1323 (1975) (Blackmun, J., in chambers); Times-Picayune Pub. Corp. v. Schulingkamp, 419 U.S. 1301, 1309 (1974) (Powell, J., in chambers). In CBS, Inc., for instance, a state court enjoined a news outlet from airing footage of a meat-packing plant, reasoning that it was wrongfully obtained and could lead to the plant's closure. See 510 U.S. at 1315–16. The news outlet then applied to the Supreme Court for an emergency stay, hoping to air the tape that evening. See id. at 1315. Sitting as a Circuit Justice, Justice Blackmun granted the stay. "[I]ndefinite delay of the broadcast will cause irreparable harm

Many of the cited cases are in the end simply about timing.

Over and over again in First Amendment cases, courts issue injunctions --- because a person whose speech is suppressed cannot be asked to wait until the far end of the road for a remedy. The harm along the way is irreparable. It cannot be fixed later.

But if it is too much to wait from the beginning of a case (when, say, a preliminary injunction might be entered) until its end (when there might be a damages payout or permanent relief) --- then what of waiting months or even years for the case to get off the ground in the first place, while it winds its way through the immigration courts?

* * *

Per the Supreme Court in Axon, bypassing administrative courts can be allowed when there is a "here-and-now" injury that will be "impossible to remedy" "once the [administrative] proceeding is over." 598 U.S. at 191.

That implies that this case should be heard, now, in federal court.

First Amendment harms, as alleged here, are routinely said to cause "irreparable injury." In Axon's phrase, they cause injuries that are "impossible to remedy."

First Amendment harms, as alleged here, are often said to warrant preliminary and early relief. Because in Axon's words, later, "once the proceeding is over," will be too late.

And First Amendment harms, as alleged here, are classic in-the-moment injuries. Axon speaks of "here-and-now" injuries. See id. at 191. And that is what First Amendment injuries are, and have always been understood to be.

In Axon, the Supreme Court concluded, the claimants "will lose their rights not to undergo the complained-of agency proceedings if they cannot assert those rights until the proceedings are over." Id. at 192.

So too here.

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to the news media that is intolerable under the First Amendment," he wrote. Id. at 1318.

The Petitioner says his First Amendment rights are now being violated. He will lose them and he will keep losing them if he must wait for federal court review. In the Court's judgment: he does not have to. The Petitioner's claims may or may not be meritorious. But our law allows them to be heard, now, in federal court.

* * *

Section 1252(b)(9) does not bar jurisdiction because it does not apply to pre-order-of-removal cases like this one. See Part IV.

But if Section 1252(b)(9) does apply to cases like this one, it divests jurisdiction only when later federal court review would be "meaningful." Here, it would not be. Therefore, Section 1252(b)(9) does not strip this Court of jurisdiction to review the Petitioner's challenge to the Secretary of State's determination. See Part V and Part VI.

VII. Section 1252(g)

Move on now to another statute.

The Respondents say that Section 1252(g) prevents consideration of the Petitioner's First Amendment claim as to the Secretary's determination. See Opposition Brief at 14.

Section 1252(g) reads:

> [N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g).

The Supreme Court construed this provision in AADC --- and narrowly.

The Supreme Court rejected the parties' understanding of Section 1252(g) "as covering all or nearly all deportation claims." AADC, 525 U.S. at 478. Unlike Section 1252(b)(9), Section 1252(g) was not an expansive "zipper clause." Id. at 482.

> In fact, what § 1252(g) says is much narrower. The provision applies only to

> three discrete actions that the Attorney General[69] may take: her decision or action to commence proceedings, adjudicate cases, or execute removal orders.

Id. at 482 (emphasis in original) (cleaned up).

AADC's view of Section 1252(g) as a tightly drawn provision has been reaffirmed by a Supreme Court plurality. See Jennings, 583 U.S. at 841 (AADC "did not interpret [Section 1252(g)'s] language to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves.").

And the Third Circuit has landed on the same approach, emphasizing just how narrow-gauged Section 1252(g) is. See Tazu v. Att'y Gen. U.S., 975 F.3d 292, 296 (3d Cir. 2020) ("Section 1252(g) does not sweep broadly. It reaches only these three specific actions, not everything that arises out of them."); see also, e.g., Chehazeh, 666 F.3d at 133-35; Garcia v. Att'y Gen. of U.S., 553 F.3d 724, 728-29 (3d Cir. 2009).

* * *

Section 1252(g) does not bar consideration here of the Secretary of State's determination.

The reason is this: the determination is not one of the "three specific actions," Tazu, 975 F.3d at 296, covered by the statute, and it is not an exercise of "prosecutorial discretion." AADC, 525 U.S. at 489.

* * *

Cross the last two "specific actions" off the list.

The Secretary of State's determination is not "a decision or action" to "execute," 8 U.S.C. § 1252(g), a removal order. Indeed, no such order has been entered.

---

[69] The reference to "Attorney General" should now be read as "Secretary of Homeland Security," given the post-Section 1252(g) creation of the Department of Homeland Security. See Johnson v. Guzman Chavez, 594 U.S. 523, 527 n.1 (2021); La. Forestry Ass'n Inc. v. Sec. U.S. Dep't of Lab., 745 F.3d 653, 660 n.3 (3d Cir. 2014); 6 U.S.C. § 557.

And the Secretary's determination is not "a decision or action" to "adjudicate" a case. Id. The Secretary is not a judicial officer, and the relevant statutes do not suggest he has the power to control immigration judges.

* * *

Come now to the last of the three "specific actions."

Is the Secretary of State's determination a "decision or action by the [the Secretary of Homeland Security] to commence proceedings"?

To ask this question is to answer it.

The determination is an "action." See Part IV.A.3(a). But it is an action by the Secretary of State, not what Section 1252(g) requires: an "action by the [Secretary of Homeland Security]."

There is no way to whistle past this textual problem. See Est. of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 476 (1992) (referencing the "basic and unexceptional rule that courts must give effect to the clear meaning of statutes as written").

The textual problem cinches things --- and it is also a surface indication of a deeper issue.

Per the Supreme Court, Section 1252(g)'s aim was to give the Secretary of Homeland Security the space she needs to make the choices she must --- about enforcement priorities, for example, or allocation of finite resources. These are classic questions of prosecutorial discretion, and they are generally for prosecutors to work through for themselves.

Per the Supreme Court: "Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." AADC, 525 U.S. at 485 n.9.[70]

But the Secretary of State does not exercise prosecutorial discretion here. He takes his step --- he makes his determination --- and then it is over to the Secretary of Homeland Security, for her to make her choice.

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[70] See generally United States v. Texas, 599 U.S. 670, 679 (2023) (noting that the "principle of enforcement discretion over arrests and prosecutions extends to the immigration context," and describing the "problems raised by judicial review of the Executive Branch's arrest and prosecution policies").

There were, in short, two distinct moving pieces here --- (a) the Secretary of State's determination as to the Petitioner, and then (b) the act of "prosecutorial discretion" that followed. Section 1252(g), by its terms, covers only (b). But what the Petitioner is challenging is (a).

The two distinct steps are there on the face of the Secretary's memo, which marks the handover from the Secretary of State's area of responsibility to the Secretary of Homeland Security's.

The memo is addressed from him to her. See Determination at 1.

It reports the Secretary of State's conclusion. See id. ("I have determined that . . . [the Petitioner] . . . [is a] deportable alien[.]").

And it then looks to the next steps --- which are the Secretary of Homeland Security's to undertake. See id. ("I understand that [a Homeland Security component] now intends to initiate removal charges[.]").

And all of this makes sense under the various relevant statutes.

A Section 1227(a)(4)(C)(i) determination from the Secretary of State makes a noncitizen "deportable." 8 U.S.C. § 1227(a)(4)(C)(i).

"Deportable" means can be deported, "[]able" to be deported.

Who then decides whether someone who can be deported will be removed? The Secretary of Homeland Security.

> Any alien . . . in and admitted to the United States shall, upon the order of the [Secretary of Homeland Security], be removed if the alien is within one of more of the following classes of deportable aliens.

8 U.S.C. § 1227(a) (emphasis added).[71]

[71] In exercising her power, the Secretary of Homeland Security generally has wide discretion. See, e.g., Arizona v. United States, 567 U.S. 387, 396 (2012); AADC, 525 U.S. at 483-84; Texas v. United States, 809 F.3d 134, 165-66 (5th Cir. 2015); Martinez-Garcia v. Ashcroft, 366 F.3d 732, 735 (9th Cir. 2004); Costa v. INS, 233 F.3d 31, 37 (1st Cir. 2000).

In a nutshell: the Secretary of State's determination was its own step; it was taken separate from, and before, the Secretary of Homeland Security's "decision or action to commence proceedings." AADC, 525 U.S. at 482 (cleaned up).

But jurisdiction is stripped by Section 1252(g) only as to the decision made by the Secretary of Homeland Security, see id. --- and the Petitioner's challenge here is not to that. Rather, it is to the earlier decision, made by the Secretary of State.

Jurisdiction is not stripped. See, e.g., N. Am. Butterfly Assoc. v. Wolf, 977 F.3d 1244, 1260 (D.C. Cir. 2020); Jafarzadeh v. Nielsen, 321 F. Supp. 3d 19, 29 (D.D.C. 2018); Young Sun Shin v. Mukasey, 547 F.3d 1019, 1024 (9th Cir. 2008); Wong v. United States, 373 F.3d 952, 965 (9th Cir. 2004), abrogated on other grounds by Wilkie v. Robbins, 551 U.S. 537 (2007); Humphries v. Various Fed. USINS Emps., 164 F.3d 936, 944 (5th Cir. 1999); Castellar v. Nielsen, 2018 WL 786742, at *10 (S.D. Cal. Feb. 8, 2018); Abdur-Rahman v. Napolitano, 814 F. Supp. 2d 1087, 1096 (W.D. Wa. 2010); Hafeez v. Dorochoff, 2007 WL 4300582, at *2 (N.D. Ill. Nov. 30, 2007); cf. Tazu, 975 F.3d at 298.

VIII. The Policy

The Court has considered and rejected the Respondents' argument that, under Section 1252(b)(9) and Section 1252(g), it lacks jurisdiction over the Petitioner's challenge to the Secretary of State's determination. See Part IV to Part VII.

Citing the same statutes, the Respondents also say there is no jurisdiction over the Petitioner's request for an injunction to stop a certain alleged policy. See Opposition Brief at 1, 8, 14.

This argument does not work. To see why, start with the background.

* * *

The Petitioner alleges that the Respondents have "adopted a policy . . . to retaliate against and punish noncitizens like [the Petitioner] for their participation in protests concerning Israel's military campaign in Gaza." Petition ¶ 2.

In particular:

> On or before March 8, 2025, Respondents adopted the Policy by which they would

> retaliate against and punish noncitizens like [the Petitioner] for their participation in protests concerning Israel's military campaign in Gaza. Under the Policy, Respondent Rubio, the Secretary of State, would make determinations that the protestors' presence or activities in the United States would have potentially serious foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest. These determinations would then permit the Department of Homeland Security to seek to detain and deport the protestor.

Id. ¶ 44.

Per the Petitioner, he was detained by federal officials "as a first implementation of the policy and a 'blueprint' for future investigations and deportations of prominent student activists." Id. at 13 (cleaned up).

The alleged policy, in short, is broader than the Secretary's determination as to the Petitioner, since it is said to include determinations as to others. It is also broader than the Petitioner's detention, since it is said to envision detention of others.

* * *

The argument that Section 1252(b)(9) and Section 1252(g) strip jurisdiction as to the alleged policy is not persuasive.

This is for the reasons explained above as to the Secretary's determination, see Part IV to Part VII, plus some others.

These do not need to be belabored, but tick through them quickly here.

First, while the Secretary's determination amounts to a Section 1252(b)(9) "action," see Part IV.A.3(a), it is a good deal harder to say that a policy is an "action" --- especially a policy that, as alleged, does not have sharply marked edges. Cf. Opposition Brief at 8 (describing the alleged policy as "an ill-defined initiative").

Second, if Section 1252(b)(9) applies here, meaningful fact-finding as to the policy will be harder yet in the immigration

courts. See Part VI.B. The policy, for example, is broader than the Secretary's determination, and therefore could require discovery as to a broader range of subjects.[72]

Third and finally, Section 1252(g) focuses on exercises of "prosecutorial discretion." See Part VII. But the alleged policy is an extra step removed from the decision of the Department of Homeland Security to initiate removal proceedings here. The Secretary of State's determination came before the Department of Homeland Security's removal-proceedings decision. And the policy is alleged to predate the determination.

* * *

In short, there is no jurisdictional bar to the Court taking up here the Petitioner's request for an injunction to stop the alleged policy.[73]

---

[72] Fact-finding complexities may be part of why courts routinely hold that claims about a broad government policy --- like the one alleged here --- are not barred by Section 1252(b)(9), and therefore should go forward in federal court from the start. See Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 591 U.S. 1, 19 (2020); Texas v. United States, 126 F.4th 392, 417 (5th Cir. 2025); Casa de Md. v. U.S. Dep't of Homeland Sec. 924 F.3d 684, 697 (4th Cir. 2019); Nava v. Dep't of Homeland Sec., 435 F. Supp. 3d 880, 885–86, 895 (N.D. Ill. 2020); O.A., 404 F. Supp. 3d at 135–38; cf. Daud v. Gonzales, 207 F. App'x 194, 200 (3d Cir. 2006).

[73] The Respondents also invoke another jurisdictional bar, 8 U.S.C. § 1226(e), but only as to the Petitioner's request for an injunction to release him from detention. See Opposition Brief at 20–21. This has no bearing here now. Section 1226(e) bars judicial review as to detention "under this section," a section that covers detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(e) (emphasis added); see generally e.g., Jennings, 583 U.S. at 306; Velasco Lopez v. Decker, 978 F.3d 842, 848 (2d Cir. 2020); Quinteros v. Warden Pike Cnty. Corr. Facility, 784 F. App'x 75, 76–77 (3d Cir. 2019); Hernandez v. Sessions, 872 F.3d 976, 981–82 (9th Cir. 2017); Padilla-Ramirez v. Bible, 882 F.3d 826, 829–30 (9th Cir. 2017); Sylvain v. Att'y Gen. of U.S., 714 F.3d 150, 154 (3d Cir. 2013); Castellano v. Holder, 337 F. App'x 263, 268 n.3 (3d Cir. 2009); Gayle v. Napolitano, 2013 WL 1090993, at *2

IX. Conclusion

In circumstances like this one, federal courts have recently split as to whether jurisdiction is stripped. Compare Taal v. Trump, 2025 WL 926207, at *2 (N.D.N.Y. Mar. 27, 2025) (yes), with Ozturk v. Trump, 2025 WL 1145250, at *15 (D. Vt. Apr. 18, 2025) (no).

This Court concludes that jurisdiction is not stripped over the Petitioner's claims that the Secretary of State's determination and the alleged policy are unconstitutional.

Section 1252(b)(9) is irrelevant. It takes away federal district court jurisdiction only after an order of removal has been entered. But none has been entered here. See Part IV.

And even if Section 1252(b)(9) might apply when, as here, no order has been entered, that provision strips jurisdiction only when delayed review would amount to "meaningful review." See Part V. Here, it would not. See Part VI.

As to Section 1252(g), that pulls away jurisdiction over "specific actions" by the Secretary of Homeland Security --- not over actions by the Secretary of State, like his determination here, and not over across-the-board policies, like the one alleged here. See Part VII and Part VIII.

This Court has habeas jurisdiction over this case. See Khalil, 2025 WL 1019658. And as set out in this Opinion, that jurisdiction is intact. It has not been removed.

(D.N.J. Mar. 15, 2013); Baguidy v. Elwood, 2012 WL 5406193, at *4 (D.N.J. Nov. 5, 2012). If the Court holds that the Constitution forbids removal of the Petitioner based on a particular charge, then, apart from an appeal from that holding, there will no longer be a "pending . . . decision on whether the alien is to be removed from the United States" --- because the "decision" would have been made by this Court's determination that it would be unconstitutional to remove him. Therefore, at that point, there will be no available argument that Section 1226(e) bars release. To be sure, Section 1226(e) might be relevant if the Court were to consider ordering the release of the Petitioner without first finding that a charge against him is unconstitutional. But that circumstance can be addressed when and if it comes up.

Orders as to next steps in this case will follow shortly.

DATE: April 29, 2025

Michael E. Farbiarz, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MAHMOUD KHALIL, *Petitioner*, v. DONALD TRUMP et al., *Respondents*.	No. 25-cv-01963 (MEF)(MAH) **OPINION and ORDER**

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* * *

Federal officials detained a lawful permanent resident and seek to remove him from the United States for two reasons.

First, because his application for lawful permanent residence was allegedly inaccurate.

And second, because the Secretary of State has determined that his presence in the United States "compromise[s] a compelling . . . foreign policy interest."

The lawful permanent resident filed a habeas corpus petition, and has moved to preliminarily enjoin various federal officials --- arguing that the Constitution forbids them from removing him from the United States for either of the two cited reasons.

As to the first reason, the lawful permanent resident has not established a likelihood of success on the merits of his claim.

Therefore, his motion for a preliminary injunction is denied.

As to the second reason, the lawful permanent resident has established a likelihood of success on the merits.

But he has not put forward evidence as to the other things he must show to secure a preliminary injunction. The Court will now afford him a chance to do so.

* * *

I. Background

A. The Facts

The relevant facts for now are as follows.

A lawful permanent resident[1] was arrested by federal officials. See Declaration of Amy E. Greer (ECF 11-1) ¶¶ 4-6; Second Supplemental Declaration of Acting Field Office Director William P. Joyce (ECF 72) ¶¶ 6-7.

He remains in immigration custody. See Petitioner's Amended Memorandum of Law in Support of Motion for Preliminary Injunctive Relief (ECF 124) ("Motion for Preliminary Injunction") at 1-2.

The Department of Homeland Security is seeking to remove him from the United States on two grounds.

The first ground:

To become a lawful permanent resident, a person must submit an application to federal officials. See 8 C.F.R. § 245.2(a)(3). The application has to be filled out "fully and accurately." U.S. Citizenship & Immigr. Servs., Instructions for Application to Register Permanent Residence or Adjust Status, https://perma.cc/RZ5K-N47Z (accessed on May 28, 2025) (page 5 of 42).

In 2024, the lawful permanent resident completed his lawful-permanent-resident application. See DHS Evidence, Tab 2 (Apr.

[1] Mahmoud Khalil. A lawful permanent resident is a person who has "been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws[.]" 8 U.S.C. § 1101(a)(20).

9, 2025) (Form I-485); see also Third Amended Petition ("Petition") ¶ 21.

But per federal officials, he did not accurately answer certain questions. See Additional Charges (Mar. 17, 2025).

This can be a basis for removal from the United States. See id.; see also 8 U.S.C. §§ 1182(a)(6)(C)(i), 1227(a)(1)(A).

The second ground for removal:

The Secretary of State determined that the lawful permanent resident's continued presence or activities in the United States would "compromise a compelling foreign policy interest." See Memorandum from Marco Rubio, Secretary of State, to Kristi Noem, Secretary of Homeland Security ("Determination") (ECF 198-1), at 1.[2]

Such a determination can also be a basis for removal. See 8 U.S.C. § 1227(a)(4)(C).

B. Procedural History

There are two branches to this case.

Federal officials have brought removal proceedings in immigration court. And the lawful permanent resident has brought a habeas corpus case in federal court.

1. Immigration Court

Removing a lawful permanent resident from the United States generally requires a hearing. See 8 U.S.C. § 1229a. Those typically go forward before an immigration judge. See id. § 1229a(a)(1); 8 C.F.R. § 1240.10(a).

Federal officials have begun removal proceedings against the Petitioner before an immigration judge.

The immigration judge has not ruled on the first ground, as to whether the lawful permanent resident can be removed based on the way he filled out the above-referenced application.

But she has ruled on the second ground, holding that the Petitioner can be removed from the United States based on the

[2] The substance of the Secretary's determination is described in Part IV.

Secretary of State's determination. See Audio Recording of Hearing (April 11, 2025) at 1:34:40 to 1:38:26.

2. Federal Court

Separate from the above, the lawful permanent resident initiated his own proceedings.

He filed a habeas corpus petition in federal district court.

From here, he is called "the Petitioner." The various people he named in his habeas petition are referred to, collectively, as "the Respondents."[3]

* * *

The Petitioner filed his suit in New York, but the case was transferred to New Jersey. See Khalil v. Joyce, 2025 WL 849803 (S.D.N.Y. Mar. 19, 2025).

Here, the Respondents moved to dismiss the case, arguing that it should go forward only where the Petitioner has been in immigration custody --- Louisiana. The motion was denied. The Court held that habeas jurisdiction is proper in New Jersey. See Khalil v. Joyce, 2025 WL 972959 (D.N.J. Apr. 1, 2025).[4]

The Respondents also argued that jurisdiction was stripped from this Court under the Immigration and Nationality Act. See Respondents' Opposition to Petitioner's Motion for a Preliminary Injunction ("Opposition Brief") (ECF 156) at 8-21. The Court rejected this argument, holding that its habeas jurisdiction

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[3] The Respondents are listed in the current habeas petition as: President of the United States Donald Trump; Acting Field Office Director of New York, United States Immigration and Customs Enforcement, William P. Joyce; Warden of Elizabeth Contract Detention Facility Yolanda Pittman; Acting Director of United States Immigration and Customs Enforcement Caleb Vitello; Secretary of the United States Department of Homeland Security Kristi Noem; Secretary of the United States Department of State Marco Rubio; and Attorney General of the United States Pamela Bondi.

[4] The Court certified its April 1 opinion and order under 28 U.S.C. § 1292(b), by an opinion dated April 4. See Khalil v. Joyce, 2025 WL 1019658, at *2 (D.N.J. Apr. 4, 2025). On May 6, the Third Circuit denied the petition to appeal. See Khalil v. President U.S., No. 25-08019 (3d Cir. May 6, 2025).

remains intact. See Khalil v. Joyce, 2025 WL 1232369 (D.N.J. Apr. 29, 2025).[5]

Finally, the Respondents moved to dismiss or transfer this case for lack of venue. The briefing was completed as of May 5, and the motion was denied that day. See ECF 248.

C. The Motion

As noted, the Petitioner has moved for a preliminary injunction. See ECF 66.

The motion became fully submitted on May 14, with the filing of the parties' final legal brief. See ECF 255.

The Petitioner's motion is based on two arguments.

First, the Petitioner claims that the efforts to remove him are retaliation for his exercise of First Amendment-protected speech. See Motion for Preliminary Injunction at 10–18.

And second, he argues that the efforts to remove him violate the Due Process Clause, because they are rife with unconstitutional "vagueness." See id. at 23-31.

The Petitioner's motion is before the Court.

II. The Court's Approach

Federal officials, as noted, are seeking to remove the Petitioner from the United States on two grounds, see Part I.A., and the Petitioner's motion aims to enjoin them from doing so. See Part I.C.

* * *

The Court first considers whether the underlying federal statutes are unconstitutionally vague as they are being applied to the Petitioner by means of the Secretary of State's determination. See Motion for Preliminary Injunction at 23–31.

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[5] On April 30, the Respondents moved to certify the April 29 opinion under 28 U.S.C. § 1292(b). See ECF 218. The Petitioner opposed the motion. See ECF 221. On May 1, the Court issued an opinion denying certification. See Khalil v. Joyce, 2025 WL 1262349, at *2 (D.N.J. May 1, 2025).

As to this argument, the Court lays out the governing legal principles, see Part III, and then describes the Secretary's determination. See Part IV.

From there, the Court provides its conclusion: the Petitioner is likely to succeed[6] on the merits of this unconstitutional vagueness argument. See Part V.

But this does not entitle him to a preliminary injunction. He has not put before the Court evidence as to the various other things he must prove, see footnote 6, before an injunction might issue. See Part VII. The Court will give the Petitioner a chance to quickly fill out the record, and for the Respondents to then weigh in. See id.

* * *

The Court also considers what it understands to be[7] the Petitioner's second argument: that he cannot be removed from the United States based on his alleged failure to accurately fill out his lawful-permanent-resident application --- because the effort to remove him flows from an allegedly unconstitutional policy established by the President and his senior advisors.

The Court's conclusion: this argument is not meaningfully developed, and the Petitioner therefore has not carried his burden of showing that he is likely to succeed on the merits. Accordingly, an injunction may not issue. See Part VI.

* * *

Start off, just below, with the legal principles that govern the Petitioner's void-for-vagueness challenge to the Secretary of State's determination that he should be removed from the United States.

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[6] The focus throughout is on likely success, not success. This is because to win on his preliminary injunction motion, the Petitioner must show "he is [1] likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008) (emphasis added). The first two factors are "the most critical." Nken v. Holder, 434 U.S. 418, 434 (2009).

[7] "Understands to be" because, as noted in Part VI, the argument on this point is not crystal clear.

III. Vagueness: Legal Principles

Our laws are required to strike a balance.

A law cannot be so narrow that it punishes pre-selected people. Think, for example, of the Constitution's limit on bills of attainder. See U.S. Const., art. I, § 9, cl. 3; Cummings v. Missouri, 71 U.S. 277 (1866).

And at the same time, a law cannot be so broad that it covers just about anyone. See United States v. Reese, 92 U.S. 214, 221 (1875).

A given law needs clarity, too.

The rule of lenity,[8] for example, helps to ensure that our criminal laws are exacting. See, e.g., Liparota v. United States, 471 U.S. 419, 427 (1985).

Constitutional vagueness doctrine is animated by each of these concerns.

The scope of a law matters for vagueness doctrine. And so does how clear it is.

Take clarity first.

Vagueness doctrine requires that a law be clear enough to provide real notice --- understandable guidance as to the conduct a person should steer himself away from, to avoid the negative consequence the law lays out.

This sort of guidance "guarantees that ordinary people have fair notice of the conduct a statute proscribes." Sessions v. Dimaya, 584 U.S. 148, 155-56 (2018) (cleaned up).

And this "guarantee" is a matter of constitutional law. Why? Because "[v]ague laws contravene the first essential of due process of law that statutes must give people of common

[8] "The judicial doctrine holding that a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment." Rule of Lenity, Black's Law Dictionary (12th ed. 2024).

intelligence fair notice of what the law demands of them." United States v. Davis, 588 U.S. 445, 451 (2019) (cleaned up).[9]

Vagueness doctrine zeros in on a second concern, too.

It aims to cut off laws that are so broad, or so fuzzy, that they end up warping the separation of powers --- by handing over de facto responsibility for deciding what the law forbids from legislators (who are supposed to be the ones making the law) to executive officials like police or prosecutors (who are only supposed to be enforcing it).[10]

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[9] See also, e.g., City of Chi. v. Morales, 527 U.S. 41, 58 (1999) ("[T]he purpose of the fair notice requirement is to enable the ordinary citizen to conform his or her conduct to the law."); Gentile v. State Bar of Nev., 501 U.S. 1030, 1077-78 (1991) ("The void-for-vagueness doctrine is concerned with a defendant's right to fair notice and adequate warning that his conduct runs afoul of the law."); Grayned v. City of Rockford, 408 U.S. 104, 108 (1972) ("[W]e insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly."); Rabe v. Washington, 405 U.S. 313, 315 (1972) ("To avoid the constitutional vice of vagueness, it is necessary, at a minimum, that a statute give fair notice that certain conduct is proscribed."); Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972) ("[A vague law] fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.") (cleaned up); Jordan v. De George, 341 U.S. 223, 230 (1951) ("The essential purpose [of vagueness doctrine] . . . is to warn individuals of the . . . consequences of their conduct."); Connally v. Gen. Constr. Co., 269 U.S. 385, 391 (1926) ("[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.").

[10] See, e.g., Davis, 588 U.S. at 451 ("Vague statutes threaten to hand responsibility for defining crimes to relatively unaccountable police, prosecutors, and judges, eroding the people's ability to oversee the creation of the laws they are expected to abide."); Kolender v. Lawson, 461 U.S. 352, 358 (1983) ("Where the legislature fails to provide . . . minimal guidelines, a criminal statute may permit a standardless sweep that allows policemen, prosecutors, and juries to pursue their

This blurring of law-making power with law-enforcing power can be an "invit[ation] [to] arbitrary enforcement," because it can leave executive officials "free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case[.]" Beckles v. United States, 580 U.S. 256, 266 (2017) (cleaned up).[11]

In a nutshell: a concern for notice to "ordinary people," and a concern for subjecting government power to crisply drawn and "fixed" standards --- these are the two main engines of constitutional vagueness doctrine.

* * *

Take up the details of vagueness doctrine as they come up.

For now, two last things.

* * *

First, how vague a law can be depends on the kind of law it is.

Civil laws that deal mainly with economic matters take the lowest rung on the ladder.

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personal predilections.") (cleaned up); cf. Reese, 92 U.S. at 221 ("[i]t would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained," and "[t]his would . . . substitute the judicial for the legislative department of the government"). Vague laws can also sometimes transfer lawmaking power to other actors, too. Juries and judges, for example. See, e.g., Beckles v. United States, 580 U.S. 256, 266 (2017); Johnson v. United States, 576 U.S. 591 (2015); see also Louisville & N. R. Co. v. R.R. Comm'n of Tenn., 19 F. 679, 691 (C.C.M.D. Tenn. 1884); Ex Parte Jackson, 45 Ark. 158, 164 (1885).

[11] See, e.g., Johnson, 576 U.S. at 595 (due process is violated when a law is "so standardless that it invites arbitrary enforcement"); Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc., 455 U.S. 489, 498 (1982) ("[I]f arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.") (cleaned up); Smith v. Goguen, 415 U.S. 566, 572-73 (1974) (vagueness doctrine "requires legislatures to set reasonably clear guidelines for law enforcement and triers of fact in order to prevent arbitrary and discriminatory enforcement") (cleaned up).

As to these sorts of laws, vagueness doctrine is not especially demanding. See, e.g., Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc., 455 U.S. 489, 499 (1982); Joseph E. Seagram & Sons, Inc. v. Hostetter, 384 U.S. 35, 48-49 (1966); United States v. Nat'l Dairy Prods. Corp., 372 U.S. 29, 34-35 (1963).

The next level up: criminal laws.

These get a much harder look from a vagueness perspective. See, e.g., City of Chi. v. Morales, 527 U.S. 41, 56 (1999); Posters 'N' Things, Ltd. v. United States, 511 U.S. 513, 525 (1994); Kolender v. Lawson, 461 U.S. 352, 357 (1983); Papachristou v. City of Jacksonville, 405 U.S. 156, 165-66 (1972); Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939).

And critically: this is also the category for immigration laws that can trigger removal from the United States, laws like the ones the Secretary of State's determination is based on. See Dimaya, 584 U.S. at 156-57 (citing Jordan v. De George, 341 U.S. 223, 229, 231 (1951)).

Up at the top --- arguably vague laws that touch on First Amendment-protected rights.

These must meet the most exacting vagueness standards. See, e.g., FCC v. Fox Television Stations, Inc., 567 U.S. 239, 253-54 (2012); Smith v. Goguen, 415 U.S. 566, 573 (1974); Baggett v. Bullitt, 377 U.S. 360, 372 (1964); Cramp v. Bd. of Pub. Instruction of Orange Cnty., 368 U.S. 278, 287 (1961); Winters v. New York, 333 U.S. 507, 518 (1948).

* * *

A second point, the final one for now.

Vagueness challenges to a law run down one of two tracks. There are facial challenges, and there are "as applied" challenges. See generally 32 Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Judicial Review § 8141 (2d ed. 2025).

A facial challenge is about the law as it might be applied to everyone (or nearly everyone).

An as-applied challenge is about the law as it actually applies to the person who brings the challenge.

To win on a facial challenge, a person must show that a law is vague in all of its applications (or at least in a great many of

them). See id.; Johnson v. United States, 576 U.S. 591, 595–96, 602-03 (2015); Hoffman Ests., 455 U.S. at 495.

To win on an as-applied challenge, a person must show that a law is vague in the way that it is being applied to him. See Fed. Prac. & Proc. Judicial Review § 8141 n.13 (collecting cases).

* * *

More on the law as it comes.

Turn now to a description of the Secretary of State's determination.

IV. The Secretary of State's Determination

As noted, under 8 U.S.C. § 1227(a)(4)(C), a foreign national may be removed from the United States based on a determination from the Secretary of State.

Such determinations must meet higher standards when they are based on a foreign national's "otherwise lawful" "beliefs, statements, or associations." See 8 U.S.C. § 1182(a)(3)(C)(iii).

Those higher standards have a procedural aspect and a substantive aspect.

As to procedure, the Secretary's determination must be (a) made by him personally and (b) reported to certain congressional leaders. See id. §§ 1182(a)(3)(C)(iii), 1182(a)(3)(C)(iv).

As to substance, the Secretary must determine that the foreign national's "presence or activities" in the United States "would compromise a compelling United States foreign policy interest." Id. §§ 1227(a)(4)(C)(i), 1182(a)(3)(C)(iii).

* * *

Here, the Secretary of State's determination came in the form of a memorandum. See Determination at 1.

In it, the Secretary referenced the higher standard. See Determination at 1 ("Under INA section 237(a)(4)(C)(ii), for cases in which the basis for this determination is the alien's past, current, or expected beliefs, statements, or associations that are otherwise lawful, the Secretary of State must personally determine that the alien's presence or activities would compromise a compelling U.S. foreign policy interest.").

And in the memo, the Secretary seemed to apply the higher standard. See id. ("I have determined that the activities and presence of these aliens in the United States would have potentially serious adverse foreign policy consequences and would compromise a compelling U.S. foreign policy interest.").

In short: the higher standard is the one that is invoked here.[12]

* * *

The Secretary determined that the Petitioner undertook activities within the United States.[13]

The effects of these activities, the Secretary determined, were felt inside the United States.[14]

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[12] Two things. First, 8 U.S.C. § 1227(a)(4)(C) became law in 1990. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat 4978. But until 1996, it was in a different place in Title 8 of the United States Code --- not in Section 1227, as it is now, but in Section 1251. See 8 U.S.C. § 1251(a)(4)(C)(i) (1995); see also Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat 3009 (moving the provisions). And second, the higher standard that is relevant here is in its own corner of Title 8. It is at Section 1182. For ease of reference, throughout this Opinion and Order the Court refers collectively to (a) Section 1227(a)(4)(C), (b) the former Section 1251, and (c) the relevant subsections of Section 1182 --- as "Section 1227."

[13] The Secretary's determination described the Petitioner's "participation and role[] . . . in antisemitic protests and disruptive activities," and the Petitioner's "public actions . . . in the United States." Determination at 2.

[14] Per the determination, the Petitioner's activities "fostered a hostile environment for Jewish students in the United States," and the Petitioner's "continued presence . . . in the United States undermine[s] U.S. policy to combat anti-Semitism . . . in the United States, in addition to efforts to protect Jewish students from harassment and violence in the United States." Id.

The Secretary determined that these activities also had an impact outside of the United States.[15] See id.

The full determination is at Appendix A. The substantive part is this:

> I have determined that the activities and presence of [the Petitioner] in the United States would have potentially serious adverse foreign policy consequences and would compromise a compelling U.S. foreign policy interest. Th[is] determination[] [is] based on information provided by the DHS/ICE/HIS regarding the participation and role[] of . . . [the Petitioner] in antisemitic protests and disruptive activities, which fosters a hostile environment for Jewish students in the United States. . . . The public actions and continued presence of . . . [the Petitioner] in the United States undermine[s] U.S. policy to combat anti-Semitism around the world and in the United States, in addition to efforts to protect Jewish students from harassment and violence in the United States. Consistent with E.O. 14150,[16] America First Policy Directive to the Secretary of State, the foreign policy of the United States champions core American interests and American citizens and condoning anti-Semitic conduct and disruptive protests in the United States would severely undermine that significant foreign policy objective.

Id. at 1-2.

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[15] The Secretary determined that "[t]he public actions and continued presence" of the Petitioner "undermine[s] U.S. policy to combat anti-Semitism around the world." Id.

[16] This is a reference to Executive Order 14,150, issued by the President on January 20, 2025. It is attached as Appendix B.

V. Vagueness

Is the Petitioner likely to succeed on the merits of his claim that Section 1227,[17] applied to him through the Secretary's determination, is unconstitutionally vague?

The Court's conclusion: yes.

This Part explains why.

A. Section 1227

1. The Relevant Part

At the core of any constitutional vagueness claim is the argument that a law is doubly flawed.

It does not put the ordinary person on notice as to what is allowed and what is not. See Part III.

And it does not delineate the power of the government sharply enough. See id.

Here, Section 1227 is the statute that is claimed to be vague. See Petitioner's Supplemental Vagueness Brief (ECF 233) ("Petitioner's Supplemental Brief") at 15.

But not all parts of Section 1227 matter for a vagueness analysis.

Some parts speak to how a removal might go forward --- removal happens, in cases like this one, via a "personal" determination by the Secretary of State. See Part IV.

Other parts of the statute speak to what a person might do to potentially get himself removed --- "compromise a compelling United States foreign policy interest." See id.

Only the latter piece of Section 1227 is relevant to the vagueness analysis.

Why?

Because only "compromise a compelling . . . foreign policy interest" purports to give a foreign national the notice that vagueness law requires.

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[17] Recall that this is shorthand for a set of laws. See footnote 12.

And because only "compromise a compelling . . . foreign policy interest" purports to bolt on substantive guardrails --- outer-edge limits on the space in which an official (here, the Secretary) is free to act.

What notice does "compromise a compelling . . . foreign policy interest" supply to the ordinary person? What limits do the quoted words put on who the Secretary can remove?[18]

Move through a set of sources, to see where the answer to these questions might come from.

2. Sources

Section 1227 is a statute, and to know what a statute conveys, the first stop is always the same: a look to its words. See, e.g., Sw. Airlines Co. v. Saxon, 596 U.S. 450, 457 (2022) ("As always, we begin with the text."); accord, e.g., Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980); Touche Ross & Co. v. Redington, 442 U.S. 560, 568 (1979).

Vagueness law is no exception.

To understand both the heads-up that a law gives to a "person of ordinary intelligence," Papachristou, 405 U.S. at 162, and the extent to which a law crisply hems in the power of government officials, the words of the statute are the place to start. See Dimaya, 584 U.S. at 164; Holder v. Humanitarian L. Project, 561

[18] The notice question and the enforcement-power question often run together. If an ordinary person needs to guess at what a law means, government enforcers may need to guess, too. Cf. Winters, 333 U.S. at 519 (it would be "utter[ly] impossib[le] [for] the actor or the trier to know where this . . . standard of guilt would draw the line") (emphasis added). And more notice often means tighter limits on what the government can do. To see the point, imagine if Section 1227 were tweaked --- if it said a person could be removed only for "compromising a compelling foreign policy interest related to nuclear weapons." The hypothesized change adds specificity, which improves notice. And the change also tightens the range of who can be removed, which trims back executive discretion. Removal "related to nuclear weapons" rings a clearer warning bell. And it also limits the Secretary to nuclear-related removals. In a nutshell: notice and limits on government power are often yoked together, pulling in the same direction. (Not always, though. See, e.g., footnote 20.)

U.S. 1, 20-21 (2010); Morales, 527 U.S. at 56-59; Posters 'N' Things, 511 U.S. at 525-26.

But they are not usually the place to finish.

This is because, for the purposes of vagueness law, sources outside the statutory text are also relevant.

But walk through the usual outside-the-text sources here, and it becomes clear that they have no role to play in this case, with one exception.

* * *

First, courts look to prior judicial decisions that interpret the statute. Precedents might have clarified the statute, or whittled it back. See, e.g., Johnson, 576 U.S. at 601; Skilling v. United States, 561 U.S. 358, 407-08 (2010); Grayned v. City of Rockford, 408 U.S. 104, 111-12 (1972); United States v. Loy, 237 F.3d 251, 263 (3d Cir. 2001).

But that is irrelevant here.

Section 1227 has been meaningfully analyzed by a federal court only once --- by Judge Barry, when she sat on this Court. See Massieu v. Reno, 915 F. Supp. 681, 699-703 (D.N.J. 1996), rev'd on other grounds, 91 F.3d 416 (3d Cir. 1996).

Judge Barry did not impose any interpretation on Section 1227. See id. at 703.

Rather, she simply struck it down as unconstitutionally vague --- across the board, on its face. See id.[19]

* * *

Second, courts look to the ways in which prior interpretations by administrative tribunals have molded a statute's meaning. See, e.g., Fox Television Stations, 567 U.S. at 254-55; U.S. Civ. Serv. Comm'n v. Nat'l Ass'n of Letter Carriers, AFL-CIO, 413 U.S. 548, 572 (1973); see also Alphonsus v. Holder, 705 F.3d 1031, 1043 (9th Cir. 2013), abrogated on other grounds by Guerrero v. Whitaker, 908 F.3d 541 (9th Cir. 2018); Miranda v. U.S. Att'y Gen., 632 F. App'x 997, 999 (11th Cir. 2015); Hess v.

[19] The Petitioner has specifically stated that he is not pursuing a facial vagueness challenge. See Motion for Preliminary Injunction at 29 n.27. Rather, his is an as-applied challenge only. See id. at 23-24; see generally Part III.

Bd. of Parole & Post-Prison Supervision, 514 F.3d 909, 914 (9th Cir. 2008).

But there is no real administrative case law to lean on here.

In 1999, the Board of Immigration Appeals, the top administrative court in this area, held that a Secretary of State's Section 1227 determination is conclusive. See In re Ruiz-Massieu, 22 I. & N. Dec. 833, 842 (BIA 1999). An immigration judge must take the determination at face value, without further analysis. See id.

That nipped in the bud the development of any potentially clarifying administrative case law.

* * *

Third, courts thinking through vagueness challenges look to administrative regulations that might clarify a statute's meaning and limit the sorts of actions the government can take. See, e.g., Northstar Wireless, LLC v. FCC, 38 F.4th 190, 216 (D.C. Cir. 2022); United States v. Blaszczak, 947 F.3d 19, 40 (2d Cir. 2019), cert. granted, judgment vacated sub nom. Olan v. United States, 141 S. Ct. 1040 (2021); Wis. Res. Prot. Council v. Flambeau Mining Co., 727 F.3d 700, 708 (7th Cir. 2013); United States v. McAusland, 979 F.2d 970, 975 (4th Cir. 1992).

But again: nothing like that on the table.

No regulation, for example, lists the broad categories of "foreign policy interests" that could trigger a Section 1227 removal, or spells out criteria for what might count as "compelling."

* * *

Fourth, courts in vagueness cases sometimes look to guidance materials --- a manual posted online, for example, can provide a heads-up as to how the government might be looking to enforce a particular statute. See, e.g., FTC v. Wyndham Worldwide Corp., 799 F.3d 236, 257-58 & nn.22-24 (3rd Cir. 2015); accord, e.g., Carman v. Yellen, 112 F.4th 386, 404 (6th Cir. 2024); Cal. Pac. Bank v. FDIC, 885 F.3d 560, 571-72 (9th Cir. 2018) (as to

interpretative materials, such as policy statements, agency manuals, etc.).[20]

But there is no public manual, or anything else of the kind, that sheds light on when the Secretary of State might opt to use his Section 1227 power.

* * *

Fifth, courts ask if the statute uses technical words. See, e.g., Connally v. Gen. Constr. Co., 269 U.S. 385, 391 (1926); Hygrade Provision Co. v. Sherman, 266 U.S. 497, 502 (1925); Omaechevarria v. Idaho, 246 U.S. 343, 348 (1918). Or well-understood legal terms, like phrases pulled in from the common law. See, e.g., Cameron v. Johnson, 390 U.S. 611, 616 n.7 (1968); Winters, 333 U.S. at 519; Mahler v. Eby, 264 U.S. 32, 40 (1924); accord, e.g., United States v. Nason, 269 F.3d 10, 22 (1st Cir. 2001); Jellum v. Cupp, 475 F.2d 829, 831 (9th Cir. 1973).

"Public interest," for example, might sound impossibly open-ended. See FCC v. RCA Commc'ns, 346 U.S. 86, 90-91 (1953) (discussing the term). But decades of judicial precedent have defined it, see id. --- and so in some cases, with the common law meaning read into the statute, "public interest" can pass a vagueness test. See, e.g., N.Y. Cent. Sec. Corp. v. United States, 287 U.S. 12, 25 (1932) (taking this approach).

But none of this is in the mix here.

"Foreign policy interest" is not a legal term of art. Neither is "compromise."

"Compelling" often comes up in constitutional law. See, e.g., Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 532 (2022); Fisher v. Univ. of Tex. at Austin, 570 U.S. 297, 314–15 (2013).

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[20] Guidance materials provide potential notice --- they help "ordinary people," Morales, 527 U.S. at 64, see what the government might do. But they do not generally purport to constrain government power by limiting what it can do. So when it comes to guidance materials, notice and power do not travel together. Guidance supplies notice. But it does not provide an equal measure of constraint on the scope of government power. Cf. footnote 18.

But Section 1227 does not import the constitutional law meaning of "compelling."[21]

* * *

Sixth, federal courts routinely look to legislative history to decide whether a particular statute is too vague.[22]

And in this case, both the Petitioner and the Respondents direct the Court to Section 1227's legislative history. See

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[21] In constitutional law, "compelling" indicates which interests (ends) the government must be pursuing for an action to have a chance to make it past the means-ends gauntlet ("narrowly tailored") required by the doctrine of strict scrutiny. See, e.g., Kennedy, 597 U.S. at 532; Fisher, 570 U.S. at 314–15. A campaign-finance law that triggers strict scrutiny might clear the hurdle if it aims to achieve the compelling interest of battling overt corruption. But not if its goal is a non-compelling interest, like evening out resources between candidates. "Compelling," in short, matters in constitutional law because it defines the subset of government interests that can be invoked to try to justify certain government actions. But here, there is no need to pick an interest. Congress has done that. Section 1227 says it: a "foreign policy interest." In Section 1227, therefore, "compelling" is not shorthand for those interests that, as in constitutional law, might be important enough to allow for certain government actions. Rather, "compelling" in Section 1227 is simply an adjective that modifies an already selected interest, a "foreign policy interest."

[22] See Davis, 588 U.S. at 459–60; Nat'l Dairy Prods. Corp., 372 U.S. at 32–34; United States v. Harriss, 347 U.S. 612, 620-21 (1954); Boyce Motor Lines v. United States, 342 U.S. 337, 341–42 (1952); see also Gougen, 415 U.S. at 582 n.30; Kahn v. United States, 753 F.2d 1208, 1222 n.8 (3d Cir. 1985); accord, e.g., CPR for Skid Row v. City of L.A., 779 F.3d 1098, 1108 (9th Cir. 2015); United States v. Rybicki, 354 F.3d 124, 132-37 (2d Cir. 2003); United States v. Colon-Ortiz, 866 F.2d 6, 11 (1st Cir. 1989); United States v. Ocegueda, 564 F.2d 1363, 1365 (9th Cir. 1977); cf. Skilling, 561 U.S. at 404–05; United States v. Powell, 423 U.S. 87, 91 (1975); Nat'l Ass'n of Letter Carriers, 413 U.S. at 571–72; but see United States v. Shreveport Grain & Elevator Co., 287 U.S. 77, 83–84 (1932); Fleuti v. Rosenberg, 302 F.2d 652, 657 (9th Cir. 1962).

Petitioner's Supplemental Brief at 18–19; Respondents' Supplemental Vagueness Brief (ECF 256) ("Respondents' Supplemental Brief") at 5–7.

Here, the legislative history sheds light on how an ordinary person might understand Section 1227. That is taken up below, in Part V.D.1.

* * *

In sum:

Courts can often draw on outside-the-text sources as part of a vagueness analysis.

These sources can provide notice. And they can limit government enforcement discretion.

But with the exception of legislative history, none of this is in play here. As to Section 1227, there are no relevant judicial or administrative decisions, regulations, guidance materials, or borrowed technical or legal terms.

Therefore, the statute mostly stands alone.

Move now to an analysis of its meaning.

3. Meaning

A statute's words are generally given their "ordinary meaning." See New Prime Inc. v. Oliveira, 586 U.S. 105, 113 (2019); Walters v. Metro. Educ. Enters., Inc., 519 U.S. 202, 207 (1997); Perrin v. United States, 444 U.S. 37, 42 (1979); Caminetti v. United States, 242 U.S. 470, 485-86 (1917).

And for an objective, down-the-middle understanding of ordinary meaning, courts typically do what everyone else does --- they reach for the dictionary. See, e.g., Wis. Bell, Inc. v. United States ex rel. Heath, 145 S. Ct. 498, 505 (2025); Taniguchi v. Kan Pac. Saipan, Ltd., 566 U.S. 560, 567-69 (2012); Reiter v. Sonotone Corp., 442 U.S. 330, 338 (1979); Eisner v. Macomber, 252 U.S. 189, 207 (1920); Osborne v. S.D. Land & Town Co., 178 U.S. 22, 38 (1900); Fanning v. Gregoire, 57 U.S. 524, 525 (1853); United States v. Tenbroek, 15 U.S. (2 Wheat.) 248, 251-52 (1817).

Vagueness doctrine works the same way.

Courts thinking through vagueness questions start with the words of the statute. See Dimaya, 584 U.S. at 160–61; Johnson, 576

U.S. at 597; Holder, 561 U.S. at 20–21; United States v. Williams, 553 U.S. 285, 306 (2008); Morales, 527 U.S. at 56–59; Posters 'N' Things, 511 U.S. at 525–26; Hoffman Ests., 455 U.S. at 500; Coates v. City of Cincinnati, 402 U.S. 611, 614 (1971).

And they rely on dictionaries to find the "ordinary meaning" of the statute's words, Oliveira, 586 U.S. at 113, so as to land on a sense of what "ordinary people," Johnson, 576 U.S. at 595, would take from them.[23]

The Supreme Court has taken this approach. See, e.g., Holder, 561 U.S. at 23-24 (reasoning from a statute's dictionary definition in a vagueness case); Hoffman Ests., 455 U.S. at 501-02 (same). And so has the Third Circuit. See CMR D.N. Corp. v. City of Phila., 703 F.3d 612, 632 (3d Cir. 2013) (same); United States v. Maurer, 639 F.3d 72, 78 (3d Cir. 2011) (same).

* * *

Against this backdrop, recall that the relevant part of Section 1227 is the piece that says a foreign national can be removed if he has "compromise[d] a compelling United States foreign policy interest." See Part V.A.1.

Zoom in on two of these words: "foreign policy."

One current[24] definition of "foreign policy": "the underlying basic direction of the activity and relationships of a sovereign

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[23] When a statute defines a word, the statute's definition is plugged in, not a dictionary's. See, e.g., Holder, 561 U.S. at 20–21. Section 1227's key words for vagueness purposes are "compromise," "compelling," and "foreign policy interests." See Part V.A.1. But the statute does not define them.

[24] The law generally asks about a statute's meaning at the time it was enacted. See Niz-Chavez v. Garland, 593 U.S. 155, 160 (2021); Bostock v. Clayton Cnty., 590 U.S. 644, 654 (2020); Tanzin v. Tanvir, 592 U.S. 43, 48 (2020); Oliveira, 586 U.S. at 113. Time-of-enactment dictionaries help with that work. See Delaware v. Pennsylvania, 598 U.S. 115, 128 (2023); Wis. Cent. Ltd. v. United States, 585 U.S. 274, 277-78 (2018); see also Khalil, 2025 WL 1232369, at *8-9; Khalil, 2025 WL 972959, at *17. But here, things may be more complicated. Recall vagueness doctrine's two underlying concerns. One is ensuring that the government's enforcement discretion under a statute is appropriately delineated. See Kolender, 461 U.S. at 358;

state in its interaction with other sovereign states typically manifested in peace, war, neutrality, and alliance or various combinations of or approaches to these." Foreign Policy, n., Merriam-Webster's Unabridged Dictionary (2025).

Another current definition: "the policies of a government regarding relations with other countries." Foreign Policy, n., Collins English Dictionary (2025).

And some others.

"The diplomatic policy of a nation in its interactions with other nations." Foreign Policy, n., New American Heritage Dictionary of the English Language (5th ed. 2022).

"[A] government's strategy in dealing with other nations." Foreign Policy, n., New Oxford American Dictionary (3d ed. 2015).[25]

Papachristou, 405 U.S. at 162. That starts off with this question: what is the government's enforcement discretion under the statute? That is mainly a statutory interpretation question. And for Section 1227, that question turns to an extent on the meaning of the statute when it was passed, in 1990. But vagueness doctrine also focuses on notice to ordinary people. And that could conceivably require a different focus. Not on the meaning of the law when it was passed. But rather on what the law was taken to mean when the Petitioner allegedly acted --- here, seemingly in 2023 to 2025. All of this may suggest that the Court should look to two sets of dictionaries. To circa-1990 dictionaries, to get a handle on the precise scope of the power Section 1227 gave to the government when the law was passed. And to present-day dictionaries, from around 2023 to 2025, to understand the notice the Petitioner would have taken from Section 1227. But there is no need to wade into this issue here. The reason why: there is no meaningful difference between "foreign policy" as it is understood today and as it was understood around 1990. See footnotes 25, 26, and 27.

[25] Dictionaries from around 1990 turn up the same basic meaning. Foreign Policy, n., Webster's Third New International Dictionary of the English Language, Unabridged 889 (1993) ("the underlying basic direction of the activity and relationships of a sovereign state in its interaction with other sovereign states typically manifested in peace, war, neutrality, alliance or various combinations or approaches to these"); Foreign Policy, n.,

What all of this adds up to: in everyday English, what we mean by a country's "foreign policy" is its approach to other countries.

* * *

Now kick the tires on this reading by breaking up "foreign policy" into its component parts.

Start from the back end. "Policy" means "[a] principle or course of action adopted or proposed as desirable, advantageous, or expedient; esp. one formally advocated by a government, political party, etc." Policy, n., sense I.4, Oxford English Dictionary (2025); accord, e.g., Policy, n., sense 5.a, Merriam-Webster's Unabridged Dictionary (2025); Policy, n., New Oxford American Dictionary (3d ed. 2015).[26]

As to "foreign," that means "[d]ealing with matters concerning other countries[.]" Foreign, adj., sense II.9.a, Oxford English Dictionary (2022); accord, e.g., Foreign, adj., sense 5, Merriam-Webster's Unabridged Dictionary (2025) ("related to or dealing with other nations"); Foreign, adj., sense 3, Brittanica Dictionary (2025) ("relating to or dealing with other nations"); Foreign, adj., sense 1, New Oxford American Dictionary (3d ed. 2015) ("dealing with or relating to other countries").[27]

Merriam-Webster's Collegiate Dictionary 456 (10th ed. 1993) ("the policy of a sovereign state in its interaction with other sovereign states"); Foreign Policy, n., American Heritage Dictionary of the English Language (3d ed. 1992) ("The diplomatic policy of a nation in its interactions with other nations.").

[26] Somewhat older definitions, see footnote 24, run along the same lines. See Policy, n., sense 5, Oxford English Dictionary (1989); Policy, n., sense 2, Webster's Encyclopedic Unabridged Dictionary of the English Language 1113 (1989).

[27] Again, definitions from around 1990 point in the same direction. See, e.g., Foreign, adj., sense 4, New Merriam-Webster Dictionary for Large Print Users 352 (1989) ("related to or dealing with other nations"); Foreign, sense 10, VI Oxford English Dictionary 52 (1989) ("Dealing with matters concerning other countries."); Foreign, adj., sense 5, New Penguin English Dictionary 364 (1986) ("of, concerned with, or dealing with other nations").

* * *

Bottom line: a country's "foreign policy" is the course of action it takes as to other countries.

That is true to how the words land on people's ears today, and also to how they were understood when Section 1227 was passed in 1990.

And the above definition makes sense whether "foreign policy" is scrutinized as a whole, or if it is understood based on the meaning of its parts, "foreign" and "policy."

B. Other Countries

Section 1227 can come into play only when a person has a severe negative impact ("compromise[s]") on an especially important ("compelling") American "foreign policy interest" --- and that last phrase concerns the United States' relations with other countries. See Part V.A.3.

With this understanding in mind, is the Petitioner likely to win on the merits of his argument that Section 1227 is unconstitutionally vague as applied to the effort to remove him under the statute?

The Court's conclusion: yes.

To see why, compare two things.

First, what Section 1227 tells an "ordinary person" that he might be removed from the United States for.

And second, what, per the Secretary of State's determination, the Petitioner is to be removed for.[28]

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[28] This Opinion and Order is solely concerned with what the Secretary of State determined. To get at why, note that when it comes to vagueness doctrine the Supreme Court has analogized removal cases like this one to criminal cases. See Dimaya, 584 U.S. at 156–57 (citing Jordan, 341 U.S. at 229, 231). The Secretary's determination is like a criminal indictment --- a formal instrument that tells someone what he allegedly did, and kicks off a legal process against him. In criminal cases in which there is a vagueness challenge, courts routinely anchor the analysis in the allegations of the indictment, at least early in the litigation, as here. See United States v.

* * *

Congress empowered the Secretary of State to seek removal of foreign nationals if they compromise American "foreign policy" interests --- which here means a compromise to the United States' relations with another country or countries.

But the Secretary did not affirmatively determine that the Petitioner's alleged conduct has impacted U.S. relations with other countries.

Indeed, the Secretary's determination[29] says nothing about any country other than America.

It also does not mention a region of the world that encompasses particular countries.

And while it cites an executive order,[30] the order does not mention any country other than America or any global region.

* * *

Birbragher, 603 F.3d 478, 480–81 (8th Cir. 2010); United States v. Woznichak, 2023 WL 7324442, at *2 (W.D. Pa. Nov. 7, 2023); United States v. Auernheimer, 2012 WL 5389142, at *3 (D.N.J. Oct. 26, 2012), rev'd, 748 F.3d 525 (3d Cir. 2014); United States v. Gigante, 737 F. Supp. 292, 295 (D.N.J. 1990); see also Nat'l Dairy Prods. Corp., 372 U.S. at 32-33, 37; United States v. Stock, 728 F.3d 287, 299 (3d Cir. 2013). But cf. Peoples Rts. Org., Inc. v. City of Columbus, 152 F.3d 522, 530 (6th Cir. 1998). Moreover, Congress specifically directed that in cases like this one, see Part IV, the Secretary would be required to make a personal determination. At this stage, looking to other information would be to skirt Congress' choice. And it would also be to diminish the seriousness of the step the Secretary of State has himself taken and the respect it deserves; the Secretary of State has determined certain things but not others. All of this is consistent with where the Respondents are. They do not meaningfully argue against vagueness-as-applied based on information outside the Secretary's determination. They do not provide such information. Quite the opposite. They are opposed to "peer[ing] behind," Respondents' Supplemental Brief at 14, the determination, and the Court does not do so here.

[29] Recall: it is at Appendix A, reproduced there in full.

[30] At Appendix B.

Would an ordinary person have a sense that he could be removed from the United States because he "compromise[d]" American "foreign policy interests" --- that is, because he compromised U.S. relations with other countries --- when the Secretary has not determined that his actions impacted U.S. relations with a foreign country?

Probably not.

* * *

And if Section 1227 "foreign policy" is read to allow removals for conduct not affirmatively determined by the Secretary to have impacted any foreign country, can the statute be said to "provide [an] explicit standard[]" that could prevent "arbitrary . . . enforcement"? Grayned, 408 U.S. at 108.

Again, probably not.

The reason is this: if a person can be removed without the Secretary determining that there is a "foreign policy" impact, an impact on U.S. relations with a foreign country --- then there is no "explicit standard," id., left behind in Section 1227.

To see why, recall that Section 1227's relevant provision is this: "compromise[s] a compelling . . . foreign policy interest." See Part V.A.1.

Each of these words limits the government's enforcement power.

"Compromise[s]" implies a serious impairment to "foreign policy," not a slight one. "Compelling" points to an especially important "foreign policy interest," not a minor one or a mid-sized one.

These words constrain the Secretary's Section 1227 power.

But they do no independent work. They are bundled together with "foreign policy."

What under the statute must be "compromise[d]"? Foreign policy.

What does "compelling" do? It trims back on the kind of foreign policy that can count.

What this adds up to: because the Secretary has not affirmatively determined here that there is a foreign policy impact, there is nothing left of the other constraints that Congress laid down in Section 1227.

Congress required an especially strong impact ("compromise[s]") on foreign policy. But that does not matter if what has been put on the table is not foreign policy.

And Congress required that the foreign policy be an especially important one --- "compelling." But that does not matter if the Secretary is not acting in relation to "foreign policy" in the first place.

In short: a Section 1227 removal effort that is not based on a determination from the Secretary that there is a foreign policy impact is left fully standardless --- because without a "foreign policy" link there is nothing left of the standard ("compromise[s] a compelling . . . foreign policy interest") that Congress laid down when it passed Section 1227. See Johnson, 576 U.S. at 595 (a law is vague when, among other things, it is "standardless"); Kolender, 461 U.S. at 358 (similar); Goguen, 415 U.S. at 578 (a statute is vague when it "simply has no core"); Coates, 402 U.S. at 614 (a statute is vague when "no standard of conduct is supplied at all"); Giaccio v. Pennsylvania, 382 U.S. 399, 402 (1966) (similar).

* * *

Lack of notice and "standardless" enforcement --- these tilt the scale in favor of the conclusion that the Petitioner is likely to succeed on the merits of his claim that Section 1227 is vague as applied to efforts to remove him via the Secretary of State's determination.[31]

To see the point from a different perspective, step back for a moment, starting just below.

1. "Want of Proper Words"

It has long been the "the law of the land" that "no one [can] be taken by surprise" by having to "answer in court for what [he]

[31] Does this, on its own, move things all the way to the conclusion that the Petitioner is likely to succeed on the merits? There is no need to answer. There are other important things that weigh in the Petitioner's direction. See Part V.C to Part V.F. How this case might look without those --- that is a separate question.

has not been warned to answer." Goldington v. Bassingburn, Y.B. Trin. 3 Edw. II, f. 27b, 196 (1310).[32]

But "surprise" can come from different directions.

It can be a matter of "Uncertainty." And it can also flow from "the Want of proper legal words." 2 W. Hawkins, Pleas of the Crown, ch. 25, § 100, p. 245 (2d ed. 1724) ("[I]t seems to have been anciently the common Practice, where an Indictment appeared to be insufficient, either for its Uncertainty or the Want of proper legal words, not to put the defendant to answer it[.]").

The source of "surprise" just discussed is not mainly "Uncertainty." Rather, it is "the Want of proper legal words."

This is explained just below.

* * *

Surprise of the "Uncertainty" sort generally concerns the ambiguity of a key statutory term.[33]

This is bread-and-butter vagueness doctrine, and the classic example comes from English legal history.

A statute made it a crime to steal "cattle." And "cattle" used to include a broader group of animals than it does today. See Dimaya, 584 U.S. at 178 (Gorsuch, J., concurring). Did the word also cover snatching an ox or a lamb? See 1 William Blackstone, Commentaries *88 (discussing this example). It was unclear, "so the court treated the term 'cattle' as a nullity." Dimaya, 584 U.S. at 178 (Gorsuch, J., concurring) (describing this statute).

Along these lines, think of a case like Connally v. General Construction Co., 269 U.S. 385 (1926).

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[32] Goldington's "law of the land," invokes the Magna Carta, and the Supreme Court has said that "[t]he words, 'due process of law' [in the Constitution] were undoubtedly intended to convey the same meaning as the words, 'by the law of the land,' in Magna Charta." Den ex dem. Murray v. Hoboken Land & Improvement Co., 59 U.S. 272, 276 (1855). In turn, the Constitution's Due Process Clause is the source of contemporary vagueness doctrine. See Beckles, 580 U.S. at 262; Johnson, 576 U.S. at 598; Williams, 553 U.S. at 304.

[33] "Generally," but not always. Another kind of "surprise" is the subject of Part V.E.

There, the Supreme Court held there was too much vagueness in a law that required employers to pay the wage that prevailed "in the locality where the work is performed." See id. at 388. The law was ambiguous. It was not clear which places might make up "the locality."

> Who can say, with any degree of accuracy, what areas constitute the locality where a given piece of work is being done? Two men, moving in any direction from the place of operations, would not be at all likely to agree upon the point where they had passed the boundary which separated the locality of that work from the next locality.

Id. at 394.

* * *

The kind of surprise that is relevant for now is not "Uncertainty." It is a "Want of proper legal words."

"Want of proper legal words" happens when the problem is not ambiguity.

The language in a statute might provide sufficient and clear notice. And it might appropriately constrain government action.

But when the statute has virtually nothing to do with the case at hand, its language cannot do its work.

An ox may or may not count as cattle. That is an "[u]ncertainty" case.

But everyone knows that a teapot is not cattle. When a teapot is stolen, the statute simply cannot apply, and not by a long shot.

The statute does not provide notice to those who might steal teapots. And because the statute does not give the government power to take on teapot cases, it does not supply a standard to apply in such cases, either.

That is a "Want of proper legal words"-type situation.

As to this category, think of a case like Rabe v. Washington, 405 U.S. 313 (1972).

There, the Supreme Court struck down on vagueness grounds a conviction for screening an obscene movie. Why? Because the

conclusion that the movie was obscene was based on its "context" --- and that idea was nowhere to be found in the statute.

> To avoid the constitutional vice of vagueness, it is necessary, at a minimum, that a statute give fair notice that certain conduct is proscribed. The [Washington] statute under which petitioner was prosecuted, however, made no mention that the 'context' or location of the exhibition was an element of the offense . . . . Petitioner's conviction was thus affirmed under a statute with a meaning quite different from the one he was charged with violating.
>
> It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made.

Id. at 315 (cleaned up); see also, e.g., Bouie v. City of Columbia, 378 U.S. 347, 351-56 (1964).

* * *

Come back now to Section 1227, and to this case.

Section 1227 allows for removal of a person who the Secretary of State determines is negatively impacting American foreign policy --- that is, the United States' relations with other countries.

But the Secretary of State has not made that determination here. His determination says nothing about foreign countries. Not explicitly. And not implicitly, either. There is no suggestion in the Secretary's determination that U.S. relations with other countries have been impacted by the Petitioner's conduct.

This is a dramatic misfit, a "Want of proper legal words." Hawkins, Pleas of the Crown p. 245.

As to the law's concern with notice: how could an "ordinary person" have known that Section 1227 might be used in this circumstance?

And as to the law's concern with enforcement discretion: how could the Secretary, who needed under Section 1227 to determine that U.S. relations with other countries were being impacted,

use Section 1227 without making that determination? And once he did, what legislative standard was left behind to guide his discretion?

2. Domestic Impact

Before moving on, consider a narrow point.

The Secretary of State's determination says that some of the Petitioner's activities had a domestic impact. See Determination at 2.

To the extent inside-the-United-States conduct by the Petitioner was determined by the Secretary to have had only inside-the-United-States consequences, there is an added reason, beyond what has been discussed above, to think Section 1227 is vague as applied to that particular subset of the Petitioner's activities.

Take the point up here.

* * *

Recall that the Secretary's determination described only activities undertaken by the Petitioner in the United States. See id. at 2 (describing "participation and role[] . . . in antisemitic protests and disruptive activities," and the Petitioner's "public actions . . . in the United States").

And recall that some of the effects of these activities, per the Secretary, were felt in the United States. See id. (the Petitioner's activities "foster[] a hostile environment for Jewish students in the United States"); id. (the Petitioner's "continued presence . . . in the United States undermine[s] U.S. policy to combat anti-Semitism . . . in the United States, in addition to efforts to protect Jewish students from harassment and violence in the United States").

But protecting students "in the United States" is a domestic concern, not a "foreign policy" concern.

And foreign and domestic are understood to be distinct.

Therefore, to an ordinary person, giving the Secretary power over a "foreign policy" impact is not the same as also giving the Secretary power over domestic conduct to the extent it had only a domestic impact.

* * *

To see the point, start with the words.

"Foreign" is often marked down as the opposite of "domestic." See Foreign, adj., sense 1, Merriam-Webster.com Thesaurus (2025); Foreign, adj., sense 1, Merriam-Webster's Collegiate Thesaurus (2025); Foreign, adj., sense 1, Collins English Thesaurus (2025); Foreign, adj., sense 1, Pocket Oxford American Thesaurus (2012); cf. Domestic, adj., Cambridge English Thesaurus (2025) (listing "foreign" as an antonym).

And "domestic" is usually taken to mean "[e]xisting, occurring, or produced inside a particular region or country; not foreign or international." Domestic, adj., sense 4, Oxford English Dictionary (2023) (emphasis added); see also, e.g., Domestic, adj., sense 3, Merriam-Webster Unabridged Dictionary (2025) ("relating and limited to one's own country or the country under consideration or its internal affairs and interests"); Domestic, adj., Cambridge English Dictionary (2025) ("relating to a person's own country"); Domestic, adj., sense 1, Collins English Dictionary (2025) ("political activities, events, and situations [that] happen or exist within one particular country"); Domestic, adj., sense 4, American Heritage Dictionary of the English Language (5th ed. 2022) ("[o]f or relating to a country's internal affairs").[34]

In keeping with these understandings, Supreme Court opinions have often assumed that foreign concerns and domestic concerns are distinct.[35]

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[34] Older dictionaries, see footnote 24, dredge up the same basic meanings. See, e.g., Foreign, Collins English Dictionary & Thesaurus 443 (1993) (listing "domestic" as an antonym); Domestic, adj., sense 3.a, Oxford English Dictionary (1989) ("Of or pertaining to one's own country or nation; not foreign, internal, inland, 'home'."); Domestic, adj., sense 4, Webster's Encyclopedic Unabridged Dictionary of the English Language 424 (1989) ("of or pertaining to one's own or a particular country as apart from other countries").

[35] See, e.g., Fleming v. Page, 50 U.S. 603, 606 (1850) ("A foreign country is one exclusively within the sovereignty of a foreign nation, and without the sovereignty of the United States. This is the well-settled meaning of the word 'foreign,' in acts of Congress."); Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 16 (1831) (Marshall, C.J.) ("In the general, nations

And this is no artifact of legal culture, a way of thinking that is particular to lawyers or judges. Not at all. Virtually everyone treats foreign and domestic as contrast points (if not opposites).

One way to see this: by looking to newspaper articles[36] for the two or three months before the Petitioner's arrest. These overwhelmingly show that foreign and domestic are generally taken as separate (and indeed as contrasts).[37]

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not owing a common allegiance are foreign to each other."); see also, e.g., Haaland v. Brackeen, 599 U.S. 255, 274 (2023); Medellin v. Texas, 552 U.S. 491, 564 (2008) (Breyer, J., dissenting); United States v. Lara, 541 U.S. 193, 201 (2004); Kent v. Dulles, 357 U.S. 116, 127 (1958); Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 176 (1951) (Douglas, J., concurring); United States v. Pink, 315 U.S. 203, 233 (1942) ("No State can rewrite our foreign policy to conform to its own domestic policies."); see also William Blackstone, Commentaries *66 (contrasting "foreign emergencies" with "domestic discontents"); The Federalist No. 3 (John Jay) (differentiating between "dangers from foreign arms and influence . . . [and] dangers of the like kind arising from domestic causes") (cleaned up).

[36] Notice to an ordinary person can be supplied by a look to "common usage." United States v. Tykarsky, 446 F.3d 458, 473 (3d Cir. 2006); accord, e.g., Kovacs v. Cooper, 336 U.S. 77 (1959) (considering the "daily use" of certain words); Sproles v. Binford, 286 U.S. 374, 393 (1932) (invoking "common usage and understanding"); Mahler, 264 U.S. at 40 (citing "common understanding" that gives words "the quality of a recognized standard"). In keeping with this, the Third Circuit has scrutinized newspaper articles in the vagueness context to get a sense of the notice that a statute might provide to an "ordinary person." See United States v. Blake, 288 F. App'x 791, 794-95 (3d Cir. 2008). Moreover, "analyzing 'how particular combinations of words are used in a vast database of English prose' can shed light on how ordinary people understand statutory terms." Delligatti v. United States, 145 S. Ct. 797, 813 (2025) (Gorsuch, J., dissenting) (emphasis added) (quoting Facebook, Inc. v. Duguid, 592 U.S. 395, 412 (2021) (Alito, J., concurring in judgment)). Newspapers can provide that database.

[37] See, e.g., Tom O'Connor, Trump Takes on Xi and Putin at their Own Great Power Game, Newsweek, Mar. 7, 2025 (contrasting

And it is presumably because the statute's reference to foreign policy is indeed about foreign affairs, not domestic ones, that it is the Secretary of State who has an important role to play in Section 1227 removals.

After all, the State Department's business is not domestic matters, but foreign ones. The State Department "exists to assist the President . . . in formulating and executing [] foreign policy." 1 Foreign Affairs Manual 011.2; accord, e.g., Kumar v. Republic of Sudan, 880 F.3d 144, 157 (4th Cir. 2018); Thomas v. Baker, 925 F.2d 1523, 1524 (D.C. Cir. 1991); United States v. Green, 671 F.2d 46, 51 n.7 (1st Cir. 1982); see also 22 U.S.C. § 2656 ("The Secretary of State shall perform such duties as shall from time to time be . . . intrusted to him by the President relative . . . to such . . . matters respecting

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foreign and domestic); Ross Douthat, Trump and Vance are Stripping Away Foreign Policy Illusions, N.Y. Times, Mar. 1, 2025 (same); Daniel Bush, Donald Trump Has Promised a "Golden Age" for the US. Can He Deliver?, Newsweek, Feb. 7, 2025 (same); Shane Brennan, Biden's Long, Unique Legacy, News Journal, Jan. 19, 2025, at A.9 (same); Francesca Chambers, Biden Argues US Stronger on World Stage: President Uses Farewell Speeches to Define Legacy, USA Today, Jan. 14, 2025 (same); Stuart E. Eizenstat, Jimmy Carter's Underrated Legacy: A Strong, Ethical America and a More Peaceful World, USA Today, Dec. 29, 2024 (same). For articles that take the same approach from when Section 1227 became law through to the present, see, for example: George F. Will, The 'Better Off' Diversion: A Kerry Win Might Not Mean Marked Changes in Either Domestic or Foreign Policy, Pitt. Post-Gazette, July 12, 2004, at A.13; Patrick Healy & Susan Milligan, Kerry Calls Bush's Domestic, Foreign Policies 'Extreme', Bos. Globe, Feb. 8, 2004, at A.20; David M. Shribman, Democrats Turn to Foreign Policy, Bos. Globe, Aug. 14, 2001, at A.3; David S. Broder, Needed: A Voice for Foreign Policy, Record, Nov. 25, 1996, at A12; Michael Remez, Foreign Policy Takes Back Seat in Presidential Campaign, Hartford Courant, Oct. 28, 1996 at A.1; John F. Harris, Clinton Learning Foreign Policy Can Be Fun Shifts His Focus from Domestic Issues, Record, Dec. 15, 1995, at A18; Richard Benedetto, Bush Goes to China; Criticizes Clinton's Domestic, Foreign Policies, USA Today, Jan. 12, 1994, at 08A; Johanna Neuman, Economy Takes Front Seat to Foreign Policy, USA Today, Nov. 6, 1992, at 03A; Jonathan Schell, Foreign Policy --- Who Needs It?, Newsday, Sept. 26, 1991, at 117.

foreign affairs as the President of the United States shall assign to the [State] Department[.]").[38]

* * *

[38] Immigration law straddles the foreign-domestic line. But that does not blur away the normal foreign-versus-domestic distinction. Take the Administrative Procedure Act. Under it, proposed rules must usually wait out a notice-and-comment period. See 5 U.S.C. § 553. But not rules that involve a "foreign affairs function of the United States." Id. § 553(a)(1). Do all immigration-related rules involve a "foreign affairs function"? No. "For the exception to apply, the public rulemaking provisions should provoke definitely undesirable international consequences." Yassini v. Crosland, 618 F.2d 1356, 1360 n.4 (9th Cir. 1980) (citing S. Rep. No. 752, 79th Cong., 1st Sess. 13 (1945)); accord City of N.Y. v. Permanent Mission of India to U.N., 618 F.3d 172, 202 (2d Cir. 2010); Hou Ching Chow v. Att'y Gen., 362 F. Supp. 1288, 1290 (D.D.C. 1973). And look to 8 U.S.C. § 1182(f) --- which lets the President limit the entry of foreign nationals when he finds their arrival "would be detrimental to the interests of the United States." What "interests"? In Trump v. Hawaii, 585 U.S. 667 (2018), the President invoked Section 1182(f), see id. at 675, and the Supreme Court noted that his "stated objective" was "to protect the country and improve vetting processes." Id. at 704–05. And this was not the first time, the Court noted, that a President had suspended entry "to retaliate for conduct by [foreigners'] governments that conflicted with U.S. foreign policy interests." Id. at 693. In light of the international interests invoked, the Court ruled that the President's invocation of Section 1182(f) passed muster. See id. at 711. Contrast that with Doe #1 v. Trump, 957 F.3d 1050 (9th Cir. 2020). There, the President invoked Section 1182(f) to restrict particular foreign nationals from entering the country without certain health insurance. See id. at 1056, 1065. Foreign policy interests were not on the table. See id. at 1067. Rather, the focus was healthcare costs, "a purely domestic economic issue." Id. at 1067. This interest, per the court of appeals, was likely outside the "traditional spheres authorized by § 1182(f)" --- "international affairs and national security." Id. at 1067. Therefore, the President was unlikely to "succeed in [hi]s broad reliance on § 1182(f)." Id. at 1067. In sum: immigration law holds the line between foreign and domestic; courts have refused to conflate the two, under both the APA and Section 1182(f).

Bottom line as to the narrow point covered in this section:

To the extent the Secretary determined that any domestic conduct had only a domestic impact, there is an additional reason to think Section 1227 is vague as applied to that particular conduct.

A statute that empowers the Secretary only when it comes to impacts on foreign policy does not also empower him as to impacts on purely domestic matters.[39]

Using Section 1227 in that circumstance undermines notice. And it makes it impossible to say the Secretary is acting in accord with an "explicit standard," Grayned, 408 U.S. at 108, laid down by Congress.

C. In Comparison

Where things stand.

Under Section 1227, a person can be removed if the Secretary of State determines he is negatively impacting U.S. relations with a foreign country or countries. See Part V.A.3.

But the Secretary did not make that determination here.

His determination does not say whether the Petitioner's conduct affected U.S. relations with any other country. See id.

An ordinary person would have had no real inkling that a Section 1227 removal could go forward in this way --- without the Secretary first determining that there has been an impact on American relations with another country. See Part V.B.

And using Section 1227 like this is to use it without reference to the only "explicit standard," Grayned, 408 U.S. at 108, laid

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[39] See Amy Coney Barrett, Congressional Insiders & Outsiders, 84 U. Chi. L. Rev. 2193, 2197 n.12 (2017) (noting that under the canon of expressio unius, "the inclusion of specific terms signifies the exclusion of others"); see, e.g., Tucker v. Alexandroff, 183 U.S. 424, 436 (1902) (applying that canon; see also Bittner v. United States, 598 U.S. 85, 94 (2023) (same). And the point is stronger yet given the gulf that is generally taken to exist between "foreign" and "domestic," as described above.

down by Congress --- the linchpin of which is a link to foreign policy. See id.

* * *

There is another vagueness problem here, too.

Namely, Section 1227 is markedly vaguer than a number of statutes the Supreme Court has struck down over the years on vagueness grounds, see Part V.C.1 --- and the Respondents' counterargument on this point is not persuasive. See Part V.C.2.

Move through these points now, and then in Part V.C.3 consider their implications for this case.

1. Precedent

As discussed, see Part V.A.1, Section 1227's key operative term is "foreign policy."

The statute's reliance on that term makes Section 1227 more vague than other statutes the Supreme Court has struck down.

Apples-to-apples comparisons do not work smoothly in this area. This is because each statute covers a different subject area. And each uses different words.

But the pattern is clear. A few examples make the point.[40]

a) Kolender

The stepping-off point: Kolender v. Lawson, 461 U.S. 352 (1983).

The statute there required anyone loitering in certain circumstances to hand over identification. See id. at 353. The statute was attacked as facially unconstitutional. See id. at

[40] Recall here that how vague a law can be depends on the kind of law it is. See generally Part III. Civil laws that deal mainly with economic matters do not get especially rigorous scrutiny. Criminal laws, though, come in for a much harder look. (And a key point: immigration laws like Section 1227 get the same treatment as criminal laws. See Dimaya, 584 U.S. at 156–57 (citing Jordan, 341 U.S. at 229, 231).) There is also another level up. As to statutes that touch on First Amendment-protected rights, vagueness review is at its most exacting. First Amendment issues are taken up in Part V.F.

355. Why? Because it required the ID to be "credible and reliable," and, per the Supreme Court, that was vague. See id. at 353–54.

Standing alone, "credible and reliable" is about as vague as "compelling foreign policy interest."

Can an out-of-town water bill count? What about a new credit card? How about both together?

Does America have a compelling foreign policy interest in working with Colombia to prevent narcotics trafficking or in working with Syria to eliminate chemical weapons stockpiles? What about in helping Egypt to preserve antiquities? Preventing poaching in Kenya? What about disincentivizing poor working conditions at garment factories in Bangladesh? What about preserving security there?

In Kolender, the face of the statute was not the end of the story.

A previous judicial decision had narrowed down the law. Per a state appeals court, "credible and reliable" "meant identification 'carrying reasonable assurance that the identification is authentic and providing means for later getting in touch with the person who has identified himself.'" Id. at 357 (quoting People v. Solomon, 33 Cal. App. 3d 429, 438 (Cal. Ct. App. 1973)).

That interpretation arguably seemed to provide the harder-edged standard that was missing from the statute's text. See id. at 373 (White, J., dissenting).

But no matter, the Supreme Court held.

Even as interpreted, the Court explained, "the statute vests virtually complete discretion in the hands of the police." Id. at 358.

And this even though there was another constraint built into the law: police officers were allowed to ask for identification only in "circumstances that would justify a stop under the standards of Terry v. Ohio, 392 U.S. 1 (1968)." Id. at 353.

Nonetheless, the statute was struck down by the Supreme Court as unconstitutionally vague, invalid on its face. See id. at 361.

In short: the statute in Kolender was roughly as vague as Section 1227. But it did not clear the bar. Even though it had

been interpreted and pared back by a prior court decision --- but there is none here. And even though government discretion was tied down to the dense body of rules developed under Terry. Again, nothing like that here.

b) Akron

Move to City of Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416 (1983).

Per an Akron ordinance, doctors performing abortions had to "[e]nsure that the remains of the unborn child are disposed of in a humane and sanitary manner." Id. at 451.

The doctors challenged "humane" as unconstitutionally vague, see id. at 451–52, and the Court agreed --- striking down the statute.

This was not surprising. "Humane" is open-ended.

But some years before, a different federal court had upheld a "humane disposition" law against a vagueness attack in light of the state's representation that the law aimed "to preclude the mindless dumping of aborted fetuses on garbage piles." See id. at 451 (citing Planned Parenthood Ass'n v. Fitzpatrick, 401 F. Supp. 554, 573 (E.D. Pa. 1975), aff'd sub nom. Franklin v. Fitzpatrick, 428 U.S. 901 (1976)); see also id. at 475 (O'Connor, J., dissenting).

At the Supreme Court, Akron tried to lean on this same representation. See id. at 474–75 (O'Connor, J., dissenting).

But that did not do the trick, and the Supreme Court struck down the law as too vague. See id. at 452 (majority opinion).

c) Cramp

Take a final case, Cramp v. Board of Public Instruction of Orange County, 368 U.S. 278 (1961).

A Florida law required every state employee to swear "he has never lent his 'aid, support, advice, counsel or influence to the Communist Party.'" Id. at 279.

A teacher sued, claiming the state law was void for vagueness. See id. at 280, 283.

The law left plenty of room for guesswork.

The Supreme Court asked: "[c]ould a lawyer who had ever represented the Communist Party or its members swear with either confidence or honesty that he had never knowingly lent his 'counsel' to the Party?" Id. at 286.

The statute did not say, and the Court held the law unconstitutionally vague. See id. at 280, 288.

But the Florida law was less vague than Section 1227.

Pushing back on communism was an unmissable American foreign policy interest when the Supreme Court reached its decision. See, e.g., 22 U.S.C. § 2370(h) (banning "aid" to communist countries when against "the best interests of the United States"); Communist Party of U.S. v. Subversive Activities Control Bd., 367 U.S. 1, 93–96 (1961).

And the Florida law honed in on that interest, and just that interest, in a single, clear way --- by requiring an oath.

Now see the contrast.

Section 1227 catches within its net not just one U.S. foreign policy interest, but large numbers of them. Anything that can be chalked up as "compelling."

And it protects those interests not by forbidding a specific and knowable action, like refusing to take an oath.

Rather, it does so in an opaque and catch-all way --- by reaching anything that "compromise[s]" those interests, however a "compromise" might happen.

Moreover, the law is much more forgiving of vagueness in a statute that includes a mens rea requirement. The thinking is that if a statute requires a person to know she is acting intentionally, then it may matter less that the law is somewhat unclear. See, e.g., Loy, 237 F.3d at 265 (collecting cases).

The Florida law, as construed by the Florida Supreme Court, had a mens rea requirement. See id. at 285 (citing Cramp v. Bd. of Pub. Instruction of Orange Cnty., 125 So. 2d 554, 557 (Fla. 1960)).

But Section 1227 does not have one. A person can be removed from the United States for compromising a compelling foreign policy interest. Even if he does not aim to. And even if he does not know that he has done so.

To be sure, it might be said, the Florida law implicated First Amendment issues.

It required state employees to swear an oath. Compelled speech is a classic First Amendment concern. See Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31, 585 U.S. 878, 892 (2018); W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943). And for purposes of vagueness law, statutes that put pressure on free speech are held to a higher standard. See Part III.

But that is no distinction from this case.

Here, the Petitioner protested, see Determination at 2 --- and the Secretary's determination relied on the part of Section 1227 that kicks in only when removal is sought based on "beliefs, statements, or associations" that are "lawful." See id. at 1-2 (tracking the text of Section 1182(a)(3)(C)).

* * *

In short:

The Secretary's determination does not say what Section 1227 requires. The Secretary did not affirmatively determine that the Petitioner's conduct has affected U.S. relations with other countries.

This undermines notice. It leaves enforcement standardless. And it weighs in favor of the conclusion that Section 1227 is unconstitutionally vague as applied here. See Part V.B.

That conclusion is strengthened by comparing Section 1227 to the laws struck down by the Supreme Court in Kolender, Akron, and Cramp --- which suggest that Section 1227 already starts off on its back foot, hovering close to the line that separates what is constitutional from what is not.

2. The Counterargument

The Respondents see things differently.

Section 1227, they contend, "is plainly more definite than other provisions that the Supreme Court has upheld against vagueness challenges." See Respondents' Supplemental Brief at 7-8 (emphasis in original).

But they do not take on any of the cases discussed above.

And in any event, the Respondents' argument does not work. To see why, tick through the cases they cite.

* * *

First, Jordan v. De George, 341 U.S. 223 (1951).

There, the Supreme Court rejected a vagueness challenge to a provision allowing the deportation of someone who had committed more than one "crime involving moral turpitude." See id. at 225, 229–32.

That sounds vague.

But its meaning was no mystery. "Moral turpitude" had been part of our immigration laws since 1891, during which time it had been construed by the Supreme Court. See id. at 229–30 & n.14. And other statutes used the same phrase. Those, too, had received judicial interpretation. See id. at 230. And no court in any context had held the phrase was too vague. See id.

Moreover, as to the statute in the Jordan case, underlying due process concerns[41] were plainly satisfied --- the "moral turpitude" provision was triggered only "after conviction and sentence of the requisite two crimes." Id. "[T]he statute [as to moral turpitude] provided adequate notice, at least to the extent that if an alien behaved him or herself and did not violate the traditionally well-defined penal laws, the alien could rest assured that he or she would not be deported, at least under that statute." Massieu, 915 F. Supp. at 700.

This case is not like Jordan.

No court, much less the Supreme Court, has construed Section 1227.

No court seems to have interpreted the Section 1227 language as it may appear in another obviously relevant statute.

And the Petitioner has not been convicted of multiple crimes (or any crime) as a prerequisite for removal.

Indeed, the Secretary is going forward under a determination that alludes to alleged criminal conduct by another person, but not the Petitioner. See Determination at 2. And moreover, the Secretary affirmatively suggests that the Petitioner's

[41] Recall that the void-for-vagueness doctrine is rooted in the Due Process Clause. See footnote 32.

underlying "beliefs, statements, or associations" are "lawful." Id. at 1 (citing Section 1227).

* * *

Second, the Respondents point to Mahler v. Eby, 264 U.S. 32 (1924).

That was a vagueness challenge to a law that provided for the deportation of noncitizens that the Secretary of Labor found to be "undesirable residents of the United States." Id. at 36 (cleaned up).

The Supreme Court rejected the challenge.

The Respondents take from Mahler that "the expression 'undesirable residents of the United States' is sufficiently definite to make the delegation quite within the power of Congress." Respondents' Supplemental Brief at 7 (quoting Mahler, 264 U.S. at 40) (cleaned up).

The argument seems to run like this: if the Secretary of Labor can determine that someone is "undesirable" and secure their removal on that basis, then the Secretary of State should be able to determine that someone is compromising "compelling foreign policy interests" and have them removed for that.

This argument sounds strong.

But a look at the fuller Supreme Court excerpt shows that the "undesirable" standard did not stand alone, and in fact had been dramatically narrowed down and specified.

The Respondents paste into their legal brief the part of Mahler the Court has underlined below. But they leave on the cutting-room floor everything else --- and those are the critical passages:

> [Congress] has established classes of persons who in its judgment constitute an eligible list for deportation, of whom the Secretary is directed to deport those he finds to be undesirable residents of this country. With the background of a declared policy of Congress to exclude aliens classified in great detail by their undesirable qualities in the Immigration Act of 1917, and in previous legislation of a similar character, we think the expression

> 'undesirable residents of the United States' is sufficiently definite to make the delegation quite within the power of Congress.

Mahler, 264 U.S. at 40 (emphasis added).

What were the undesirable qualities that had been "classified"?

> The classes include all aliens interned as enemies by the President's proclamation under R. S. § 4067 (Comp. St. § 7615) and alien convicts under the Espionage Act, the Explosives Act, the act restricting foreign travel, the Sabotage Act, the Selective Draft Act, the act punishing threats against the President, the Trading with the Enemy Act, and certain sections of the Penal Code.

Id. at 36–37.

These are hard-edged, public standards --- and "great[ly] detail[ed]" ones, id. at 40, as the Supreme Court put it. They dramatically reduced any vagueness otherwise inherent in the term "undesirable residents."

There is no persuasive way to analogize Mahler to this case.

Section 1227, like the law in Mahler, starts off with broad language. But then in Mahler, a list of "great detail," id., came in to flesh things out. There is nothing like that list associated with Section 1227. No regulations, for example.

To ignore the list, as the Respondents do, is to miss why the statute in Mahler passed muster --- and to miss, too, why Section 1227 is much vaguer than the law that was at issue in that case.

And another point.

One of the terms in Mahler, "undesirable residents," had been used in American immigration law as far back as 1802. And so, per the Supreme Court in Mahler, "[o]ur history has created a common understanding of the words 'undesirable residents' which gives them the quality of a recognized standard." Id.

But again, that is not this case.

No word in Section 1227 hauls along with it the built-up clarity of our common law. See Part V.A.2.

Mahler is, simply, a long way off. The analogy does not work.

* * *

The Respondents' third and final case is Boutilier v. Immigration & Naturalization Service, 387 U.S. 118 (1967). See Respondents' Supplemental Brief at 8.

The Boutilier petitioner had been ordered deported under a law that made excludable those foreign nationals who had a "psychopathic personality," which federal officials read to include gay men. See 387 U.S. at 118. The petitioner argued that this reading of the law was void for vagueness, see id. at 119, but the Supreme Court disagreed.

The Court explained why: "[t]he legislative history of the Act indicates beyond a shadow of a doubt that the Congress intended the phrase 'psychopathic personality' to include homosexuals such as petitioner." Id. at 120.

The Court went on to describe that clarifying history. See id. at 121–22. One example: a Senate report defined "'psychopathic personality' . . . to include homosexuals." Id. at 121.

Another data point: a report of the Public Health Service that buttressed the legislative history defined "psychopathic personality" to include homosexuality. See id. at 120.

The legislative history of Section 1227 is a world away from all this.

Far from specifying "beyond a shadow of a doubt" what might be meant by a "compelling . . . foreign policy interest," Congress took the exact opposite tack --- indicating that it wanted to leave things open-textured and flexible, undefined.

Per the State Department's Legal Adviser in the run-up to the passage of Section 1227: "[w]e recognize that the revised standard leaves considerable discretion in the Executive branch. But we believe it is . . . inadvisable to be more precise[.]" Exclusion and Deportation of Aliens: Hearing Before the Subcomm. on Immigr., Refugees, and Int'l L. of the Comm. of the H. Comm. on the Judiciary, 100th Cong. 40 (1987) ("1987 Hearing") (statement of Abraham D. Sofaer, Legal Adviser of the State Dep't).

And to the extent that legislative history is relevant here, it suggests, if anything, that the Secretary's determination as to

the Petitioner is out of step with the statute. That is the subject of Part V.D.

3. Implications

Where things stand.

Section 1227, as applied here, appears to be a good deal vaguer than other statutes the Supreme Court has struck down for vagueness. See Part V.C.1.

And the problem is not solved by the Respondents' cited cases. See Part V.C.2.

Is this the end of the road? Does the above require the conclusion that Section 1227, as applied, must simply be struck down?

After all, the Supreme Court cases cited above, see Part V.C.1, were facial challenges, and this one is an as-applied challenge.

A facial challenge traditionally attacks a statute as "impermissibly vague in all of its applications." Hoffman Ests., 455 U.S. at 495 (emphasis added).

And "[i]f a statute is vague in all its applications then it will necessarily be vague 'as applied' in every case." United States v. Gaudreau, 860 F.2d 357, 361 (10th Cir. 1988) (emphasis added).

If less vague statutes did not survive facial challenges in Kolender, Akron, and Cramp, can the vaguer Section 1227 survive the current as-applied challenge?

The Court's judgment: yes, it can.

Take two reasons why.

* * *

First, the quote from the Supreme Court in Hoffman, just above, may no longer be good law.

In Johnson, for example, the Court looked back on L. Cohen Grocery, a case in which a statute that barred "unjust and unreasonable" prices was voided as vague on its face.

The Johnson Court asked: was the pricing statute really vague in all its applications? See 576 U.S. at 602. After all, "charging someone a thousand dollars for a pound of sugar would

surely be unjust and unreasonable." Id. (interpreting L. Cohen Grocery) (emphasis added).

But, the Johnson Court noted, that did not stop the Supreme Court in L. Cohen Grocery from striking down the pricing law on its face, as void for vagueness across the board. See id.

Why not? Because per the Supreme Court in Johnson, a holding of facial vagueness need not mean that literally every application of a law is vague. See id. at 602-03.

On this understanding, the fact that "a statute is vague in all its applications" does not "necessarily" suggest the statute will "be vague 'as applied' in every case." Gaudreau, 860 F.2d at 361.

And this means that the Supreme Court cases cited above --- Kolender, Akron, and Cramp --- do not require the conclusion that Section 1227 is vague as applied here, even as they push things a long way down the road in that direction.

* * *

A second reason why Kolender, Akron, and Cramp do not strictly compel any conclusion here: those cases may be distinguishable, at least to an extent.

Take two ways.

When assessing a vagueness challenge, the Supreme Court has aimed to account for the sheer difficulty of crafting an appropriately tight law. Think of a disorderly conduct ordinance, for example.

> There are areas of human conduct where, by the nature of the problems presented, legislatures simply cannot establish standards with great precision. Control of the broad range of disorderly conduct that may inhibit a policeman in the performance of his official duties may be one such area, requiring as it does an on-the-spot assessment of the need to keep order.

Goguen, 415 U.S. at 581; accord, e.g., Kolender, 461 U.S. at 360-61; United States v. Petrillo, 322 U.S. 1, 7 (1947).

Section 1227 looks like a backstop statute --- to be deployed rarely,[42] and in situations where there is a gap between the formidable range of on-the-books immigration-law powers[43] and the felt needs of an unforeseen case.

Drafting a statute to cover these sorts of situations is intrinsically hard. See 1987 Hearing at 40-41 ("it is difficult . . . to be more precise") (statement of Abraham D. Sofaer, Legal Adviser of the State Dep't).

And the drafting task was likely harder than anything that needed writing up in Kolender, Akron, or Cramp.

Take now another possible distinction.

Vagueness law's concern with sharp delineation of government power is said to rest on the need to limit the possibility of arbitrary enforcement.

That can result when a too-broad law gives de facto lawmaking power to many lower-level enforcement officials. See, e.g., Davis, 588 U.S. at 451 ("Vague statutes threaten to hand responsibility for defining crimes to relatively unaccountable police, prosecutors, and judges, eroding the people's ability to oversee the creation of the laws they are expected to abide."); accord, e.g., Johnson, 576 U.S. at 595 (similar); Kolender, 461 U.S. at 358 (similar).[44]

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[42] See 1987 Hearing at 40-41 (statement of Abraham D. Sofaer, Legal Adviser of the State Dep't) (suggesting this).

[43] See, e.g., 8 U.S.C. § 1227(a)(4)(B) (authorizing removal in cases involving terrorism); id. § 1227(a)(4)(E) (same, religious persecution); id. § 1227(a)(2)(A)(iii) (same, commission of aggravated felony); id. § 1227(a)(6)(B) (same, unlawful voting); id. § 1227(a)(6)(B) (same, public charge).

[44] The concern in this situation dovetails with the double difficulties associated with (a) a broadly written injunction that then (b) gives many different people a hand in enforcing it. See, e.g., Merch Traffic, LLC v. Does 1-100, 686 F. Supp. 3d 380, 386 (D.N.J. 2023) ("Where . . . the injunction's starting point is loose language, many interpreters . . . means many different interpretations. And many different interpretations multiplies the chances for uncertainty and confusion, along with the risk that the injunction will be

But the Supreme Court has indicated there are also possible vagueness problems when a single senior official or a single official body is expected to make enforcement decisions without the benefit of a crisp legal standard from the legislature. See Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 71 (1963) (statewide commission); Mahler, 264 U.S. at 40 (Secretary of Labor); cf. Aptheker v. Sec'y of State, 378 U.S. 500 (1964) (Secretary of State).

Is all relatively standardless enforcement to be treated in the same way? Is decentralized enforcement under a loose standard (as in Kolender, Akron, and Cramp) to be directly analogized, without doctrinal adjustment, to centralized enforcement under a loose standard (as in Bantam and Mahler --- and also as envisioned for the Secretary of State in Section 1227)?[45]

These are complex questions, and they suggest that it would be too hasty to simply treat Kolender, Akron, and Cramp as compelling the outcome in this case.

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misunderstood in ways that sweep in people it should not.") (cleaned up).

[45] Thinking this through might require wrestling with another set of questions. Namely, in its cabining-government-power prong, is vagueness doctrine concerned only with arbitrary enforcement, or is it also concerned with democratic accountability? And if vagueness doctrine is concerned with accountability (as some cases suggest, see, e.g., Davis, 588 U.S. at 451), does that imply that it should be more forgiving of relatively looser standards when they are visibly administered only by a single, senior official? See Alexander Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics 151 (1962) ("A vague statute delegates to administrators, prosecutors, juries, and judges the authority of ad hoc decision, which is in its nature difficult if not impossible to hold to account, because of its narrow impact."); cf. Dimaya, 584 U.S. at 182-83 (Gorsuch J., concurring); Memorandum from David J. Barron, Acting Assistant Att'y Gen., Office of Legal Counsel, to Eric Holder, U.S. Att'y Gen., Applicability of Federal Criminal Laws and the Constitution to Contemplated Lethal Operations Against Shaykh Anwar al-Aulaqi 38-41 (July 16, 2010) (in a context that is far afield, implicitly suggesting that due process concerns may be lessened when "high-level" officials are the key decision-makers).

* * *

In sum:

Section 1227 as applied here is more vague than other statutes the Supreme Court has struck down, see Part V.C.1, but this does not end things. It weighs in favor of the conclusion that Section 1227 is vague as applied. But it does not require that conclusion.

D. History

When it comes to vagueness, the Supreme Court and other federal courts have often looked to legislative history. See Part V.A.2.

And in this case, the parties have affirmatively brought Section 1227's legislative history to the Court's attention. See Petitioner's Supplemental Brief at 18–19; Respondents' Supplemental Brief at 5–7.[46]

Take up here Section 1227's legislative history, see Part V.D.1, and then its enforcement history. See Part V.D.2.

A quick preview of what they show:

The legislative history generally suggests that Section 1227 removal was intended for cases in which (a) the underlying conduct happened abroad or almost exclusively abroad, and (b) it was determined by the Secretary of State that the underlying conduct would have impacted U.S. relations with other countries.

And the enforcement history shows Section 1227 has generally been used over the years in keeping with the legislative-history blueprint --- for removals based on conduct that took place entirely (or almost entirely) abroad, and that, per the Secretary, affected America's relations with other countries.

This case does not fit into those categories.

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[46] And the Respondents have focused the Court on Boutilier v. INS, 387 U.S. 118 (1967), discussed above, in which the Supreme Court squinted hard at legislative history to resolve a vagueness challenge. See id. at 121–22 (citing S. Rep. No. 82-1137, at 9 (1952)).

As determined by the Secretary of State, all of the Petitioner's conduct took place in the United States. See Determination at 2. And the Secretary has not affirmatively determined that the Petitioner's conduct impacted U.S. relations with any foreign country. See id.

The takeaway: a further reduction in the likelihood that an "ordinary person" in the Petitioner's position would have had a sense that Section 1227 might be used to seek to remove him.

1. Legislative History

a) Its Role

Ensuring that there are clear limits on the scope of government power is one of the bases for the vagueness doctrine. See Part III.

And this is largely a matter of two things.

First, understanding what the statute does and does not empower the government to do. And then second, asking the vagueness question --- how crisp is Congress' command, and what sort of space does it leave behind for potentially arbitrary enforcement?

The first part of the inquiry is mainly a matter of statutory interpretation. And as to that, legislative history can have a role to play only when the underlying statute is ambiguous. See, e.g., Bostock v. Clayton Cnty., 590 U.S. 644, 674 (2020).

Here, the linchpin words in Section 1227 are "foreign policy." The dictionary definitions of those words are essentially uniform. See Part V.A.3. The words are not ambiguous.

Therefore, as to delineating the power that Section 1227 gives the Secretary, legislative history has no role.[47]

But that is not the end of the matter.

In addition to zeroing in on the limits to government power, vagueness doctrine also takes up notice questions. What would

[47] No role for now. See footnote 68.

an ordinary person take away from the law? What would he or she be warned about as a practical matter?

This sort of notice is a matter of what things mean in "the common mind." McBoyle v. United States, 283 U.S. 25, 27 (1931); Mahler, 264 U.S. at 40 ("common understanding"); Kovacs v. Cooper, 336 U.S. 77 (1959) ("daily use"); Sproles v. Binford, 286 U.S. 374, 393 (1932) ("common usage and understanding").

Getting at that often requires panning out, to consider the broader range of information that might inform the understanding of ordinary people. This can mean a look to newspaper articles, for example, see Blake, 288 F. App'x at 794-95, and to enforcement history. See Wyndham, 799 F.3d at 257-58 & nn.22-24. And it is hard to know why it should not also mean a look to legislative history.

What this adds up to: the parties have each pointed the Court to Section 1227's legislative history, and the Court refers to it here to shed light on the notice an ordinary person in the Petitioner's position would have had.

Now look to two parts of the legislative history.

b) The Conference Report

Start with the 1990 House Conference Report.[48] See Petitioner's Supplemental Brief at 18-19 (citing the Report); Respondents' Supplemental Brief at 7 (same).

The Report was issued in the run-up to the passage of Section 1227. See H.R. Rep. No. 101-955 (1990) (Conf. Rep.), as reprinted in 1990 U.S.C.C.A.N. 6784, 6794.

[48] A conference report "presents the formal legislative language on which the conference committee has agreed." Christopher M. Davis, Cong. Rsch. Serv., R98-382, Conference Reports & Joint Explanatory Statements 1 (2015). Such reports are sometimes regarded as relatively more reliable sources of legislative history. See, e.g., Ry. Lab. Execs. Ass'n v. Interstate Com. Comm'n, 735 F.2d 691, 701 (2d Cir. 1984); Demby v. Schweiker, 671 F.2d 507, 510 (D.C. Cir. 1981).

When, per the Report, might Section 1227 be invoked?[49]

The Report gave two examples.

The first: Section 1227 might be brought to bear when there could be "imminent harm to the lives or property of United States persons abroad or to property of the United States government abroad (as occurred with the former Shah of Iran)." Id. at 6795.

The reference to the Shah is apparently this: on October 29, 1979, the Shah of Iran was admitted to the United States for medical treatment, and six days later scores of Americans were taken hostage in the storming of the United States Embassy in Tehran. See Mark Bowden, Guests of the Ayatollah (2006) at 5-6, 19-20.

By then, the Shah had ruled Iran for more than 35 years. He was not someone who undertook meaningful activities in the United States. He moved around in the last year of his life to a succession of countries for treatment, including Egypt, Morocco, the Bahamas, and Mexico. One of those countries was the United States.

And the concern as to the Shah's treatment was that it could have impacted "lives or property of United States persons abroad," or "property of the United States government abroad." See H.R. Rep. No. 101-955 (1990) (Conf. Rep.), as reprinted in 1990 U.S.C.C.A.N. 6784, 6795 (emphasis added).

Bottom line: per the Report's first example, Section 1227 was to focus on conduct outside of the United States that involved a direct impact on U.S. relations with a foreign country, Iran.

The Report's second example: Section 1227 might be used when there "would [be a] viol[ation] [of] a treaty or international agreement to which the United States is a party." Id.

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[49] The Report discussed Section 1227 in the context of the decision to exclude a person from entering the United States, see H.R. Rep. No. 101-955, 1990 U.S.C.C.A.N. at 6794-95 --- not, as here, in the context of an effort to remove a person from the United States. No matter. Section 1227 makes clear that these are interchangeable. They are governed by the same standard. Compare 8 U.S.C. § 1227(a)(4)(C)(ii), with id. § 1182(a)(3)(C)(iii).

As a general matter, treaties are externally focused, concerned with foreign matters, not domestic ones.[50] See Medellin v. Texas, 552 U.S. 491, 505 (2008) ("A treaty is . . . primarily a compact between independent nations.") (cleaned up); see also 3 Debates in the Several State Conventions on the Adoption of the Federal Constitution (Jonathan Elliott ed., 1836) at 514 (statement of James Madison: "The object of treaties is the regulation of intercourse with foreign nations, and is external."); Treaties and Executive Agreements: Hearings on S.J. Res. 1 before a Subcomm. of the Sen. Comm. on the Judiciary, 84th Cong. 183 (1955) (Secretary of State Dulles) (stating that treaties cannot regulate matters "which do not essentially affect the actions of nations in relation to international affairs, but are purely internal").

Treaties are overwhelmingly entered between the United States and other counties. See Medellin, 552 U.S. at 505; Washington v. Wash. State Com. Passenger Fishing Vessel Ass'n, 443 U.S. 658, 675 (1979); Restatement (Fourth) of the Foreign Relations Law of the United States § 301 (2018); Phillip R. Trimble, International Law: United States Foreign Relations Law 129 (1st ed. 2002).

And "viol[ating]" a treaty --- the Report's stated concern --- would plainly impact U.S. relations with the country that was America's treaty partner.[51]

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[50] "As a general matter" because of some arguable drift during recent decades. Compare Restatement (Second) of the Foreign Relations Law of the United States § 117(1)(a) (1965) (stating that the Constitution's treaty power can be put in play only if the subject matter of the treaty "is of international concern"), with Restatement (Third) of the Foreign Relations Law of the United States § 302, cmt. c (1987) ("Contrary to what was once suggested, the Constitution does not require that an international agreement deal only with 'matters of international concern.'").

[51] It is not crystal clear how a Section 1227 removal might prevent a treaty breach. But maybe the idea is that a country whose extradition request is not fulfilled by the United States would think of its extradition treaty as having been breached. On this understanding, Section 1227 might have been envisioned as working, in part, as a kind of back-up extradition-type mechanism, as when, for example, there is a failure of proof

In short, the Report's examples point in the same direction: Section 1227 was expected to be used in contexts in which the underlying conduct (a) took place mainly abroad, not inside the United States, and (b) was determined by the Secretary to impact U.S. relations with another country.

c) The Prior Statute

Look now to another piece of legislative history.

Section 1227 became law in 1990, and the Respondents direct the Court to Section 1227's pre-enactment history. See Respondents' Supplemental Brief at 6.

That history is laid out here over the next page or two.

* * *

A 1952 statute empowered the Secretary of State to order the removal of certain foreign nationals from the United States. See Immigration & Nationality Act of 1952, Pub. L. No. 82-414 § 241(a)(7), 66 Stat. 163, 206 (codified at 8 U.S.C. § 1251(a)(7)).

This statute had "for years" been understood to reach foreign nationals who might generate "adverse foreign policy consequences" for the United States. See 1987 Hearing at 47 (letter of Assistant Att'y Gen. John Bolton).

The 1952 statute did not mention the words "foreign policy." See Immigration & Nationality Act of 1952 §§ 212(a)(27) (exclusion), 241(a)(7) (deportation).

Rather, per the 1952 statute, a foreign national could be removed if he "engage[d] in activities which would be prejudicial to the public interest . . . of the United States." See id. §§ 212(a)(27) (exclusion), 241(a)(7) (deportation).

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before the American extradition court, and an extradition therefore does not go forward. That is how Section 1227 was used in Massieu v. Reno, 91 F.3d 416, 418-19 (3d Cir. 1996). (In terms of the location-of-the-underlying-conduct point, note that when the United States extradites a person to country X, it is virtually always for conduct that occurred in country X, not for conduct that took place in the United States. See, e.g., Extradition Treaty, Mex.-U.S., art. 1(1), May 4, 1978, 31 U.S.T. 5059.)

That worked because "public interest" could be read to cover foreign policy concerns. See 1987 Hearing at 47 (letter of Assistant Att'y Gen. John Bolton) (describing the Department of Justice's long-standing interpretation of the 1952 statue).

But it did so by casting a wide net --- one so broad that it allowed the Secretary of State to act on foreign policy concerns and also based on purely domestic concerns.

During the late 1980s, Attorney General Meese and Secretary of State Schultz gave a set of major speeches focused on changing immigration laws to pry open more space for free expression. See id. at 33 (statement of Abraham D. Sofaer, Legal Adviser of the State Dep't) (describing the speeches).

Citing these speeches, former Judge Sofaer, then the State Department Legal Adviser, testified for the Reagan administration that the foreign-and-domestic 1952 statute could be eliminated, provided that a replacement statute gave back to the Secretary of State the foreign policy-focused powers that he needed.

Judge Sofaer's testimony:

> We recognize . . . that the "public interest" standard is broad, and we are prepared to support replacing it with language that limits the grounds of exclusion to potentially serious foreign policy consequences. (The public interest standard also encompasses internal security cases, but we feel these are adequately handled under other sections of the law.) This narrowing of our authority is significant. . . . We recognize that the revised standard leaves considerable discretion in the Executive branch. But we believe it is difficult and inadvisable to be more precise in defining what cons[t]itutes a serious adverse foreign policy consequence. New crises and difficulties arise every day in our international relations, and we need some flexibility to deal with them.

Id. at 40-41.

The gist of Judge Sofaer's testimony: the 1952 statute swept broadly and included powers to address both domestic ("internal") concerns and also foreign policy concerns. Cf., e.g., id. at 57-58 (testimony of then-INS Commissioner Alan Nelson). The 1952 statute, he argued, could be struck from the books, so long as its kernel of foreign policy power was kept.

And that is where things went.

In 1990, Congress repealed the relevant part of the 1952 statute and replaced it with the current Section 1227. See Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (1990).

By eliminating the broad 1952 "public interest" standard and allowing for removal only on grounds related to "foreign policy interests," Section 1227 provided what the Reagan administration had wanted: a narrower statute, focused solely on the Secretary's power as to foreign policy concerns, without any of the power of the old "public interest" standard as to matters of "internal" concern.

In a nutshell: Section 1227 was meant to focus on foreign concerns, not domestic ones. And that view undergirded the Reagan administration's position --- which was to walk away from removal powers triggered by "internal" conduct, so long as foreign-focused removal powers stayed on the books.

2. Enforcement History

The Court can also look to Section 1227's enforcement history.

In its Wyndham decision, the Third Circuit assessed enforcement history to help resolve a vagueness question. It scrutinized the complaints filed by an enforcement agency, the FTC, to get a handle on the notice that might have been provided to an entity that was later sued by the agency. See Wyndham, 799 F.3d at 257-58 & nn.22-24.[52]

[52] Three points here. First, in Wyndham the Third Circuit pointed to enforcement history to show that a company was not in the dark and therefore could not successfully make a lack-of-notice argument. See 799 F.3d at 258. But it makes little sense to think that enforcement history might be used to help defeat a lack-of-notice argument (as in Wyndham) but not to help bolster one (as here). Second, there are, in general, solid

Take up Section 1227's enforcement history now.[53]

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reasons to look to enforcement history. For example, it comes closer in time to a person's alleged conduct than legislative history, and the example of a concrete case looms larger for an ordinary person than a given congressional report. Moreover, in terms of notice, what is actually being done (what the enforcement history shows) is likely more telling that what was first planned (which is what the legislative history shows). In addition, if the government always enforces a statute in one way but then spins it around and uses it in a wholly different way, that may lead to the sort of arbitrary enforcement that vagueness doctrine is specifically intended to guard against. Why ignore it? A third point. Enforcement history can count only if it provides public notice. Wyndham makes that clear, see 799 F.3d at 257, and public examples are the Court's sole focus here. A seemingly non-public case put forward by the Respondents, see Respondents' Letter (May 9, 2025) (ECF 241) at 1, has been put aside. (Note that the State Department has published three examples from Section 1227's enforcement history on the internet, in its widely used compendium, the Digest of United States Practice in International Law 1991-1999.)

[53] A note on enforcement history in this case. This month, the Court convened a conference in lieu of oral argument and set a schedule for supplemental briefing. See ECF 224, 228. At the conference, the Court indicated it would be looking to enforcement history. See Transcript of May 2, 2025 Teleconference (ECF 229) at 7:14-19, 8:6-10. No one objected. Five days later the Court ordered the Respondents to provide enforcement-history information. See ECF 231. The Respondents apparently agreed that such materials were relevant. They said they were "in the process" of gathering those materials themselves and "already intended to provide some of this information to the Court in [their then-upcoming] supplemental [legal brief]." ECF 232. But the Respondents asked for more time to provide the information. See id. More time was afforded, see ECF 234; the Respondents produced enforcement history materials, see ECF 241, 246 --- and then, only after that, objected for the first time to the production of further information, and seemingly to the use of such materials, too. See Respondents' Letter (May 9, 2025) (ECF 247). The Court did not press the matter. But one way or another, the Respondents' objection came too late.

* * *

The enforcement history of Section 1227 lines up with its legislative history.

They point in the same direction: the statute was meant to be used, and generally was used (until the Petitioner's case) as to people whose relevant conduct took place entirely abroad, or all but entirely abroad, and which was determined by the Secretary to impact U.S. relations with a foreign country.

Walk through the enforcement history now.

* * *

In 1995, the Secretary of State issued a Section 1227 determination as to a Jordanian national. The underlying facts:

> [T]he respondent was indicted in Jordan of conspiracy with the intention of committing terrorist acts. The indictment describes a deliberately unnamed organization in Jordan established for the purpose of fighting tyrant Arab rulers, resisting the "peace process," combating vice, and fighting Jews and Americans. This documentation alleges that the organization collected arms and explosives and attempted a number of bombings in cinemas in Jordan, and also a supermarket there, in January 1994. The respondent's alleged role was training one of the organization's founders at a training camp in the Philippines and agreeing to finance the organization after a visit to Jordan to assess the organization's capabilities in early 1994. As a result of the legal proceeding in Jordan, the respondent was evidently sentenced to death in absentia for his role in the terrorist attacks.

In Re Mohammad J.A. Khalifa, 21 I. & N. Dec. 107, 108-09 (BIA 1995).

The Secretary of State's determination indicated that Jordan had requested the removal, see ECF 252 at 5-6, and that saying no would "damage U.S. relations with Jordan." Id. at 6.

* * *

Later in 1995, the Secretary of State determined that the leader of a Haitian paramilitary force should be removed from the United States.

More of the same. Conduct that took place wholly abroad, and a determination by the Secretary that zeroed in on harm to U.S. relations with a foreign country.

Secretary of State Christopher's determination:

> [T]he Revolutionary Front for the Advancement and Progress of Haiti ("FRAPH") . . . claims to be a political party, [but] it has never in fact participated in the national political process. It is officially regarded by the Department of State as an illegitimate paramilitary organization whose members were responsible for numerous rights violations in Haiti in 1993 and 1994. Opposition to FRAPH is a key element of our Haitian foreign policy, and we have said so publicly. . . .
>
> [The foreign national whose removal is sought] is one of the co-founders and current President of FRAPH. He was instrumental in sustaining the repression that prevailed in Haiti under the illegal military-led regime until it was displaced last September by the multinational force led by the United States. On February 3, 1995, Mr. Constant sent a letter on behalf of FRAPH to the Special Representative of the Secretary General of the United Nations for Haiti using a Washington, D.C., return address and telephone number. In addition, since his arrival in the United States, FRAPH elements in Haiti have broadcast on Haitian radio tape recordings of Mr. Constant speaking on behalf of FRAPH to the Haitian people.
>
> These activities create the impression in Haiti that the United States is permitting

> Mr. Constant to use the United States as a base of operations for FRAPH. They fuel false but widespread perceptions in Haiti that Mr. Constant was deliberately allowed to enter the United States in December and that the United States Government is secretly supporting him; that the United States endorses both him and his positions; and that we approve of FRAPH. These misperceptions persist notwithstanding that we have consistently denounced FRAPH and made statements distancing the United States from it and Mr. Constant.
>
> My concern about Mr. Constant's presence and activities in the United States is heightened by the fact that elections for a new Haitian Parliament and for over 2,000 local government positions are scheduled for June 4, 1995. The United States has a huge stake in making sure that these elections --- the best manifestation of democracy --- are held successfully. Because Mr. Constant for many Haitians symbolizes the antithesis of democracy, permitting him to remain at large in the United States could undermine this important foreign policy objective. . . .
>
> The Haitian Government shares our belief that Mr. Constant is in the United States and has requested his extradition so that he may face criminal charges in Haiti. We have returned the request, which was technically deficient, to the Haitian Government, to which we have offered assistance in perfecting the documents. Given the compelling foreign policy interests at stake, it is essential that we seek Mr. Constant's deportation independent of any extradition efforts.

Letter from Warren Christopher, Sec'y of State, to Janet Reno, Att'y Gen. (Mar. 29, 1995), U.S. Dep't of State, https://perma.cc/24DS-V4DR (accessed on May 28, 2025) (retrieved

through the Digest of United States Practice in International Law 1991-1999).[54]

* * *

Fast-forward two years, to a 1997 determination from Secretary of State Albright and another example of the same pattern.

A foreign national's removal was sought based on purely foreign conduct, and also based on an impact on U.S. relations with other countries. Among other things, a refusal might have harmed a U.S.-led peace process, and might have made other countries less likely to help America deny safe havens to terrorists.

> I have determined that the entry, continued presence, or activities in the United States of Mousa Mohammed Abu Marzook . . . would have potentially serious adverse foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest. My determination is based on the following considerations. . . .
>
> Mr. Marzook, who acknowledges that he is a top official of Hamas, has been declared a "Specially Designated Terrorist" under the authority of [a Presidential] executive order by virtue of his actions on behalf of Hamas. All assets of both Hamas and Mr. Marzook in the United States are blocked, and financial transactions with each are prohibited unless authorized by the Department of the Treasury's Office of Foreign Assets Control.
>
> Additionally, during the course of recent extradition proceedings against Mr. Marzook

[54] See also, e.g., Matthew Purdy, Hiding in Plain Sight: Search for Haitian Exile, N.Y. Times, May 24, 1995, at B.1 (newspaper article describing Constant's removal from the United States); INS Agents Arrest Emmanuel Constant, United Press Int'l (May 11, 1995), https://perma.cc/8UMS-MFSR (accessed on May 28, 2025) (same).

initiated at the request of the Government of Israel, two U.S. courts found probable cause that he was criminally responsible for ten specific, grave incidents of terrorism in and around Israel before his arrival in the United States. Judge Duffy stated:

> "I find that there is probable cause to believe Abu Marzook engaged in and intended to further aims of the conspiracy by his membership in and support of the Hamas organization. I also find that probable cause exists that Abu Marzook knew of Hamas's plan to carry out violent, murderous attacks, that he selected the leadership and supplied the money to enable the attacks to take place and that such attacks were, therefore, a foreseeable consequence of the conspiracy."

Judge Wood, in her ruling, found that "the evidence [Judge Duffy] relied upon is more than sufficient to sustain his ruling," noting as an example Mr. Marzook's public acceptance of responsibility on behalf of Hamas for an October 9, 1994, attack in a pedestrian mall in downtown Jerusalem. . . .

The credibility of United States policies would be jeopardized if a prominent leader of a designated terrorist organization were allowed to reside in the United States. This in turn would undermine our ability to seek cooperation from others in denying terrorists [safe haven]. Moreover, this is a particularly crucial moment in the Middle East peace process, when senior United States officials are making a maximum effort to secure cooperation in the fight against Hamas terrorism and to resume the negotiating process.

Letter from Madeleine Albright, Sec'y of State, to Janet Reno, Att'y Gen. (Apr. 4, 1997) (quoting Marzook v. Christopher, 1996 WL 583378 (S.D.N.Y. Oct. 10, 1996)), https://perma.cc/Q87M-UD99 (retrieved through the Digest of United States Practice in International Law 1991-1999) (accessed on May 28, 2025) (cleaned up).

* * *

Finally: Matter of Ruiz-Massieu, 22 I. & N. Dec. 833 (BIA 1999).

There, federal officials sought to remove Mario Ruiz-Massieu. See Massieu, 91 F.3d at 417-19. He was "the second ranking law enforcement authority in Mexico" and was facing "serious" and "unprecedented" criminal charges there. Massieu, 915 F. Supp. at 711.

Ruiz-Massieu was alleged to have violated Mexican criminal law while serving in Mexico as a Mexican government official. See id. The Secretary's determination focused entirely on his alleged activities abroad. And it zeroed in on damage in the absence of removal to "U.S.-Mexican relations."

> The U.S. Government has consistently urged Mexico to take the steps towards reform in its justice system that President Zedillo is so forcefully pursuing. The ability to prosecute Mr. Ruiz Massieu and other powerful individuals in Mexico for the crimes of which they are accused is key to the success of Zedillo's pledge to transform totally the judicial and law enforcement system and to rid Mexico of corruption and abuse of power. Should the U.S. Government not return Mr. Ruiz Massieu to Mexico, our support of such reforms would be seen as hollow and self-serving and would be a major setback for President Zedillo and our combined efforts to chart a new and effective course of U.S.-Mexican relations.

Id. at 712.[55]

[55] See generally Ronald Smothers, Former Mexican Deputy Attorney General Indicted for Drug Trafficking, N.Y. Times (Aug. 28,

* * *

The legislative history and the enforcement history of Section 1227 sit on the same side of the scale.

Section 1227 was generally meant to be used, and has been used, for conduct (a) that entirely or all but entirely took place outside the United States and (b) that, as determined by the Secretary, would impact U.S. relations with a foreign country.

But here, per the Secretary's determination, the Petitioner acted solely within the United States. See Determination at 2. And the Secretary did not affirmatively determine that the Petitioner's conduct had any impact on U.S. relations with another country.

The legislative and enforcement history do not suggest in "the common mind," McBoyle, 283 U.S. at 27, that removal might be sought in these circumstances.[56]

Rather, they underscore that a Section 1227 removal of the kind at issue here is unprecedented --- not within the realm of conduct that the statute normally covers, of which an ordinary person would have notice.

E. Difficulty

To see the next point, start with this legal principle: a law can be unconstitutionally vague when it conditions liability or punishment (or here, removal) on a standard that requires analysis that is simply too hard for an ordinary person to realistically pull off.

1999), https://perma.cc/3DZZ-EBG8 (accessed on May 28, 2025); Ex-Official of Mexico Indicted, Wash. Post. (Aug. 27, 1999), https://www.washingtonpost.com/archive/politics/1999/08/28/ex-official-of-mexico-indicted/8633fe6d-5e2b-476a-8496-cc72cbca6a5d (accessed on May 28, 2025).

[56] If anything, the relevant "history and practice," Beauharnais v. Illinois, 343 U.S. 250, 253 (1952), might have led an ordinary person to affirmatively believe that domestic conduct which the Secretary has not determined affects U.S. relations with another country is beyond the reach of Section 1227.

The Supreme Court has made that clear, as discussed below. And it is not hard to see its reasoning.

A standard that is too hard to use undermines notice. As a practical matter, it leaves people guessing as to whether they are violating the law.

And such a standard also ups the odds of arbitrary enforcement, because it leaves enforcers to guess, too.

Take this up now, along with its implications for this case.

* * *

Legal standards often require some analysis, and that is not generally a vagueness problem.

Take an ordinance that says a person picketing outside a school commits a crime if she makes noise that disturbs a class.

The ordinance requires the demonstrator to think through the possible relationship between a cause (her protest) and a possible effect (disruption of the students and teachers working away inside).

If she gets the analysis wrong --- or at least analyzes things differently than a police officer might --- the demonstrator can be arrested.

This is no vagueness issue.

The ordinance requires an analysis that is not especially complicated or obscure. People can figure out whether "normal . . . activity . . . is about to be disrupted." Grayned, 408 U.S. at 112.

No surprise, then, that anti-noise ordinances along the lines of the above have routinely survived vagueness challenges. See, e.g., id.; Cameron, 390 U.S. at 615–17 (rejecting vagueness challenge to an ordinance that prohibited demonstrations that disturbed activity inside a courthouse); see generally Nash v. United States, 229 U.S. 373, 377 (1913) ("[T]he law is full of instances where a man's fate depends on his estimating rightly.").

Consider another law.

This one told truck drivers hauling explosives to avoid "driving into or through congested thoroughfares, places where crowds are

assembled" --- "so far as practicable, and, where feasible." Boyce Motor Lines, 342 U.S. at 339.

This can be tricky to figure out in big cities, and a truck company hauling loads from New Jersey to New York was charged with breaking the referenced law. See id.

It argued the law was unconstitutionally vague. See id. at 339–40. But the Supreme Court disagreed. See id. at 343.

Trucking-industry groups had been involved in formulating the law, see id. at 341–42, and truckers could realistically be expected to thread the needle by mapping out routes that dodged "congested" streets and "crowd[ed]" places. See id. at 342–43; accord, e.g., Sproles, 286 U.S. at 393 (rejecting vagueness challenge to a law that required truckers to use the "shortest practicable route to [their] destination").

In the noise-ordinance cases and in the trucking cases, the operative legal standards required some analysis. But not too much, and so the Supreme Court held there was no vagueness problem.

There are cases, though, that go the other way --- cases in which the analysis required by a statute's operative standard was too difficult as a practical matter, and so the Supreme Court struck down the statute.

Walk through the cases now.

* * *

First, International Harvester Co. of America v. Kentucky, 234 U.S. 216 (1914).

A Kentucky law allowed certain businesses to come together to sell their goods --- but only if that would not raise prices. See id. at 221.

How to confirm that prices did not jump?

Per the Kentucky law, that was a matter of determining whether current prices were no more than what "the market value under fair competition" would have been --- that is, the prices "under normal market conditions," id., had the businesses not decided to join together in the first place.

A company, International Harvester, was convicted under this law. See id. at 219. But the Supreme Court, per Justice Holmes, struck down the law as unconstitutionally vague.

Why? Not because the Kentucky law required wading through some shades of gray. Many laws require that.

Negligence law, per the Supreme Court, was one such example: "between the two extremes of the obviously illegal and the plainly lawful there is a gradual approach, and that the complexity of life makes it impossible to draw a line in advance without an artificial simplification that would be unjust." Id. at 223. Laws against negligence leave room for judgment, but they are not vague. They involve well-known concepts, which makes it "comparatively easy for common sense to keep to what is safe." Id.

But the Kentucky law was vague because "common sense" could be no help. Only "complex[]," id., counterfactual economic analysis could indicate what prices might have been had the businesses not come together --- and without doing that analysis, International Harvester could not stay on the right side of the law.

But why not just require International Harvester to loose accountants and economists on the pricing question?

The Supreme Court's answer: the required analysis was simply too hard.

Working through it would vex "the acutest commercial mind." Id. The facts --- necessary grist for any financial analysis --- were "uncertain both in nature and degree." Id. They were "only partially determinate." Id. The end result would be "[t]o compel [businesses] to guess," "to divine prophetically." Id.

All of this, per the Supreme Court, was too much, and so it struck down the law as vague. See id. at 222-24; accord, e.g., Am. Seeding Mach. Co. v. Kentucky, 236 U.S. 660, 662 (1915); Collins v. Kentucky, 234 U.S. 634, 638 (1914).

Ordinary people need to have a real shot at understanding what the law requires. That is impossible when a law's requirements are articulated through an analysis that must be done --- but which is so challenging that it ultimately calls for a great deal of guesswork. See Harriss, 347 U.S. at 617 ("The

underlying principle [of vagueness law] is that no man shall be held criminally responsible,[57] for conduct which he could not reasonably understand to be proscribed.").[58]

Now take another case, United States v. L. Cohen Grocery Co., 255 U.S. 81 (1921).

The defendant, a grocer, was charged with violating a law that barred sales of certain goods at an "unjust or unreasonable rate." Id. at 89 (cleaned up).

District judges had taken numerous approaches to determining a "[]reasonable" rate. See id. at 90 n.2. They came up with various formulas; these accounted for the price the defendant paid, handling costs, and typical industry profits. See id.

The Supreme Court might have gone with any one of those --- especially because the statute in question had a mens rea requirement, see id. at 86, something that has long been understood as stiff medicine for curing a vagueness problem. See, e.g., Screws v. United States, 325 U.S. 91, 101—103 (1945);

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[57] As noted in Part III, the vagueness doctrine that applies to criminal cases applies in removal cases. See Dimaya, 584 U.S. at 156–57 (citing Jordan, 341 U.S. at 229, 231).

[58] A passage in International Harvester suggests that the analysis the statute required was not just difficult, but impossible --- requiring "gifts that mankind does not possess." 234 U.S. at 224. But an impossibility reading of the case would be too strong. Judges routinely deal with counterfactual questions. What would a person have earned if she had not been injured? And counterfactual questions can be sprawling. Think of an antitrust class action. Or some of the lost-profits issues in major commercial disputes. Or the price effects of foreign goods dumped in the domestic market. See, e.g., Swiff-Train Co. v. United States, 793 F.3d 1355 (Fed. Cir. 2015). The counterfactual economics question in International Harvester question would have been very hard. That was the Supreme Court's point. But it would not likely have seemed literally impossible to Justice Holmes and his colleagues. (Indeed, economists often resolve tough questions by seeking out "natural experiments." And one could have been at hand in International Harvester. To ask how the market would have worked without the combinations Kentucky allowed, it might have been possible to simply look to the prices being charged in similar markets that did not have a combinations law like Kentucky's.)

United States v. Ragen, 314 U.S. 513, 524 (1942); Gorin v. United States, 312 U.S. 19, 27–28 (1941); Omaechevarria, 246 U.S. at 348.

But the Court struck down the statute as vague. See L. Cohen Grocery, 255 U.S. at 92–93. The range of facts that might relate to whether a price is "unreasonable" was simply too broad to get a solid handle on.

> [The statute] confines the subject-matter of the investigation which it authorizes to no element essentially inhering in the transaction as to which it provides. It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against.

Id. at 89.

The statute, in short, envisioned a standard ("[]reasonable" and "[]just") for allowable prices. See id. at 86.

That standard, on its own, may not have been too hard to administer. See Cameron, 390 U.S. at 616 & n.7 (holding that "unreasonable" is not vague --- and noting that the Constitution itself uses that term).

But applying the standard, figuring out how it might actually work as to the price of a pound of sugar --- that was too much. The equation was too difficult to work through, because its factual inputs could be anything and everything --- "the widest conceivable inquiry."

A third case is Johnson v. United States, 576 U.S. 591 (2015).

There, the Supreme Court considered a provision of federal law that lengthened a defendant's prison term if she had three or more prior convictions for a "violent felony." See id. at 593 (cleaned up). The law, as interpreted by the Supreme Court, defined "violent felony" in light of whether the underlying crime's "ordinary case" posed a serious risk of physical injury. See id. at 596 (cleaned up).

This was too vague an approach under the Constitution, the Supreme Court held. One of the main reasons why:

> How does one go about deciding what kind of conduct the 'ordinary case' of a crime involves? A statistical analysis of the state reporter? A survey? Expert evidence? Google? Gut instinct? To take an example, does the ordinary instance of witness tampering involve offering a witness a bribe? Or threatening a witness with violence? . . . Explaining why attempted burglary poses a serious potential risk of physical injury, the Court said: "An armed would-be burglar may be spotted by a police officer, a private security guard, or a participant in a neighborhood watch program. Or a homeowner . . . may give chase, and a violent encounter may ensue." The dissent, by contrast, asserted that any confrontation that occurs during an attempted burglary "is likely to consist of nothing more than the occupant's yelling 'Who's there?' from his window, and the burglar's running away." The [statute] offers no reliable way to choose between these competing accounts of what 'ordinary' attempted burglary involves.

Id. at 597 (cleaned up).

The questions posed by the Supreme Court, through Justice Scalia, were sharp and telling. But they were clearly rhetorical.

It is possible to work out, at least roughly, what the "ordinary" case of a crime is. For example, a "statistical analysis" of reported cases would likely shed light on that,[59] and an expert deep dive might, too. Indeed, the Sentencing

[59] There are, for example, around two to three dozen people charged each year in the federal system under the statute that forbids witness tampering. See Federal Criminal Case Processing Statistics Data Tool, Bureau of Just. Stats., https://fccps.bjs.ojp.gov/home.html?dashboard=FJSP-CriminalCodeStats&tab=CriminalCodeStatistics&ccm=4 (accessed on May 28, 2025) (Select "Number of persons in cases filed" and "18:1512 B"). The indictments for these can help show what is typical.

Guidelines are in part premised on typicality. See Koon v. United States, 518 U.S. 81, 94 (1996) (noting that the United States Sentencing Commission bases its Guidelines on "a heartland of typical cases"); U.S. Sent'g Guidelines Manual at 7 (U.S. Sent'g Comm'n 2024) ("When a court finds an atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm, the court may consider whether a departure is warranted.").

The point is only this: Johnson does not rest on the idea that it is literally impossible to determine what the "ordinary" case of a crime is --- only that the analysis is enormously difficult and consuming.

And when the law requires an analysis like that, vagueness red flags go up, as they did in International Harvester and L. Cohen Grocery, too.

This point looms especially large in First Amendment-related cases.[60]

To see how, look to a final case, Herndon v. Lowry, 301 U.S. 242 (1937).

There, the Supreme Court reviewed a state criminal conviction. The underlying statute had been construed as requiring an element of violence, see id. at 262–63, but the defendant had done little more than recruit Communist Party members and possess certain literature. See id. at 253.

On what basis, then, could he have been convicted? How could the violence aspect of the conviction be sustained?

The state courts' answer: based on the potential actions of others --- on the defendant's "influence . . . in causing such action by those whom he sought to induce." Id. at 262.

Quoting L. Cohen Grocery at length, see id. at 263, and citing a set of other vagueness cases, see id. at 263 n.14, the Supreme Court reversed the conviction.

The state's criminal law, the Supreme Court held, improperly allowed for conviction based on a "forecast," id. at 262, the

[60] The Petitioner's case is a First Amendment case. See Part V.F.

"result of a chain of causation," id., as to how others might in the future respond to the defendant's past actions.

> The question thus proposed to a jury involves pure speculation as to future trends of thought and action. Within what time might one reasonably expect that an attempted organization of the Communist Party in the United States would result in violent action by that party? If a jury returned a special verdict saying twenty years or even fifty years, the verdict could not be shown to be wrong. The law, as thus construed, licenses the jury to create its own standard in each case.

Id. at 263.

The theory that the defendant "ought to have foreseen his words would have some effect in the future conduct of others," id. at 263–64, was, per the Supreme Court, too "vague." See id. at 264.

* * *

Come back now to this case.

Section 1227, the subject of the Petitioner's as-applied challenge, triggers the same difficulties as the just-cited cases.

The Secretary of State's determination rests, as relevant here, on the idea that the Petitioner's conduct in the United States impacted the global fight against anti-Semitism. See Determination at 2.[61]

But there is no suggestion as to how.

The Secretary's determination does not say that the Petitioner contacted anyone outside the United States. And the Secretary's determination does not suggest that people abroad paid any attention to the Petitioner --- let alone that he influenced them in the direction of prejudice (or in any other direction for that matter).

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[61] Put aside for now that the Secretary of State did not affirmatively determine whether this had the required impact on U.S. relations with other countries.

The implied understanding of Section 1227 at work in the Secretary's determination would seem to be this: while the statute covers only impacts on "foreign policy," those impacts can be the product of domestic action that is not said to be directed to the outside world.

Impacts of that sort can plainly happen. Ideas and words can spread. An act here can cause bias there. One person's example can "influence" another person --- "as a result of a chain of causation." Herndon, 301 U.S. at 262.

But if that is the idea, how is an ordinary person to have notice that his conduct in America may have the impact that Section 1227 requires? How will he know whether people are hearing his words? That they are being influenced by them? That he is being seen by others as a kind of role model? What facts will he need to look to in order to answer these questions? Is he to read foreign newspapers to see whether he is being covered and how? In what languages? Newspapers from what places? Should he look to YouTube? TikTok? How thoroughly must he search for himself online? And critically: how much influence abroad is enough? When will he have a sense that his influence has risen to the high level of "compromis[ing]" --- "undermin[ing]," Compromise, v., sense 2, Oxford American Writer's Thesaurus (2024) (emphasis added) --- a compelling American foreign policy interest?[62]

If a person wishes to steer clear of the possibility of being removed from the United States under Section 1227, he will have to go quiet, or he will have to figure these things out.

But having people go quiet because they cannot readily determine how to stay on the right side of the law --- that is one of the things vagueness doctrine exists to guard against.[63]

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[62] Cf. Johnson, 576 U.S. at 597 ("How does one go about deciding what kind of conduct the 'ordinary case' of a crime involves? A statistical analysis of the state reporter? A survey? Expert evidence? Google? Gut instinct?").

[63] See Grayned, 408 U.S. at 109 ("[W]here a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the

And as to figuring things out, the task is, simply, very hard.

Answering the questions listed out above depends on an extraordinarily broad range of information.

And the questions are, in any event, difficult --- around as hard as the questions in International Harvester, L. Cohen Grocery, and Johnson, cases in which the legal standards were too hard to realistically apply, to the point that they did not allow for real notice to potential violators and the underlying statutes were struck down by the Supreme Court as unconstitutionally vague.

And more pointedly: a standard that turned on a "forecast" as to how others might be "influenced" by one's conduct was stuck down as vague by the Supreme Court in Herndon.

But that is what Section 1227 asks of the Petitioner here.

F. The First Amendment

A final point.

When it comes to First Amendment-protected speech, the Supreme Court has repeatedly said that vagueness doctrine is especially demanding.[64]

The Secretary's determination here falls into First Amendment category.

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unlawful zone than if the boundaries of the forbidden areas were clearly marked.") (cleaned up).

[64] See Fox Television Stations, 567 U.S. at 253-54; Reno v. Am. C.L. Union, 521 U.S. 844, 871-72 (1997); Marks v. United States, 430 U.S. 188, 196 (1977); Buckley v. Valeo, 424 U.S. 1, 41 (1976); Parker v. Levy, 417 U.S. 733, 756 (1974); Goguen, 415 U.S. at 573; Grayned, 408 U.S. at 109; Ashton v. Kentucky, 384 U.S. 195, 200 (1966); Baggett, 377 U.S. at 372-73 & n.10; Cramp, 368 U.S. at 287-88; Smith v. California, 361 U.S. 147, 151 (1959); Cantwell v. Connecticut, 310 U.S. 296, 308 (1940); see also Ashcroft v. Free Speech Coal., 535 U.S. 234, 258 (2002); Interstate Cir., Inc. v. City of Dall., 390 U.S. 676, 684-90 (1968); Cox v. Louisiana, 379 U.S. 536, 551-52 (1965); Edwards v. South Carolina, 372 U.S. 229, 237 (1963); Winters, 333 U.S. at 509-10; Stromberg v. California, 283 U.S. 359, 369 (1931).

The Secretary's determination suggests it was based on the Petitioner's "lawful" "beliefs, statements, or associations." Determination at 1.

And "beliefs," "statements," and "associations" are generally protected by the First Amendment. See, e.g., Elfbrandt v. Russell, 384 U.S. 11, 18 (1966); Kingsley Int'l Pictures Corp. v. Regents of Univ. of State of N.Y., 360 U.S. 684, 688 (1959).[65]

* * *

When the First Amendment is implicated, as here, vagueness doctrine becomes especially unforgiving.

To see the point, look first to Buckley v. Valeo, 424 U.S. 1 (1976).

There, the Supreme Court considered a vagueness challenge to a campaign-finance statute.

The challenged provision read: "No person may make any expenditure . . . relative to a clearly identified candidate during a calendar year which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds $1,000." Id. at 193.

This is much more specific and sharply drawn than Section 1227's "compromise[s] a compelling . . . foreign policy interest."

And on first glance, it looks like it easily clears the vagueness bar.

After all, the statute's words limit the giving of one person ("no person") towards another ("a clearly identified candidate") during a clearly defined time ("a calendar year") to a fixed amount of money ("$1,000"). On top of that, the act included

[65] Sometimes, though, they are not. Think, for example, of "fighting" words or "true threats." See Counterman v. Colorado, 600 U.S. 66, 72 (2023); Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942). But those carveouts are not in play. The Secretary has proceeded on the basis that the Petitioner's "beliefs, statements, or associations" were "otherwise lawful" -- lawful, that is, but for their being a predicate for a Section 1227 removal.

its own definitions for "expenditure," "clearly identified," and "candidate." See id. at 41.

But there was a problem, the Supreme Court said.

One statutory term, "relative to," was left undefined. See id. at 41. And that suggested possible vagueness. See id.

To salvage the statute, the Court looked to context and legislative history. Context permitted (and maybe required) "'relative to' a candidate to be read to mean 'advocating the election or defeat of' a candidate." Id. at 42. And this definition also found support in the Senate Report, House Report, Conference Report, and the opinion of the court of appeals. See id. at 42 n.49.

But even that did not close the door on the vagueness problem. See id. at 42. It just opened the way to new questions. What did it mean to advocate "the election or defeat of" a candidate? The line between such advocacy, which the statute limited, and "discussion of issues or candidates," which it did not, was too hazy, the Court said. See id. at 42–43.

"Such a distinction offers no security for free discussion." Id. at 43 (cleaned up). "In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim." Id. (cleaned up).

So the Supreme Court further narrowed the statute.

As newly construed, the provision would extend "only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." Id. at 44.

And the Court listed specific phrases ---- "express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject'" --- to show exactly where the line was. Id. at 44 n.52.

Only with that extraordinary amount of specificity now baked in did the Court hold that the provision could survive a vagueness challenge under the heightened First Amendment standard afforded to political speech. See id. at 44; see also id. at 41 (noting that the Buckley Court was wrestling with an area "permeated by First Amendment interests").

And there can be no doubt that the statute in Buckley, which barely squeaked by, was much less vague than Section 1227.

* * *

Buckley is not alone.

Look to a final case, United States v. Loy, 237 F.3d 251 (3d Cir. 2001).

The defendant there, convicted for possessing child pornography, challenged a supervised-release condition as vague. The condition barred him "from possessing all forms of pornography, including legal adult pornography." Id. at 261. (cleaned up).[66]

Was this too vague? Yes, the Third Circuit held.

The court was not writing on a completely blank slate in defining "pornography." The Supreme Court had at least pointed to a definition of the word, though that was dicta of the most glancing kind. See id. at 263 (citing Miller v. California, 413 U.S. 15, 19 n.2 (1973)).

That definition and others in dictionaries left room for debate. See id. at 263–64. And even with their help, the Third Circuit could not say whether pornography encompassed only visual materials or included pure text and sound recordings, or whether it would sweep in medical textbooks and classic novels. See id. at 264, 266.

And while a federal statute defined a related term, "child pornography," that definition did not fit with the release condition. See id. at 263 n.4 (citing 18 U.S.C. § 2256). The court declined to adopt it (though it noted that the district court might borrow from it on remand). See id. at 267.

The court also declined to salvage the condition by reading it to include a mental-state requirement. Mens rea "cannot eliminate vagueness if it is satisfied by an 'intent' to do something that is in itself ambiguous," the court said. Id. at 265 (cleaned up).

The no-pornography condition went too far, and the First Amendment was part of why. "[W]ith no guidepost for [the defendant], the pornography prohibition as currently written

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[66] The court of appeals noted that pornography receives First Amendment protection. See id. at 261–63.

violates due process by failing to provide [the defendant] with adequate notice of what he may and may not do, chilling his First Amendment rights." Id. at 267. The court of appeals vacated the condition. See id. at 270.

* * *

The Supreme Court has repeatedly held that when it comes to First Amendment vagueness, the kind at issue here, the bar is raised to its highest level. See Part III.

But the Court does not seem to have set down a doctrinal test that reflects the special rigor demanded in this area.

No matter, though.

Buckley and Loy make clear what it means.

Think of the Supreme Court in Buckley, which upheld the campaign-finance statute, but only after working at length to pin it down.

And think of the Third Circuit in Loy, which looked to dictionaries, another statute, and a mens rea requirement --- but still struck down the supervised-release condition as vague.

As the Court has shown, the Secretary's determination has many vagueness-as-applied strikes against it.

Section 1227 is vaguer than other statutes that have been struck down. See Part V.C.

Section 1227 has been applied here in a surprising way --- one that lessens the notice that an "ordinary person" receives and leaves enforcement fully "standardless."

The Secretary has not determined that the Petitioner's conduct has impacted U.S. relations with another country. But that is what Section 1227 requires. See Part V.B.

And the statute's legislative and enforcement history do not foreshadow the Secretary's determination. See Part V.D.

Moreover, Section 1227, as applied here, requires hard thinking to even know whether it is being triggered. See Part V.E.

Take all of those headwinds, and add to them the First Amendment's.

The result is that the Petitioner is likely to succeed on the merits of his claim that Section 1227 is unconstitutionally

vague as applied to him through the Secretary of State's determination.

G. Another Approach

The premise of the analysis set out above in Part V.B to Part V.F is that (a) dictionaries say that "foreign policy" concerns state-to-state relations, see Part V.A.3, and (b) vagueness doctrine instructs that statutes like Section 1227 must be interpreted in light of such dictionary definitions. See id.

All of this is sound.

But nonetheless, consider now an alternative approach to the vagueness question that appears to implicitly drive part of the Respondents' argument.

Namely, what if Section 1227's "foreign policy" has a broader meaning? What if it means not just America's relations with other countries, as the dictionaries say, but also encompasses a wider concern --- the United States' relations with the external world as a whole?[67]

If that were the shape of the umbrella, fighting the social and religious scourge of global anti-Semitism could well fit under it.

And if so, it would be beside the point that the Secretary has not determined that the Petitioner's conduct impacts U.S.

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[67] The United States has a foreign policy interest in other countries. But it may also have a general interest, wholly separate from its relation to any countries, in securing access from abroad to certain minerals. See Exec. Order 14,241, 90 Fed. Reg. 13673 (Mar. 20, 2025); Exec. Order 14,017, 86 Fed. Reg. 11849 (Feb. 24, 2021). Or in limiting global emissions of certain chemicals. See Exec. Order 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021); Montreal Protocol on Substances that Deplete the Ozone Layer, Preamble, Sept. 16, 1987, S. Treaty Doc. 100-10. Or in curbing piracy on the high seas. See U.S. Counter Piracy & Maritime Security Action Plan, U.S. Dep't of State, Bureau of Pol.-Mil. Affs. (June 2, 2014). An occasional dictionary maps out this understanding, of "foreign policy" as concerned with "[t]he political and security policies adopted by a state in relation to the outside world." Foreign Policy, sense 1, A Dictionary of Diplomacy 107 (2d ed. 2003).

relations with any country or countries, because foreign policy could be taken as including things (like fighting global anti-Semitism) separate from any impact on relations with particular countries.

On this broader understanding --- call it an "external affairs" understanding --- is Section 1227 still vague as applied in this case?

The Court's conclusion: yes.

* * *

To see why, begin by noting that an external affairs reading of "foreign policy" scrambles the picture --- but only to a point.

It does not alter the fact that Section 1227 is vaguer than a number of statutes that the Supreme Court has struck down. See Part V.C. It does not undo the legislative- and enforcement-history points.[68] See Part V.D. And it does not cast doubt on the parts of the analysis that turn on the difficulty of knowing whether one has violated the law, see Part V.E, or on the relevance of the First Amendment. See Part V.F.

* * *

This said, the external affairs understanding of foreign policy would seem to improve notice.

Because, on that interpretation, the statute's words ("foreign policy") would now better fit the Secretary's determination.[69]

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[68] The Court has looked to legislative history here only as to notice. See Part V.D.1(a). But if there are competing understandings of "foreign policy," each pulling hard in a different direction, then Section 1227 is ambiguous. If so, the Court can consult the statute's legislative history not just as to notice but also as to the delineation of government powers. See Delaware, 598 U.S. at 138-39; McDaniel v. Sanchez, 452 U.S. 130, 146-47 (1981); Dir., Off. of Workers' Comp. Programs v. Sun Ship, Inc., 150 F.3d 288, 291 (3d Cir. 1998); cf. Pringle v. Ct. of Common Pleas, 778 F.2d 998, 1003 n.5 (3d Cir. 1985). And the legislative history generally supports the narrower, "other countries" reading of foreign policy. See Part V.D.

[69] Notice seems improved. But maybe not really. After all, the Secretary's effort to remove the Petitioner can be squeezed into

And moreover, using the broader external affairs understanding would mean that the Secretary is operating within a legislated standard.

After all, "foreign policy," on the external affairs understanding, can apply to efforts to take on a social or religious issue, like combatting global anti-Semitism.

* * *

But all of this is on first glance only.

Look harder at what it would mean to read "foreign policy" broadly, and Section 1227 only becomes vaguer, supplying on balance both less notice and fewer curbs on enforcement discretion.

This Part explains the point.

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the words of Section 1227 only by ignoring the leading dictionary definitions of "foreign policy." But why should an ordinary person be expected to whistle past those? Maybe, it might be said, this issue can be addressed by treating the "other countries" understanding as the primary dictionary definition of foreign policy --- and the broader "external affairs" understanding as a kind of secondary dictionary definition. But there is little warrant for doing this in the dictionaries themselves. And in any event, that renames the problem. It does not solve it. See Lanzetta, 306 U.S. at 454 (holding law unconstitutionally vague because, in part, dictionary definitions were "numerous and varied"); see also, e.g., United States v. Sharp, 27 F. Cas. 1041, 1043 (C.C.D. Pa. 1815) (noting that Justice Washington, riding circuit, declined to recommend a guilty verdict to the jury because when it came to the key term, revolt, "[i]f we resort to definitions given by philologists, they are so multifarious, and so different, that I cannot avoid feeling a natural repugnance, to selecting from this mass of definitions, one, which may fix a crime upon these men"); McJunkins v. State, 10 Ind. 140, 144-45 (1858) (determining that a law is "vague" after consulting multiple dictionaries and finding different definitions for the same term); cf. Lifchez v. Hartigan, 735 F. Supp. 1361, 1365 (N.D. Ill. 1990) ("wildly different definitions" of a key term "offer[] little help to persons of common intelligence who want to know what the state forbids").

Here is a list of some things that have been described as American "foreign policy interests" that do not seem to be linked to the United States' relations with any particular country:

(1) ensuring the global economic competitiveness of American companies, (2) ensuring resiliency in global supply chains, (3) defending democracy around the world, (4) regulating unmanned-aerial-systems exports, (5) containing the spread of "radical Islam," (6) ensuring American armed forces maintain a technological edge over potential foes, (7) promoting gender equality, (8) preventing the violation of United States export laws, (9) promoting human rights globally, (10) promoting certain international broadcasting, (11) preserving the trade of ethically sourced diamonds, (12) promoting trade, (13) combatting terrorism, (14) increasing transparency in governance, (15) maintaining the aerospace industry's competitiveness globally, (16) achieving a Comprehensive Test Ban, (17) furthering economic growth, (18) promoting human rights in the Western Hemisphere, (19) supporting free markets, (20) enlarging the number of democracies, (21) pursuing world freedom, (22) improving international relations, (23) building a more peaceful world, (24) promoting science and technology in America's relations with other nations, (25) preventing nuclear proliferation, (26) fostering world economic stability, (27) increasing individuals' capacity to meet their basic human needs, (28) adequately funding foreign aid, (29) ensuring equitable economic intercourse among nations, (30) reducing direct military involvement abroad, (31) fostering good will towards the United States, (32) reducing unnecessary barriers to trade, and (33) assisting the economic growth of less-developed countries.[70]

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[70] The source for (1) is Exec. Order 14,209, 90 Fed. Reg. 9587 (Feb. 10, 2025). For (2), President Joseph Biden, National Security Memorandum on United States Conventional Arms Transfer Policy (Feb. 23, 2023). For (3), President Joseph Biden, Memorandum on Deferred Enforced Departure for Certain Hong Kong Residents (Aug. 5, 2021). For (4), Kayleigh McEnany, Statement by the Press Secretary on Unmanned Aerial Systems Exports (July 24, 2020). For (5), President Donald Trump, Remarks on Foreign Policy (Apr. 27, 2016). For (6), Presidential Policy Directive 27, Directive on United States Conventional Arms Transfer Policy (President Obama) (Jan. 15, 2014). For (7), President Barack

Obama, Memorandum on Coordination of Policies and Programs to Promote Gender Equality and Empower Women and Girls Globally (Jan. 30, 2013). For (8), Exec. Order 13,558, 75 Fed. Reg. 69573 (Nov. 9, 2010). For (9), Robert Gibbs, Press Sec., Press Briefing (Aug. 18, 2009). For (10), President George W. Bush, Statement of Administration Policy: H.R. 2764 (June 19, 2007). For (11), President George W. Bush, Statement on Signing the Clean Diamond Trade Act (Apr. 25, 2003). For (12), Ari Fleischer, Press Sec., Press Briefing (Oct. 10, 2001). For (13), Letter from President George W. Bush to Vice President Dick Cheney and J. Dennis Hastert, Speaker of the House of Representatives (Aug. 17, 2001). For (14), President George W. Bush, Statement on the Global Forum on Fighting Corruption and Safeguarding Integrity II (May 28, 2001). For (15), Mike McCurry, Press Sec., Press Briefing (July 3, 1997). For (16), Mike McCurry, Press Sec., Press Briefing (Sept. 9, 1996). For (17), Letter from President Bill Clinton to Thomas S. Foley, Speaker of the House of Representatives, Claiborne Pell, Chairman of the S. Comm. on Foreign Rels., and John Glenn, Chairman of the S. Comm. on Gov't Affs. (Mar. 20, 1996). For (18), Dee Dee Myers, Press Sec., Press Briefing (Sept. 8, 1994). For (19), President Bill Clinton, News Conference with President Boris Yeltsin of Russia (July 10, 1994). For (20), Dee Dee Myers, Press Sec., Press Briefing (Oct. 20, 1993). For (21), President Ronald Reagan, Address to the Nation on the Soviet-United States Summit Meeting (Dec. 10, 1987). For (22), President Ronald Reagan, Message to the Congress Transmitting the Annual Report on International Activities in Science and Technology (June 17, 1987). For (23), President Ronald Reagan, Remarks to Participants in the National YMCA Youth Governors' Conference (June 21, 1984). For (24), President Ronald Reagan, Message to the Congress Transmitting the Annual Report on U.S. International Activities in Science and Technology (July 11, 1983). For (25), President Ronald Reagan, Statement on United States Nuclear Nonproliferation Policy (July 16, 1981). For (26), President Jimmy Carter, State of the Union Address (Jan. 19, 1979). For (27), President Jimmy Carter, International Health Program Statement Announcing a Program to Strengthen U.S. Participation (May 2, 1978). For (28), President Richard Nixon, Special Message to the Congress Proposing Reform of the Foreign Assistance Program (Apr. 21, 1971). For (29), President Richard Nixon, Second Annual Report to the Congress on United States Foreign Policy (Feb. 25, 1971). For (30), President Richard Nixon, Special Message to the Congress Proposing Supplemental Foreign Assistance Appropriations (Nov. 18, 1970). For (31),

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Note four things about this list.

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First, it could run on and on. Added pages could easily have been laid down.

What notice is provided if "foreign policy interest" can mean relations with other countries --- plus the 33 things noted above, plus the many multiples of the 33 that might have been put down here? Not very much.

What sort of limits on enforcement discretion does this list imply? Only light ones.

If "foreign policy" means what the dictionaries say --- U.S. relations with other countries --- then the denominator is big. But it is knowable. The United States recognizes 197 countries. See Independent States in the World, U.S. Department of State (Mar. 12, 2025), https://perma.cc/9JMZ-UBAE (accessed on May 28, 2025). Not 196 or 198, and not 296 or 298.

But how many extra "foreign policy interests" get added in when the external affairs interpretation is put on the table? The number is very large --- and that diminishes both notice and the possibility of genuine limits on enforcement discretion.[71]

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President Lyndon B. Johnson, Statement by the President Upon Signing Bill Extending the Agricultural Trade and Assistance Act (Oct. 8, 1964). For (32), President Dwight Eisenhower, Memorandum of Disapproval of Bill Concerning the Marking of Imported Articles and Containers (Sept. 7, 1960). For (33), President Dwight Eisenhower, Annual Budget Message to the Congress (Jan. 18, 1960).

[71] The breadth of a statute plainly affects an as-applied vagueness challenge. See Holder, 561 U.S. at 21 (holding, in as-applied case, that the statute was not impermissibly vague in light of a statutory definition that narrowed the key provision). This is common sense. For a given ordinary person, the signal he is seeking (I want to do X, is that allowed?) can get buried in what is to him noise (everything else the too-broad statute might cover).

Second, there is no one-stop shop, no single place to see all of America's foreign policy interests put down on paper.

Look through the sources cited in footnote 70.

They are all over the map, from executive orders to speeches to statements during press briefings. See, e.g., Exec. Order 14,209, 90 Fed. Reg. 9587 (Feb. 10, 2025) (an executive order); President Jimmy Carter, State of the Union Address (Jan. 19, 1979) (speech); Dee Dee Myers, Press Sec., Press Briefing (Sept. 8, 1994) (press briefing).

An external affairs understanding generates not only a large number of "foreign policy interests," but also a number that is unknowable as a practical matter.[72]

Where would an "ordinary person" look to get the answer to what counts as a foreign policy interest?

America, for example, has an announced interest in promoting trade in ethically sourced diamonds. See President George W. Bush, Statement on Signing the Clean Diamond Trade Act (Apr. 25, 2003).

Is that still an interest? How to know? What about trade in gold or cobalt? Can someone be removed from the United States for compromising our interest in lithium imports? Who to ask? Where to check? See Johnson, 576 U.S. at 597 ("We are convinced that the indeterminacy of the wide-ranging inquiry required . . . denies fair notice to defendants[.]"); Morales, 527 U.S. at 56 (a law may be unconstitutionally vague if it "fail[s] to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits"); Giaccio, 382 U.S. at 402 ("a law fails to meet the requirements of the Due Process Clause if it . . . leaves the public uncertain as to the conduct it prohibits").

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Third, plugging in the adjective "compelling" does not meaningfully clear things up.

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[72] Also: the United States presumably has secret foreign policy interests. What to do about those? See Massieu, 915 F. Supp. at 700 (alluding to this issue).

Of the interests set out above, around a third are characterized in the underlying foreign-policy documents as being especially important.

And on the Petitioner's challenge to Section 1227 as it is being applied to him, there is an additional issue.

As the Respondents argue, see Opposition Brief at 23–25, the Secretary of State deserves deference in terms of American foreign policy interests and their hierarchy.

But here it may not ultimately be crystal clear that the Secretary determined that the Petitioner's conduct has affected a "compelling foreign policy interest."

At the end of the analysis portion of his determination, the Secretary said that the Petitioner's conduct impacted a "significant foreign policy objective," Determination at 2, not a "compelling" one.

And "significant" implies a bar set lower than "compelling." Compare Significant, adj., sense 1, New Oxford American Dictionary (2024) ("sufficiently great or important to be worthy of attention; noteworthy"), and Significant, adj., sense 3.a, Merriam-Webster's Unabridged Dictionary (2025) ("having or likely to have influence or effect: deserving to be considered"), with Compelling, adj., New Oxford American Dictionary (2024) ("not able to be resisted; overwhelming), and Compelling, adj., sense 1, Merriam-Webster's Unabridged Dictionary (2025) ("forcing, impelling, driving").

* * *

Fourth, many of the interests listed out above are both enormously broad and fuzzy at their edges.

If foreign policy means relations with Canada or South Korea, that is concrete. On a relations-with-countries understanding, "foreign policy" is broad and highly flexible. It can, for example, be used to remove terrorists from the United States. See Part V.D (providing examples of this).

But on that understanding, Section 1227 nonetheless has an outer-edge limit, and a crisp, objective one at that --- the need for a link to America's relations with other countries.

What if "foreign policy" under Section 1227 is taken to include interests in fostering world economic stability or in creating good will towards the United States, to take two examples from

the list above? How to know where these begin and end? See City of Akron, 462 U.S. at 451 (finding law unconstitutional when a word was "impermissibly vague as a definition").

And this is no abstract concern.

What "foreign policy interest" was the Secretary invoking here?

Maybe the answer is "combat[ting] anti-Semitism around the world." Determination at 2.

But one possible reading of the Secretary's determination is that "the foreign policy of the United States champions . . . American citizens" --- and that is the "foreign policy objective" in play. Id.

But if that is so: what are the limits on this sort of interest? On this understanding, what would not be a basis for a Section 1227 removal? See City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 290 n.12 (1982) ("[V]ague laws do not limit the exercise of discretion by law enforcement officials; thus they engender the possibility of arbitrary and discriminatory enforcement."); Grayned, 408 U.S. at 108–09 ("[a] vague law impermissibly delegates basic policy matters" and in doing so opens the way to enforcement on "an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application").

* * *

To sum up:

If "foreign policy interests" are understood as based on U.S. relations with other countries, the term drops a solid anchor, though a large one. The statutory words point to something concrete that exists out in the real world --- the 197 countries recognized by the United States.

But if "foreign policy interests" reach more broadly, to cover U.S. relations with other countries, and also the full range of America's external affairs --- then the term loses much of its real-world mooring. It becomes hard to even begin to pin down.

When it comes to making foreign policy, great flexibility may be more virtue than vice.

But when it comes to the notice to ordinary people that the Constitution requires, there is a deep difficulty with a statute

that, on the "external affairs" interpretation, hangs its hat on a term whose meaning can move around all but freely.[73]

And there is a similar difficulty for the goal of cabining government enforcement discretion. See, e.g., Nat'l Ass'n for Advancement of Colored People v. Button, 371 U.S. 415, 466 (1963) (Harlan, J., dissenting) ("Laws that have failed to meet [the vagueness] standard are, almost without exception, those which turn on language calling for the exercise of subjective judgment, unaided by objective norms."); Coates, 402 U.S. at 616 (noting that an ordinance against "annoying" conduct "contains an obvious invitation to discriminatory enforcement"); see also Papachristou, 405 U.S. at 170 ("Where . . . there are no standards governing the exercise of the discretion granted by the ordinance, the scheme permits and encourages an arbitrary and discriminatory enforcement of the law."); Daniels v. Allen, 344 U.S. 443, 496 (1953) ("Discretion without a criterion for its exercise is authorization of arbitrariness."), overruled by Townsend v. Sain, 372 U.S. 293 (1963).[74]

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[73] See, e.g., Beckles, 580 U.S. at 266 (focusing on the need for "legally fixed standards"); accord The Federalist No. 62 (James Madison) (discussing the difficulties associated with "a mutable policy," with laws that are not "fixed" and can "undergo . . . incessant changes").

[74] And note here the main flaw in the Respondents' argument that the Petitioner's challenge to the Secretary's determination raises a non-justiciable "political question." See Opposition Brief at 23-25. Courts cannot usurp the Secretary's role by purporting to determine how the Nation should conduct its foreign policy. See id. at 25. Of course not. But the Court here has asked only whether Section 1227, as applied through the Secretary's determination, provides enough notice and properly cabins government authority. These are questions only about whether the Constitution's due process guarantee has been satisfied. Not, for example, about the Secretary's underlying judgment as to the Petitioner. (Indeed, the Court has taken the Secretary of State's determination entirely as a given. See footnote 28. It has not at this stage questioned it; questioning the determination might well raise different sorts of issues.) There is no political question bar here. See, e.g., Shachtman v. Dulles, 225 F.2d 938, 944 (D.C. Cir. 1955) (holding that challenge to Secretary of State's determination to

Bottom line: the Court concludes that the Petitioner is likely to succeed on the merits of his Section 1227 vagueness argument --- under the dictionary definition of "foreign policy," and also on the broader, external affairs reading discussed in this section.[75]

H. Conclusion

The Secretary of State determined that the Petitioner engaged in anti-Semitic conduct that helped to create a hostile environment for Jewish students. See Determination at 2. And there is at least some suggestion in the determination that this may have opened the door to the threat of violence. See id.

If this is accurate, it offends some of our deepest values.

One of our country's proudest claims has been that ancient prejudices have had a smaller footprint in America.[76] And one necessary thread of that fabric is this: Jews, like others, will not be targeted or hounded, "harass[ed]," id., as they take part in public life.

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deny passport in "the best interests of the United States" was "within the scope of the due process clause").

[75] Indeed, on the external affairs understanding this is, if anything, an easier case. For example, on the dictionary definition of foreign policy, Section 1227 is already vaguer than other statutes the Supreme Court has struck down on vagueness grounds. See Part V.C. But the external affairs reading of Section 1227 would make the statute even vaguer.

[76] See, e.g., Of the Study of the Law in the United States (1790–91) in 1 Collected Works of James Wilson 433–35 & n.(b) (Kermit L. Hall & Mark David Hall eds., 2007) (a lecture on law by Justice James Wilson, with President Washington present, at which Justice Wilson said that it was Lord Baltimore who was "truly the father of his country," because "before the doctrine of toleration was published in Europe, the practice of it was established in America," by a "law in favour of religious freedom [that] was passed in Maryland, as early as the year one thousand six hundred and forty nine" --- the Maryland Toleration Act (Sept. 21, 1649) that had been championed by Lord Baltimore).

But the Petitioner, in response to the Secretary of State's determination, is emphatic: the Secretary has it wrong. See Petition ¶¶ 22-28. He says that he is not a bigot, see id. ¶ 25, and claims that he is being persecuted from the highest level of our government for nothing more than speaking out on behalf of a cause he cherishes. See id. ¶¶ 29-33.

But this case, at least for now, is not about choosing between competing accounts of what happened at Columbia between 2023 and 2025. Or about whether the Petitioner's First Amendment rights are being violated.[77]

Rather, the issue now before the Court has been this: does the Constitution allow the Secretary of State to use Section 1227, as applied through the determination, to try to remove the Petitioner from the United States?

The Court's answer: likely not.

Our law asks about an "ordinary person." Would he know that Section 1227 could be used against him based on his speech inside the United States, however odious it might allegedly have been --- speech that has not been affirmatively determined by the Secretary to have an impact on U.S. relations with other countries?

The Court's answer is no.

And our law asks about government power. Would the loose interpretation of Section 1227 that the Secretary's determination rests on open the door to arbitrary enforcement?

The decided cases are mainly about close-to-the-ground officials --- police officers, prosecutors, judges. See, e.g., Davis, 588 U.S. at 451; Kolender, 461 U.S. at 358. Our law needs to be steady. And to be steady, it cannot be written so broadly that it can mean different things to each different police officer or prosecutor who has a hand in enforcing it.

Here, there is only one possible enforcer of the law.

This is because when it comes to cases like this one, where the underlying conduct is "otherwise lawful" speech, Congress has

[77] Because the Court holds the Secretary's determination is likely unconstitutionally vague, the First Amendment issue does not need to be reached.

entrusted the Section 1227 removal power to one person --- the Secretary of State. Under the statute, he must exercise his power personally, and here he has. The Secretary of State's determination deserves, and gets, the highest respect.

But arbitrary enforcement is not just a danger when many people enforce the law. It can also be a danger when one person is given the job,[78] if his determination veers too far away from the standard set down by Congress. Here, the Secretary's did.[79]

* * *

Vagueness doctrine has sometimes been criticized.

"It is not likely," Justice Holmes said, "that a criminal will carefully consider the text of the law before he murders or steals." McBoyle, 283 U.S. at 27.

That may very well be true.

But it is also true that "[t]he general outlines of the law --- or its lack of sufficiently definite shape, and hence its brooding, overreaching threat --- tend to be noticed by those who may be specially affected[.]" Alexander Bickel, The Least

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[78] See Bantam Books, 372 U.S. at 71; Mahler, 264 U.S. at 40; cf. Aptheker, 378 U.S. at 501–02.

[79] Void-for-vagueness doctrine is analogous in some ways to the non-delegation doctrine. In a non-delegation case, Justice Gorsuch has said this:

> The Constitution promises that only the people's elected representatives may adopt new federal laws restricting liberty. Yet the statute before us . . . endow[s] the nation's chief prosecutor [the Attorney General] with the power to write his own criminal code . . . . Yes, those affected are some of the least popular among us. But if a single executive branch official can write laws restricting the liberty of this group of persons, what does that mean for the next?

Gundy v. United States, 588 U.S. 128, 149 (2019) (Gorsuch, J., dissenting).

Dangerous Branch: The Supreme Court at the Bar of Politics 150-51 (1962).

Who will be "specially affected" here?

The Petitioner, to be sure.

And behind him a range of foreign nationals, of whom there are large numbers living ordinary lives in our country, who might feel the "threat" of Section 1227 being used without a "sufficiently definite shape." Id.

But to see the full, end-of-line answer to the question of who might be "affected," look more broadly.

The Supreme Court has repeatedly held that the vagueness law that applies in removal cases like this one is to be the same vagueness law that applies in criminal cases. See Dimaya, 584 U.S. at 156–57; Jordan, 341 U.S. at 229-31.

And there is every reason to think the street runs two ways.

If Section 1227 can apply, here, to the Petitioner, then other, similar statutes can also one day be made to apply.

Not just in the removal context, as to foreign nationals. But also in the criminal context, as to everyone.

This point was alluded to in 1996, the first and only time before today that a federal court has written substantively on Section 1227.

> Imagine, for a moment, how quickly our constitutional hackles would rise if a local police chief were granted the power to arrest any person whose mere presence would cause potentially serious adverse consequences for the public peace. . . . If the hypothetical police chief statute would be void for vagueness (as it obviously would), then so, too, must be Section 1227.

Massieu, 915 F. Supp. at 701 n.19.

* * *

The Court holds: the Petitioner is likely to succeed on the merits of his claim that Section 1227, as applied to him here

through the Secretary of State's determination, is vague in violation of the Due Process Clause of the Constitution.[80]

VI. Failure to Disclose

Recall that in addition to the Secretary of State's determination, federal officials have sought to remove the Petitioner from the United States on another ground. See Part I.A.

The Petitioner obtained his permanent residence, it is alleged, "by fraud or by willfully misrepresenting a material fact." Additional Charges of Inadmissibility at 1 (ECF 90-1) (citing 8 U.S.C. § 1182(a)(6)(C)(i)).[81]

Per the Respondents, these alleged failures to disclose add up to "an independent basis to justify removal." Opposition Brief at 30.

Last month, the Court noted that the Petitioner had not lodged any "challenge to the second charge." Khalil, 2025 WL 1232369, at *3 n.7. "[T]here is no reference to [such a claim] in the habeas petition." Id.

After that, the Petitioner amended his habeas petition to include two paragraphs on the failure-to-disclose charge, and these new paragraphs allude to the First Amendment. See Redline Petition Comparison ¶¶ 88–89 (May 1, 2025) (ECF 223-2).[82]

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[80] The citation to Massieu should not be misunderstood. The Court does not suggest any view as to whether Section 1227 is facially vague. That question has not been posed here. See footnote 19.

[81] In particular, federal officials contend that when the Petitioner applied for lawful permanent residence in 2024, he did not disclose that he was "a member" of the United Nations Relief and Works Agency for Palestinian Refugees ("UNRWA"), that he worked at the British Embassy in Beirut, or that he was in a group called Columbia University Apartheid Divest. See Additional Charges of Inadmissibility at 1.

[82] Does this Court have jurisdiction over a First Amendment-related challenge to the failure-to-disclose charge? Plainly yes, if Section 1252(b)(9) of Title 8 does not apply to pre-final-order-of-removal cases like this. See Khalil, 2025 WL

But even so, the amended portions of the Petition are unclear.

They say that the 2025 efforts to remove the Petitioner from the United States for his alleged 2024 failure to disclose are "evidence of the government's unlawful Policy of targeting for detention and removal noncitizens who engage in protected expressive activity in support of Palestinian rights or critical of Israel." Petition ¶ 89 (emphasis added).

Do they also imply a claim that if the alleged "Policy" is struck down on First Amendment grounds (as the Petitioner seeks, see id. at 28), then the Respondents must be enjoined from pursuing the failure-to-disclose grounds for removal?

Maybe, maybe not.

But assume for present purposes the answer is yes.

The Court's prior opinion emphasized that the Petitioner's legal briefs did not do meaningful work as to a challenge to the

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1232369, at *16–21. If it does, the questions are closer than those the Court resolved in its prior Opinion. That is because an immigration court may be able to deploy its expertise to resolve the failure-to-disclose charge. Cf. id. at *39–43. For example, an immigration court could indicate whether immigration law indeed required certain disclosures, and it could resolve any possible factual disputes as to why forms may not have been filled out in a certain way. Cf. id. at *40. And if an immigration court holds that the Petitioner did not have to disclose the allegedly omitted information, that could fully dispose of the underlying ground for removal, without any need for a federal court to reach a potentially complex First Amendment question. Cf. Elgin v. Dep't of Treasury, 567 U.S. 1, 23 (2012). All this weighs against this Court's jurisdiction, but not heavily enough. This is because the Petitioner seems to suggest the failure-to-disclose charge (as part of an allegedly retaliatory policy) violates the First Amendment. First Amendment claims call for speed, and they raise issues an immigration court cannot remedy. See Khalil, 2025 WL 1232369, at *30–34. (As to the vagueness claim discussed in prior parts of this Opinion and Order, there is plainly jurisdiction. There is no final order of removal. Immigration courts cannot remedy constitutional challenges of the sort claimed. There is no fact-finding to be done for now. Immigration-law expertise has no place. And the vagueness challenge as to the Secretary's determination is tightly bound up with First Amendment issues.)

failure-to-disclose claim. See Khalil, 2025 WL 1232369, at *3 n.7 ("Nor does the legal brief purport to seek relief from the Court based on the second [failure-to-disclose] charge.").

But this has not changed.

The Petitioner's legal briefs still make no substantial argument as to the failure-to-disclose claim --- even as lengthy supplemental briefs have been filed.

To prevail on a First Amendment-retaliation claim, the Petitioner would presumably need to show that the effort to remove him based on his alleged failure to disclose was caused by his First Amendment-protected activity. See Nieves v. Bartlett, 587 U.S. 391, 398 (2019).

But the burden is his, see Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977), and he has made no real effort to carry it. He has not developed any arguments in his legal briefs or cited anything[83] from a large body of potentially relevant case law.[84]

Recall that to obtain a preliminary injunction, a party must show that he is likely to succeed on the merits of his claim. See Lackey v. Stinnie, 145 S. Ct. 659, 667 (2025); Starbucks Corp. v. McKinney, 602 U.S. 339, 345 (2024); Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); Munaf v. Geren, 553 U.S. 674, 690 (2008); Veterans Guardian VA Claim Consulting LLC v. Platkin, 133 F.4th 213, 218 (3d Cir. 2025); Ayers v. Phila. Hous. Auth., 908 F.2d 1184, 1195 & n.23 (3d Cir. 1990); In re

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[83] On, for example, the inferences that can and cannot be drawn as to causation from temporal proximity. See Watson v. Rozum, 834 F.3d 417, 424 (3d Cir. 2016).

[84] And presumably because the Petitioner says nothing substantial, there is hardly anything in response from the Respondents, beyond noting the Petitioner allegedly did not disclose on his lawful-permanent-resident application that he was a "member" of UNRWA, even as his LinkedIn account allegedly says he was employed there. See Respondents' Supplemental Brief at 9 n.3. (This might mean to suggest that a kind of inevitable-discovery rule is implicated --- applicable to a First Amendment-retaliation claim, as it might be to, say, a Fourth Amendment claim.)

Arthur Treacher's Franchisee Litig., 689 F.2d 1137, 1143 (3d Cir. 1982); see also 42 Am. Jur. 2d Injunctions § 18 (2025).

The Petitioner has not meaningfully tried to do so.

And there is another problem, too.

The Third Circuit has held that a "preliminary injunction may not be based on facts not presented at a hearing, or not presented through affidavits, deposition testimony, or other documents, about the particular situations of the moving parties." Adams v. Freedom Forge Corp., 204 F.3d 475, 487 (3d Cir. 2000) (cleaned up); see Bradley v. Pitt. Bd. of Educ., 910 F.2d 1172, 1178 (3d Cir. 1990); see also Baker v. Fishman, 2018 WL 6727536, at *5 (D.N.J. Dec. 21, 2018), aff'd sub nom. Baker v. Ahsan, 785 F. App'x 904 (3d Cir. 2019); Herley Indus., Inc. v. R Cubed Eng'g, LLC, 2020 WL 6504588, at *4 (E.D. Pa. Nov. 5, 2020) (collecting district court cases); Bascom Food Prods. Corp. v. Reese Finer Foods, Inc., 715 F. Supp. 616, 624 n.14 (D.N.J. 1989).

Here, the Petitioner has not put forward relevant "affidavits, deposition testimony, or other documents."

To be sure, a verified[85] pleading can sometimes[86] close the gap. See, e.g., K-2 Ski Co. v. Head Ski Co., 467 F.2d 1087, 1088 (9th Cir. 1972); see also Bascom Food Prods. Corp., 715 F. Supp. at 624 n.14 (D.N.J. 1989); cf. 28 U.S.C. § 2242 (requiring habeas petitions to be verified).

And a declaration filed in this case suggests that the Petitioner has "verif[ied]" his pleading. See ECF 50-1.

But the verification was made as to the First Amended Petition for habeas relief (ECF 38), not the current one. And the First Amended Petition said nothing about the failure-to-disclose basis for removal. Indeed, the First Amended Petition was filed

[85] A verified pleading "contains a sworn statement indicating its contents are true and may be treated as an affidavit." Germain v. Shearin, 725 F. App'x 225, 226 (4th Cir. 2018).

[86] "Sometimes" because a verified pleading rarely supplies the sort of highly detailed and specific information, based on the personal knowledge of the affiant, that is especially telling.

before the failure-to-disclose charge was even made by federal officials.

The Petitioner, in short, has not put evidence in the record that relates to the failure-to-disclose charge.

The law is clear: preliminary injunctions cannot issue in such circumstances. See Adams, 204 F.3d at 487; Bradley, 910 F.2d at 1178.

To sum up: to the extent the Petitioner is moving to preliminarily enjoin the failure-to-disclose ground for removal, that motion must be denied. He has not carried his burden of showing a likelihood of success on the merits.

VII. Remedy

As to the merits, the Court has held two things.

First, that the Petitioner is likely to succeed on his vagueness challenge related to the Secretary of State's determination. See Part V.

And second, that he is not likely to succeed on his challenge as to the efforts to remove him for allegedly failing to make certain disclosures on his lawful-permanent-resident application. See Part VI.

As to remedy, the Petitioner seeks a preliminary injunction, see Motion for Preliminary Injunction at 40, and to get one he must show "that he is likely to suffer irreparable harm in the absence of preliminary relief." Winter, 555 U.S. at 20.

To do that, a litigant generally needs to put forward evidence of "irreparable harm." See footnote 6.[87]

[87] A likely violation of a First Amendment right can excuse the need to show irreparable injury. See Del. State Sportsmen's Ass'n, Inc. v. Del. Dep't of Safety & Homeland Sec., 108 F.4th 194, 204 (3d Cir. 2024) (citing Roman Cath. Diocese of Brooklyn v. Cuomo, 592 U.S. 14, 19 (2020) (per curiam)); see also K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist., 710 F.3d 99, 113 (3d Cir. 2013). The Petitioner seems to be invoking this presumption. See Motion for Preliminary Injunction at 35. But does this exception get traction here? The Court has not

As noted, see Part VI, the only relevant evidence comes from the Petitioner's verified First Amended Petition.

But the crux of the First Amended Petition's irreparable-injury contention is that the Secretary of State's determination "prevent[s] him from speaking now (through detention)[.]" First Amended Petition ¶ 89 (emphasis added).

But preliminarily enjoining the Secretary's determination would not seem to end the Petitioner's "detention" to the extent he remains detained on another basis, for his alleged 2024 failure to make certain disclosures in his lawful-permanent-resident application.

There may be other bases for showing irreparable harm --- the Secretary's determination, for example, might add another meaningful layer of free speech chill, and there is some flavor of this contention in the First Amended Petition. See id. (the determination is an "attempt to chill (through past punishment and ongoing threat) . . . his future speech in the United States") (emphasis added); see also id. ¶ 8 (among other things, the Secretary's determination is "plainly intended . . . to silence, or at the very least restrict and chill, his speech now and in the future") (emphasis added).

But nothing along these lines, or others, is developed --- maybe because the First Amended Petition's irreparable-injury sections were filed before federal officials brought the failure-to-disclose charge.

At that point in time, it looked like any irreparable injury as to the Secretary's determination was the "detention" it caused. But now the detention seems to have another, arguably independent cause --- the failure-to-disclose charge.

The Court will issue an Order shortly to permit the Petitioner to quickly address these issues, and for the Respondents to respond.[88]

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resolved the Petitioner's First Amendment claim, but rather his vagueness claim.

[88] The Petitioner will be permitted to add affidavits or other factual evidence to the record, to explain why they are not necessary, see footnote 87, or both. The Respondents have expressed dissatisfaction with the fast pace that a large number

VIII. Conclusion

The Petitioner is likely to succeed on the merits of his claim that Section 1227 is unconstitutional as applied to him.

As to that claim, an Order as to next steps will issue today.

The Petitioner is not likely to succeed on the merits of his claim related to his alleged failure to accurately complete his lawful-permanent-resident application.

As to that claim, his preliminary injunction motion is denied.

IT IS on this 28th day of May, 2025, so **ORDERED**.

Michael E. Farbiarz, U.S.D.J.

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of the Court's orders in this case have required. See Respondents' Letter (May 9, 2025) (ECF 247). But both parties have rightly asked for this case to proceed at a quick clip, and the Respondents will be expected to promptly respond to any irreparable-injury filing made by the Petitioner. (The Court provides this information so that the Respondents' lawyers, who have plainly been working hard, can thoughtfully allocate their time in advance.)

APPENDIX A

Uploaded on: 04/08/2025 10:08:42 PM (Central Daylight Time) Case: 25-1282 Doc: 44-1 Filed: 08/20/2025 Page: 314 of 106
Case 2:25-cv-01963-MEF Document 44-1 Filed 04/08/25 Page 2 of 106 PageID: 2815

THE SECRETARY OF STATE
WASHINGTON

SENSITIVE BUT UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE

MEMORANDUM FOR THE SECRETARY OF HOMELAND SECURITY

FROM: Marco Rubio

SUBJECT: (SBU) Notification of Removability Determinations under Section 237(a)(4)(C) of the Immigration and Nationality Act (INA)

(SBU) I am writing to inform you that upon notification from the Department of Homeland Security's Homeland Security Investigations (DHS/ICE/HSI) on March 7, 2025, I have determined that [redacted] and Mahmoud Khalil (DOB: [redacted]; POB: Algeria), both U.S. Lawful Permanent Residents (LPRs), are deportable aliens under INA section 237(a)(4)(C). I understand that ICE now intends to initiate removal charges against them, based on assurances from DHS/ICE/HSI.

(SBU) Under INA section 237(a)(4)(C)(i), an alien is deportable from the United States if the Secretary of State has reasonable ground to believe that the alien's presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States. Under INA section 237(a)(4)(C)(ii), for cases in which the basis for this determination is the alien's past, current, or expected beliefs, statements, or associations that are otherwise lawful, the Secretary of State must personally determine that the alien's presence or activities would compromise a compelling U.S. foreign policy interest.

(SBU) Pursuant to these authorities, I have determined that the activities and presence of these aliens in the United States would have potentially serious adverse foreign policy consequences and would compromise a compelling U.S. foreign policy interest. These determinations are based on

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information provided by the DHS/ICE/HSI regarding the participation and roles of [redacted] and Khalil in antisemitic protests and disruptive activities, which fosters a hostile environment for Jewish students in the United States. My determination for [redacted] is also based on [redacted] citations for unlawful activity during these protests. The public actions and continued presence of [redacted] and Khalil in the United States undermine U.S. policy to combat anti-Semitism around the world and in the United States, in addition to efforts to protect Jewish students from harassment and violence in the United States. Consistent with E.O. 14150, America First Policy Directive to the Secretary of State, the foreign policy of the United States champions core American interests and American citizens and condoning anti-Semitic conduct and disruptive protests in the United States would severely undermine that significant foreign policy objective.

Attachments

Tab 1 – DHS Letter on [redacted]
Tab 2 – HSI Subject Profile of [redacted]
Tab 3 – DHS Letter on Mahmoud Khalil
Tab 5 – HSI Subject Profile of Mahmoud Khalil
Tab 5 – 8 USC 1227(a)(4)(C)

APPENDIX B

Federal Register / Vol. 90, No. 18 / Wednesday, January 29, 2025 / Presidential Documents

Presidential Documents

Executive Order 14150 of January 20, 2025

America First Policy Directive to the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. *Purpose.* From this day forward, the foreign policy of the United States shall champion core American interests and always put America and American citizens first.

Sec. 2. *Policy.* As soon as practicable, the Secretary of State shall issue guidance bringing the Department of State's policies, programs, personnel, and operations in line with an America First foreign policy, which puts America and its interests first.

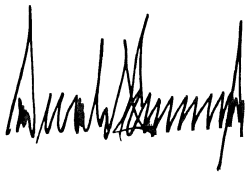
Sec. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 20, 2025.

[FR Doc. 2025–01952
Filed 1–28–25; 8:45 am]
Billing code 3395–F4–P

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MAHMOUD KHALIL,

Plaintiff,

vs.

Deputy Director William P. Joyce, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement, et al.,

Defendants.

CIVIL ACTION NUMBER:

2:25-cv-1963-MEF

Oral Argument

Frank R. Lautenberg Post Office and Courthouse
Two Federal Square
Newark, New Jersey 07102
June 20, 2025

B E F O R E: **THE HONORABLE MICHAEL E. FARBIARZ, UNITED STATES DISTRICT COURT JUDGE**

A P P E A R A N C E S:

IMMIGRATION RIGHTS CLINIC, BY:
ALINA DAS, ESQ.
NYU School of Law
245 Sullivan Street
5th Floor
New York, New York 10012

appeared on behalf of Petitioner;

Lisa Larsen, RPR, RMR, CRR, FCRR
Official Court Reporter
Lisa_Larsen@njd.uscourts.gov
(973)776-7741

Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

A P P E A R A N C E S: (Cont'd.)

UNITED STATES DEPARTMENT OF JUSTICE, BY:
BY: DHRUMAN Y. SAMPAT, SENIOR LITIGATION COUNSEL
SARAH S. WILSON, ASST. DIRECTOR
P.O. Box 878
Ben Franklin Station
Washington, D.C. 20044

appeared on behalf of Respondents; and

A L S O P R E S E N T:

Amy Greer
Amy Belsher
Veronica Salama
Robert Hodgson
Omar Jadwat
Esha Bhandari
Noor Zafar
Brian Hauss
Brett Kaufman
Baher Azmy
Samah Sisay
Naz Ahmad
Ramzi Kassem
Mudassar Toppa
Diala Shamas
Marc Van Der Hout
Johhny Sinodis
Oona Cahill
Jeanne LoCicero
Liza Weisberg

(PROCEEDINGS held via Teams before the HONORABLE MICHAEL E. FARBIARZ, United States District Court Judge, on June 20, 2025.)

THE COURT: Good afternoon. This is Judge Farbiarz.

I'll ask will the courtroom deputy please confirm that the court reporter is on the line.

THE DEPUTY CLERK: Good afternoon, Judge. Yes, Lisa Larsen is on the Teams conference.

THE COURT: Thanks very much.

We are here for *Khalil v. Trump, et al.*

I want to go around the horn and get appearances but, given the number of lawyers I know who have appeared on this case, I'm gonna do what I did last time, which is I'm simply going to ask the lawyer or lawyers who expect to speak to the pending motion to introduce just themselves and we'll take it from there.

First, the lawyer or lawyers who will be appearing -- rather, speaking today, for the petitioner.

MS. DAS: Good afternoon, Your Honor. This is Alina Das from the NYU Immigrant Rights Clinic, Washington Square Legal Services. I'll be arguing on behalf of the petitioner today.

THE COURT: Ms. Das, good afternoon to you.

And for the respondents.

MR. SAMPAT: Good afternoon, Your Honor. Dhruman

Sampat and I'll be arguing on behalf of the respondents today.

THE COURT: Good afternoon to you.

What I'll ask you to do, the lawyer for the petitioner and also the lawyer for the respondent, just so the record is complete, could I ask you to please at the end of today's proceeding file a very simple one-sentence letter that indicates all of your colleagues who are on the phone so we have a full and complete record of everybody who has appeared.

Can I ask you to do that, please.

MS. DAS: Yes, Your Honor.

MR. SAMPAT: Of course, Your Honor.

THE COURT: Thanks a lot. I appreciate it.

I want to start out -- let's just start out for half a moment as to where we are. Motion for -- a letter with respect to bail and release was filed on Monday from petitioner, including a short letter brief, the respondents responded on Tuesday, the petitioner filed his response on Wednesday, yesterday was of course a court holiday, and today, Friday noon, we are here for oral argument with respect to the motion for bail or for release. That's where we are.

In the interest of saving us some time, I want to address at the outset an argument that was made by the respondents that I don't find persuasive. I want to just explain my reasons so that we not invest our time on it.

The respondents essentially argue, among other things,

that the petitioners have simply made what functions as a motion for reconsideration of my Friday decision, which is to say my decision of seven days ago.

I think that's simply not right. What happened a week ago, a week ago today, is that as of 9:30 in the morning I preliminarily enjoined certain things, detention as to and efforts to remove as to the Secretary of State's determination as to the petitioner here.

An hour or so later the petitioner filed a letter saying, given the Court's decision as to the Secretary of State's determination, the petitioner needed to be released on the other ground he was held.

That is simply not persuasive, and it's not persuasive because the fact that a person cannot be held or removed on one charge simply does not logically imply that he or she cannot be held or removed on another charge.

If this were a criminal case, which it's of course not, the court held that a person -- a charge of theft could not go forward. That would not imply that the other charge in the case, pretend it's robbery, could not go forward. That doesn't follow logically.

As of Friday, that was the only argument that the petitioner had made, as I understood it, and as I do understand it now.

Over the weekend the petitioner apparently developed

and on Monday filed a different argument. That argument is not that the preliminarily enjoining of the Secretary of State's determination charge, that that preliminary enjoining implied logically that another charge could not go forward; rather, it's a different argument.

The Monday argument is that the remaining charge is one as to which the petitioner is entitled to either release or removal -- excuse me, release or -- not "removal," forgive me, release or transfer to this district.

So they're just simply different things. The Friday argument was that there is a logical reason why enjoining Charge A requires not going forward on Charge B. That's not logical.

The argument made Monday and the one we are here principally to discuss, the argument as to bail, is an argument simply that as to Charge B there is a request for bail the petitioner.

I do not understand the petitioner to be making a motion for reconsideration. I think that's a misunderstanding of the argument that was pressed by the petitioner last week and a misunderstanding of the decision I made on Friday.

So I wanted to say all that at the outset, Mr. Sampat, so we don't spend any time on it because I don't view it as a meaningful -- not that it's not meaningful but it's just an argument that I don't think is persuasive. So I wanted to say

that from the outset.

I'll ask Ms. Das if I could just get an update from you as to where things stand in terms of the process of seeking bail in front of the immigration judge.

MS. DAS: Yes, Your Honor, and thank you.

So on Friday, as you know, immigration counsel sought release directly from the DHS. That was denied on Monday. On Tuesday immigration counsel filed a motion for a bond hearing with the immigration judge.

As of this morning or just before this hearing, we have not heard back as to whether that bond hearing has been scheduled. In addition, Mr. Van Der Hout had also asked DHS on Friday if it would direct the immigration judge to this Court's opinion and indicate that it would be withdrawing or dismissing that charge so that the case could move forward.

As far as we know, there has not been a filing from DHS to the immigration judge about that matter, either.

THE COURT: Can you explain a little bit -- I understood from Exhibit C to your Wednesday filing, Ms. Das, that Mr. Van Der Hout, who I believe is the immigration counsel you alluded to, that Mr. Van Der Hout was seeking an immigration judge proceeding as soon as this coming Monday.

So, first, I hear you to be saying that that has not yet been scheduled.

Do I have that right?

MS. DAS: That's right, Your Honor.

THE COURT: What was the second point, if you could just slow it down a bit and explain that a little more fully.

MS. DAS: Absolutely, Your Honor.

In the same letter to -- the e-mail to the Department of Homeland Security where Mr. Van Der Hout attached the request for release directly to DHS, there was also a request to DHS that they indicate to the immigration court that they will be dismissing or withdrawing the foreign policy ground or otherwise not relying on it, given this Court's order.

In our view, that would facilitate the bond hearing for the Government to actually be conveying to the immigration judge that it can go forward on the bond hearing. Of course Mr. Van Der Hout has also given the court ruling to the immigration court and has sought reconsideration of her prior determination directly, just to cover all bases; but I just wanted to indicate that as far as we know we're not aware of DHS submitting any filings with respect to our request for bond to the immigration judge or any filings related to the foreign policy ground.

THE COURT: Right. But what I'm just not fully understanding is why it matters. It sounds like the petitioner has himself conveyed to the immigration judge that the charge that rests on the Secretary of State's determination has been preliminarily enjoined.

What difference does it make if DHS also says something about that to the immigration judge?

MS. DAS: Your Honor, it may not make a difference. It's certainly our position that the immigration judge should grant a motion for a bond hearing and hold that bond hearing as quickly as possible; but in our experience in litigating these issues, the immigration judge generally does like to hear from both sides, and so that's why we suggested it.

THE COURT: That makes sense. I wondered if there was something else I was missing, but I do appreciate how that makes sense.

One other -- Mr. Sampat, is there anything about what Ms. Das just said that is inaccurate, from your perspective?

Mr. Sampat, we don't hear you, if you're speaking.

MR. SAMPAT: Sorry, Your Honor. I was muted and I lost Your Honor's questions when I was trying to un-mute. I apologize.

THE COURT: Not at all. No worries.

Is there anything in what Ms. Das said that is inaccurate, from your perspective?

MR. SAMPAT: Not that I know of. I will say that from my understanding the bond hearing -- I agree with Ms. Das that the bond hearing has not yet been scheduled in front of the immigration judge, but I can represent that they are usually

scheduled pretty quickly. So if it's not scheduled for this upcoming Monday, as per Mr. Khalil's request, we anticipate it should be scheduled pretty soon.

THE COURT: Okay. All right. I appreciate that.

Ms. Das, I'm going to come back to you for half a moment.

Do you have an understanding as to what your expectation is as to how an immigration judge detention hearing would go, which is to say, live witnesses, a decision in one day?

What is your expectation based on experience with this particular judge in general, et cetera?

MS. DAS: Yes, Your Honor.

So it can go in different ways, so it's not precisely clear. But as a general matter, when an immigration judge receives a request to schedule a bond hearing, the immigration judge will typically set a date for that hearing.

The parties are generally given the opportunity to submit bond submissions. In a bond hearing the immigration judge would put the burden on the non-citizen respondent to demonstrate lack of flight risk and danger, and in addition to written submissions to that effect the immigration judge would typically take testimony at a bond hearing, although there are occasions where they will simply rely on argumentation from both sides.

In the typical case, an immigration judge would rule on bond on that day, but there are instances where a judge will reserve decision and take some time to issue a decision on bond.

As we noted in our papers, what we have seen most recently with respect to students in particular engaged in political speech is that the Government has been filing an automatic stay. If they file an appeal of the bond decision within one day of the decision, they receive an automatic stay where the bond decision would not be implemented while the Department of Homeland Security pursued an appeal to the Board of Immigration appeals which is a process that typically takes months to resolve.

THE COURT: Mr. Sampat, do the respondents have a position as to what they would do with respect to the referenced automatic stay if an immigration judge granted release here?

MR. SAMPAT: No, Your Honor, we don't have a position because we think it's speculative at this moment. We still don't know what the immigration judge is gonna do.

THE COURT: All right. I got it.

Mr. Sampat, just to round it out, anything that Ms. Das said that strikes you as inaccurate in terms of characterization of the process?

MR. SAMPAT: No. The only note that I had was noting

that sometimes bond decisions can be reserved, but Ms. Das said that so I think we're good on our end.

THE COURT: Thanks very much.

This is the petitioner's motion, so ordinarily I'd have the petitioner go first in terms of argument, but the respondents here have a number of threshold issues that they press.

The first and most important is, as always, jurisdiction, not most important but necessarily first, which is to say an argument under 1226(e). There's also an argument about exhaustion.

Mr. Sampat, I wanted to hear you out on one or both of those arguments at the outset. Why don't you just give me a few moments on your position now.

MR. SAMPAT: Of course, Your Honor.

Understanding that we're not gonna talk about the motion for reconsideration, so on the 1226(e), Your Honor --

THE COURT: Mr. Sampat, let me stop you for a second. There is no motion for reconsideration. My point was that I do not view what was filed by the petitioner on Monday as a motion to reconsider my Friday decision. I view it as just simply a separate motion that progresses a different theory.

The Friday theory was, in my judgment, not persuasive because, as I said, analogically, not being able to go forward on theft does not mean that somebody cannot go forward on

robbery. Those are simply separate.

This is a different argument, so I just want to be crystal clear, Mr. Sampat, my point is that I do not view the Monday motion by the petitioner as a motion for reconsideration.

With that, back to you.

MR. SAMPAT: I appreciate that, Your Honor. I was only characterizing what our position was in our papers. Understood.

On 1226(e), Your Honor, we think the text is pretty clear. It sets forth that the Attorney General's discretionary judgment regarding the application of this section shall not be subject to review and that no court may set aside an action or decision under this section regarding the detention of any alien.

Mr. Khalil is currently detained pursuant to 1226(a) in light of the fraud and willful misrepresentation charge. Congress has authorized the executive to detain aliens if they're deemed removable or inadmissible. That decision is not subject for review and a court order requiring release would offend 1226(e).

We think that the Third Circuit's decision in *Borbot v. The Warden* at 906 F.3d 274 says exactly that. So we think the release request is actually foreclosed by Third Circuit law, as well.

THE COURT: Here is the thing I don't get about that:

You briefed that argument without saying anything about the Supreme Court's decision in *St. Cyr* in 2001 or the Supreme Court's decision in *Demore* in 2003.

As you know, those decisions stand for the proposition -- well, step back. As we know from *Colorado River* and many other cases, federal courts have a, quote, unquote, virtually unflagging obligation to exercise their jurisdiction.

United States Congress has given the court habeas jurisdiction. The Supreme Court in *St. Cyr* said that jurisdiction stripping or habeas jurisdiction stripping in the immigration context has to be extraordinarily clear.

The Supreme Court said in *St. Cyr* that jurisdiction was not stripped as to a passage that was headed "elimination of custody review by habeas corpus." That's what Congress had written, and the Supreme Court said it wasn't clear enough.

Then in 2003 in *Demore,* Chief Justice Rehnquist says that as to 1226(e), which is the portion of the statute that you're invoking, that it, quote, contains no explicit provision barring habeas review.

So what I don't fundamentally understand is how it can be that the Supreme Court has said in general as to the immigration statute and in particular as to this portion of the immigration statute that it's not clear enough to vitiate

habeas and -- to eliminate habeas jurisdiction and yet you're arguing here today that 1226(e) does strip away habeas jurisdiction.

How do those live together?

MR. SAMPAT: So, Your Honor, to take Your Honor's points in turn, *St. Cyr* pre-dated the REAL ID Act which obviously curtails federal court's habeas jurisdiction moving forward where removal orders were now channeled through the petition for review process.

Demore talks about 1226(e), but I think it's important to note that *Borbot* post-dates all of those decisions. And the Third Circuit was clear on -- that a challenge to a particular action or decision to detain would be barred under 1226(a).

THE COURT: I don't think any of that is right. I think the problem you have is that there is a longstanding idea -- well, let's step back for half a moment.

The fact that *St. Cyr* pre-dates the REAL ID I think cuts strongly against your position because what it suggests is that Congress was well aware of the requisite level of specificity that it required if it was gonna strip habeas jurisdiction and 1226(e) is not particularly specific.

There are circuit courts all over the country -- Second, Ninth, the Fifth, the Seventh -- all of whom have held that 1226(e) does not bar the exercise of habeas jurisdiction.

I'll just say the names of those cases so we have them. The Second Circuit is *Ozturk*, O-Z-T-U-R-K. The Ninth Circuit is *Martinez*, citing the *Singh* case, S-I-N-G-H. The Fifth Circuit is *Najera*, N-A-J-E-R-A, and the Seventh Circuit is *Al-Siddiqui*, which I think is an especially helpful case, A-L, dash, S-I-D-D-I-Q-U-I, all of which emphasizes that *Demore* has a clear -- that *St. Cyr* requires a clear statement. *Demore* makes it clear that there's no clear statement in 1226(e) so there's no stripping of habeas jurisdiction.

And to close it out, federal courts have held for -- since the 19th century that one of the incidents of habeas jurisdiction is the ability to grant or not grant bail pending resolution of a habeas case.

You cited in your March filing the Third Circuit's *Johnston* decision on that from the '50s. The Second Circuit's *Mapp v. Reno* case collects decisions way back to the 19th century.

I have Judge Posner -- I scribbled a note to myself -- from 2007 for the Second Circuit talking about the possibility of bail in the habeas context being a, quote, natural incident, end quote, of habeas jurisdiction.

So I think the problem you have fundamentally, Mr. Sampat, is that over and over again the circuit courts of the United States have held that there's insufficient clarity in 1226(e) under *St. Cyr* to strip habeas jurisdiction, and a

core aspect of habeas jurisdiction -- in the Third Circuit, *Lucas*, *Landano*, *Johnston* -- throughout the United States a core incident of habeas jurisdiction is the possibility of admitting somebody into bail.

So I don't see 1226(e) as being clear enough under *Demore* to strip habeas jurisdiction; and if it does not strip habeas jurisdiction, 1226(e) does not strip one of the basic incidents of habeas jurisdiction, which is the ability of a federal court to grant someone bail in advance of a final decision as to the habeas claim.

Anything else you want to add on this, Mr. Sampat?

MR. SAMPAT: Yeah, Your Honor. Yes, Your Honor. Just on the *Demore* point.

THE COURT: Sure.

MR. SAMPAT: I very quickly pulled it up, and it seems like the Court's reasoning on 1226(e) was that because Mr. Kim there was not challenging the individual judgment or decision to detain, that it was rather challenging the statutory framework --

THE COURT: Mr. Sampat, Mr. Sampat, this is what happens when you pull things up during oral argument.

There's a reason I cited you to *Al-Siddiqui* out of the Seventh Circuit in particular. It makes it crystal clear that there are -- it is true that in *Demore* itself that was the issue, but, number one, Chief Justice Rehnquist said -- this

is why I quoted this particular line that, quote, Section 1226(e) contains no explicit provision barring habeas review.

Under *St. Cyr* that is dispositive, whether the case is one that challenges a regulation or challenges something as applied.

That's number one.

Number two, that's why the *Al-Siddiqui* case out of the Seventh Circuit matters. It collects a number of cases that emphasize that *Demore's* holding is controlling regardless of the nature of the challenge.

Now, there are gonna be some outer limits aspects to that, but the problem is Congress needs to speak clearly. And having not spoken clearly, that is, under the cases I have cited, even under Chief Justice Rehnquist's quote that I read to you from the Supreme Court, that's in my judgment the end of the matter.

Anything else, Mr. Sampat?

MR. SAMPAT: Not on that, Your Honor. I think we have exhausted our arguments on 1226.

THE COURT: Fair enough.

I do not view 1226(e) as a jurisdictional bar here to admitting or not admitting the petition to bail.

What's the exhaustion argument? Is that an argument you're making, Mr. Sampat, that there's administrative

exhaustion? What's your position on that?

MR. SAMPAT: So, Your Honor, our position is that as a prudential matter it makes for sense for Mr. Khalil to avail himself at the administrative process and to avoid conflicting decisions between this Court and the immigration judge.

He's currently -- as we know, he has filed for a motion of custody re-determination before the immigration Judge. He's availing himself to those processes. It makes more sense for him to go through that process right now than it is for Your Honor to weigh in.

THE COURT: Okay. What is the -- that argument proves very little in the sense that it says nothing about why I should wait for the immigration judge versus why the immigration judge should wait for me.

What is the argument for why I should wait for the immigration judge?

MR. SAMPAT: Well, Your Honor, it goes back to some of the cases that we have cited in our briefs where judges within the district have said that they won't exercise habeas jurisdiction or won't review claims absent a petitioner exhausting administrative remedy.

I'll also point Your Honor to a decision that just came out a few days ago out of the Southern District of New York. The name of the case is *Guzman vs. Joyce*, which can be found at 2025 Westlaw 1696891.

That case, Your Honor, discusses and supports the fact that exhaustion is an important part of this process before a party was to run into federal court because if the issue can be resolved administratively it is better for -- it's a better course of action than expending judicial resources here.

THE COURT: I hear that, but I think it's a -- look, you invoke in your papers and you invoked at the outset of what you just said two District of New Jersey cases. There's the opinion from Judge McNulty and there's the opinion from Judge Wigenton.

I think the problem you have is that both of those cases rely on *DeValle* and *Yi*, which are Third Circuit cases that say that administrative exhaustion is jurisdiction. But of course -- and I'm honestly surprised that nobody brings these cases to my attention in these papers, but such is life. It's the same issue I have with *Demore*. Again, nobody brings this up.

In 2023 the Supreme Court held, as we all know, that the exhaustion provisions such as they are of 8 U.S.C. 1252(d)(1), that those exhaustion provisions are not jurisdiction.

And so the cases, Mr. Sampat, you're citing are -- they just look a whole lot different. They are based on a Third Circuit conception that administrative exhaustion is jurisdiction; but after those district court decisions came

down, the United States Supreme Court explicitly held in 2023 that 1252(d)(1) is not jurisdiction.

Instead, the conclusion from the Supreme Court is that there is, if anything, some kind of common law exhaustion required. I don't know if that common law exhaustion is in play here or not.

The Third Circuit in *DeValle* suggested that 1252(d)(1) requires exhaustion, even in the context of something that long pre-dates review of a final order. One can look at that in many different ways, and one can look at that as surviving or not surviving the Supreme Court's decision in *Santos-Zacaria* of 2023.

But assuming arguendo Santos-Zacaria applies here, then exhaustion is only a prudential issue, which is how you started off, Mr. Sampat.

First, let me just say I'm not sure under *DeValle* that there is a need for prudential exhaustion before the entry -- before the entry of an order of final removal. I don't know the answer to that.

But even assuming arguendo that there is some need for that kind of exhaustion, all of the factors that Justice Jackson for the Supreme Court in *Santos-Zacaria* pointed out, all of those factors weigh heavily in the direction of me taking this issue on.

Supreme Court Justice Jackson speaks about the, quote,

unquote, orderly progression of the litigation. Here there are bail arguments that have been made in front of me. There has not even been a scheduled bail hearing in front of the immigration judge so it's hard to know why orderly progression does not cut in favor of me simply resolving the issue.

The Supreme Court in *Santos-Zacaria* invokes efficiency, it invokes, quote, unquote, waste of work. That would seem to cut in favor of me resolving the issue here as well.

There's been many, many, many pieces of evidence filed. There has been a great deal of litigation on this particular issue.

Hard to know why at this stage it's more efficient in terms of the judicial resources you alluded to, Mr. Sampat, for me not to just take the case and resolve it myself.

Finally, there is something of a futility reason to avoid exhaustion. I have to say that with respect to that there is a very strong and uncontested record here as to lack of flight risk and lack of dangerousness.

Given that strong and uncontested record, it becomes hard to know what the reason, other than waste of time, is to send this to an immigration judge who will look at those same two factors under C.F.R. 1003.19(h)(3) and will come to what I imagine is a pretty obvious solution.

I think the New Jersey cases you cite rest on Third Circuit decisions that themselves treat exhaustion as

jurisdiction. The Supreme Court in 2023 made crystal clear that exhaustion is not jurisdictional.

To the extent that exhaustion is required, in contexts like this one it is required as a prudential matter; and if it is required, if it is required as a prudential matter, for all the reasons I have just mentioned, I don't understand why it would be required here under the factors set out in *Santos-Zacaria* in 2023.

So it's a prudential matter, it's a discretionary matter, and I will not exercise my discretion to avoid this decision, given where things are postured.

Mr. Sampat, anything else you want to add on exhaustion?

MR. SAMPAT: Nothing else, Your Honor.

THE COURT: Mr. Sampat, I'm going to keep sticking with you because a lot of the preliminary things run through arguments the respondents have made.

The standard here with respect to bail, I want to understand where you're coming from on this.

MR. SAMPAT: On the extraordinary circumstances standard, Your Honor?

THE COURT: Yeah, what the key case is and what the substantive standard that that case or cases stands for.

MR. SAMPAT: Yes, Your Honor.

So *Landano* sets forth the extraordinary circumstances

standard, and we think that means, you know, it is something in the form of severe health complication or something that would be irreparable in a case where an individual would not -- further delay would severely prejudice a petitioner.

We don't have that here. Mr. Khalil, again, is before an immigration judge, is receiving his due process. If he's released, his case would be transferred to the non-detained docket, so those proceedings would remain ongoing.

It's a pretty high burden, and we don't think Mr. Khalil has made it. We think a lot of that is rooted in our March 23rd filing on the opposition for his motion for release.

THE COURT: Why do you think *Landano* provides the standard? Let me step back even further.

What is the standard that you view as the one that you've made?

MR. SAMPAT: I'm sorry, Your Honor. Give me one moment.

THE COURT: Let me explain to you why I'm asking the question.

In your March 23rd filing you just alluded to, at page 17 you indicate that the standard that needs meeting here is what you described as the *Landano* standard, and you say that it is, quote, unquote, conjunctive, that there needs to be a showing of both high probability of success on

substantial claims and extraordinary circumstances.

I'm not sure -- is that your position today, or do you have a different position?

MR. SAMPAT: No, that is our position today. That is a -- it is a conjunctive standard, Your Honor.

THE COURT: So in other words, your judgment is that there needs to be a showing of extraordinary circumstances, whatever that means, plus there needs to be a high probability -- let's pretend that's 51 percent -- of winning on a substantial claim. Is that --

MR. SAMPAT: Yes.

THE COURT: I'm not sure I understand how you get that out of the case. I think the problem you have with that is to make that argument you pin cite to a particular page in *Landano* but that particular page in *Landano* is simply reciting the standard set out by the Fifth Circuit circuit.

And a couple paragraphs later the circuit says, well, gee, we, the Third Circuit, have set out a standard in *Lucas* previously. And the *Lucas* standard is not conjunctive. The *Lucas* standard does not say something about high probability and also extraordinary circumstances. The *Lucas* standard simply says extraordinary circumstances.

So I'm not sure why the *Landano* court's simple citation -- the *Landano* court literally says this is how other courts have done it and then cites the Fifth Circuit's

conjunctive standard but then two paragraphs later has what I take to be a contrast with its own pre-*Landano* statement in *Lucas* which is simply about extraordinary circumstances, not about the merits.

I'm not sure why I read *Landano* as displacing by mere citation to the Fifth Circuit the Third Circuit's *Lucas* position.

MR. SAMPAT: Your Honor, so we cited -- there are a couple cases that we cited in our March 23rd filing where courts within the circuit have used it as a conjunctive standard. That's in *Ingram* where the court denied bail after a state prisoner failed to establish both prongs.

There's also the *Hudler* case out of the Middle District of Pennsylvania where it was denied. I'm sorry, Your Honor. I don't mean to --

THE COURT: No, no, no, go on.

MR. SAMPAT: Sure.

So *Hudler* was denied on the basis that petitioner had failed to establish a substantial constitutional claim. I will also note that when we briefed the release motion back in March, the fraud and willful misrepresentation charge wasn't before the Court or had not been briefed in the PI or in the operative pleadings that were tethered to the motion, so we haven't had a chance to actually brief it.

We don't think it's necessary because at the end of the

day we think this is a discretionary decision obviously, but this is just a separate independent charge that continues to justify Mr. Khalil's detention today.

THE COURT: What I would say that -- I read all the district court opinions you cited and they're thoughtful, of course. They're my colleagues throughout the circuit thinking this through very carefully, no doubt about it.

It's just that when I read *Landano*, I do not see a Third Circuit adapting the Fifth Circuit's conjunctive two-part test. In fact, I see it as very explicitly drawing a contrast with the Third Circuit's own *Lucas* test, which is simply focused on extraordinary circumstances.

I think that -- so I think that my own judgment is that what governs here is the *Lucas* standard, not the *Landano* standard. The thing that's a little complicated is what extraordinary circumstances mean. And I appreciate that the Second Circuit in *Mapp v. Reno* has said that extraordinary circumstances means something like circumstances so extraordinary that the habeas writ would be ineffective if bail were not granted.

But I don't see that in the Third Circuit's binding *Lucas* decision. I don't see the extraordinary circumstances are limited to that qualification.

I'll go even further. The *Mapp v. Reno* decision is itself based on an older Second Circuit decision, two of them.

One of them is *Iuteri*, I-U-T-E-R-I. And that seems like one of the cases that *Lucas* explicitly walked away from.

So I'm left with two complexities in terms of the standard here. First, I think *Lucas* controls and not *Landano*. I appreciate that many colleagues or some colleagues in the Third Circuit, other district judges, have seen it perhaps differently; but I think the most faithful read of the circuit's precedence is that *Lucas* controls.

I am left with two issues. The first is extraordinary circumstances as to what? *Mapp v. Reno* or the Second Circuit based on *Iuteri* says that it's extraordinary circumstances that are specifically tied to the efficacy of a later habeas remedy, but the Third Circuit did not say that in *Lucas* and has not said that in its case law, so far as I have been able to see it.

In addition, and I think this is quite important, *Mapp v. Reno* requires some showing of meatiness to the underlying claim. It doesn't seem like *Lucas* requires that.

Now, if *Landano* was the law in the Third Circuit, there would need to be some kind of, quote, unquote, high probability showing, but I don't think *Landano* is the law. I think *Lucas* is the law.

Under *Lucas*, what I take away is the extraordinary circumstances do not need to be focused on the preservation of the habeas remedy. The Third Circuit in *Lucas* left open a

broader remit for federal judges considering bail to simply assess extraordinary circumstances and all of the possible permutations that might arise, and the *Lucas* court did not seem to take the step that the Second Circuit did. That is to say the *Lucas* court did not seem to require that there be some showing of likelihood of success on the merits or some showing of even a substantial claim on the merits.

So my judgment is *Lucas* controls here and that *Lucas* has a very broad idea of extraordinary circumstances, not one tethered, as in *Mapp v. Reno*, to the efficacy or non-efficacy of the habeas remedy. And at least within its four corners *Lucas* does not seem to require any sort of showing that there is a kind of level of strength in the underlying claims.

I'll note two other things about *Lucas*. First of all, it seems to me that the Third Circuit almost surely takes the view -- would take the view, excuse me, that the standard set out for bail in habeas criminal cases is higher than the standard that would apply here, and that's in part based on a simple a fortiori assessment, which is that in a criminal context somebody has, by hypothesis, been convicted with all the guarantees that the Constitution implies. And there are in the state criminal context imported federalism issues.

None of that is present of course in the immigration context. There are not criminal protections, there is not a criminal judgment, and there are not federalism issues.

The a fortiori, by that I mean whatever the standard for release is, in criminal habeas is higher than the standard for release in immigration habeas.

The buttress for that a fortiori argument is what the Third Circuit in *Landano* cites, which is Justice Douglas's opinion *in Aronson*, his in-Chambers opinion in 1964.

I'll also note that *Landano* and *Lucas* seem hesitant about the idea of tying the standard of -- for granting bail in the habeas context. They seem hesitant about tying it to the substantive likelihood of success.

One of the things that is said in one of those cases is exhaustion doesn't generally turn on whether you have a good claim or not, which is really what we're talking about here.

So, bottom line, I think the *Lucas* standard controls, not *Landano*. I think the *Lucas* standard under the reasoning of Justice Douglas as cited in *Landano* is almost surely higher than the standard that is in play here.

The *Lucas* standard is about extraordinary circumstances. Period. Full stop. The *Lucas* standard is not about extraordinary circumstances related to ultimate efficacy of a habeas decision. That's the Second Circuit's perspective but it's not what *Lucas* says.

Finally, *Lucas* is not about the strength of the underlying claim. That is *Iuteri* out of the Second Circuit, that is *Mapp* out of the Second Circuit, but that is not what

the Third Circuit said in *Lucas*. And of course it's my job to faithfully apply the standard set out by the circuit and not to subtract from them and not to add to them. That's where I stand on the standard.

Mr. Sampat, do you have anything you want to add on any of this?

MR. SAMPAT: Yes, Your Honor, if I may, understanding Your Honor's point that you believe that *Lucas* is the standard and not *Landano*.

THE COURT: Right, right.

MR. SAMPAT: I think it's important to note that if *Lucas* is the standard, anyone would be able to just file a habeas petition and just say their case is different, it's special enough, there's extraordinary circumstances, and that standard is met.

I think *Landano* was meant to say that it needs to be tethered to the underlying claims that's raised in the petition itself. It makes logical sense for -- we think that it makes logical sense to read *Landano* that way because at the end of the day release pending habeas review is, in effect, sort of an injunctive relief.

There needs to be some sort of showing that there's a likelihood of success on the merits before we go forward and before release actually results. What the Third Circuit has said repeatedly is an exceptional form of relief of release on

bail pending habeas.

THE COURT: I hear all that, but my responses are twofold. First, maybe the Third Circuit should have articulated a different standard, but that's ultimately not my job. My job is to faithfully follow the circuit's standard as I understand it.

The second point I would make is extraordinary circumstances is a pretty high standard. It is certainly the case that litigants all over the country can make any claim they want, but the fact that claims are makeable doesn't mean that claims win, and extraordinary circumstances sets a pretty high bar.

The third problem with what you've said about the idea that bail pending a determination is analogous to an injunctive remedy and therefore a likelihood of success is necessary, there are a bunch of problems with that. I'll take two.

Problem one is that the Third Circuit -- forgive me for not recalling if it's in *Landano* or *Lucas*, I think it's in *Landano* -- has explicitly said no to that, has explicitly said we don't think of likelihood of success on the merits as the key issue.

The second thing is, the only circuit court that has specifically addressed the question of bail in the habeas context, which is to say the Second Circuit in *Mapp v. Reno*,

the only modern circuit that's done it, they too have not followed what you suggested.

They haven't required a likelihood of success on the merits. They have required something quite a bit lower. They have required something like a substantial claim. I'm quoting, I think, there.

So, maybe, but that's just not the state of the law, and it's the state of the law as it stands today that I'm bound to apply here.

The other problem I think you have to deal with is the a fortiori point that I alluded to earlier and that is central to *Landano*'s citation of Justice Douglas, which is that if the standard doesn't include -- and it doesn't, the *Lucas* standard does not include likelihood of success on the merits in a criminal case, why would we imagine a higher standard in an immigration case?

Indeed the logic -- not the implicit logic but the explicit logic of *Landano* would seem to be that immigration is a lower standard because, by hypothesis, nobody has received the very strict protections associated with a criminal conviction, including the full range of constitutional rights that are triggered there.

So, ultimately, I'm not persuaded by what you're saying on that point, Mr. Sampat, but I appreciate it.

Anything else you want to add?

MR. SAMPAT: No, Your Honor. Thank you.

THE COURT: Thank you.

So those were a whole bunch of preliminary issues, and they are complicated in this case in part for a reason that Mr. Sampat alluded to. These are -- extraordinary circumstances a high standard, it's hard to meet, and there are simply not a lot of cases in this area, in part because it's hard to meet and in part because generally this sort of litigation goes forward not in a federal district court but in front of an immigration judge.

Ms. Das, I haven't heard from you. We're now at the merits of your argument with respect to release. I won't ask you to repeat everything you've said in your papers, but I'd like to hear from you on the extraordinary circumstances argument, anything else you want to say, and then I'll ask Mr. Sampat to be heard as well at that point.

MS. DAS: Thank you, Your Honor.

Yes, we certainly are able to address the extraordinary circumstances, which we would essentially put into three buckets at this point.

One is certainly the fact that this is a First Amendment case, and the Government's most recent actions underscore our First Amendment concerns, which I will address in a moment. The other, as you've already noted, is that this is a case where there is extensive evidence in the record,

much of which goes to flight risk and danger, and that's evidence that the Government has not controverted.

Finally, there's a whole set of harms related to what this has meant to Mr. Khalil and his family and the prejudice that further delay would cause him.

Taking the first point on the First Amendment issues first, certainly for more than three months the Government has relied on a rarely used and unconstitutionally vague foreign policy ground to justify its detention of Mr. Khalil.

When this Court enjoined that detention and removal on that ground, ICE made the extraordinary decision this past Friday not to release Mr. Khalil as it would in an ordinary case but now to detain him on the basis of the separate immigration application charge, a charge that the evidence we presented already shows is rarely, if ever, used as a basis to detain lawful permanent residents like Mr. Khalil.

So the Government's latest actions confirm what we have alleged in this petition all along that retaliatory detention is the Government's goal, that the purpose of every step that the Government has taken in this case has been to ensure that Mr. Khalil remains locked away until he is deported as retaliation and punishment for his speech and viewpoint.

So at this stage of the case the Court does have the power and the sufficient evidentiary record to grant bail in light of that extraordinary circumstance. His petition has

been verified. He submitted extensive evidence of the Government's own statements about his protected political speech, the timing and baselessness of these characterizations, and the extraordinary irregularity of the Government's latest justification for his detention.

It's clear that this case is core about detention. It is a rare case where there's actually direct evidence of First Amendment retaliation from day one. The Government's own statements and their supplemental charging document make explicit that they have been targeting Mr. Khalil from the start based on his speech and viewpoint.

This Court has made findings with respect to the fact that Mr. Khalil has engaged in protected speech and the fact that the Government has now swapped in what we would argue to be an even weaker justification for his continuing detention, because this Court's injunction has forced them to do so, doesn't break that causal chain. If anything, it strengthens it.

THE COURT: May I ask you something on that for the moment?

MS. DAS: Yes.

THE COURT: There are two charges here and one of them has been enjoined. The second charge was not filed last Friday. It was filed many months ago. So I'm a little bit not exactly sure what you mean by swapping out a

justification.

I would imagine -- the Department of Homeland Security, I imagine, saw itself as justified in proceeding on both charges and there's just -- one is now preliminary enjoined and the other one wasn't invented on Friday. It's been on the books for months.

MS. DAS: Yes, Your Honor. Absolutely.

To be sure -- and this Court has made clear that First Amendment issues regarding the charge itself will require further development, and we, you know, intend to file those submissions promptly.

But with respect to detention itself, the Government has only relied on the foreign policy ground for detention and we know that because when in our bail briefing we argued, well, he's not a flight risk and danger and the Government has not contested that in these proceedings, the Government's response was that it was relying on the foreign policy ground, that this was somehow in the category of security cases where flight risk and dangerousness was unnecessary to detention.

We also know that based on the Government's letter on Friday that they are taking the position that they are now relying on the immigration application charge as the basis of his detention. So it's really the Government's actions that are bringing the detention part of this case based on the willful misrepresentation charge to the forefront.

But even if this issue has been in the case all along -- and certainly we have argued that retaliation is the goal and that it really doesn't matter which charge the Government is relying on, regardless of whether charges themselves are valid and give the Government discretion to detain an individual in removal proceedings, the First Amendment itself forbids the Government from exercising that discretion in retaliation for someone's speech and the Fifth Amendment forbids the Government from exercising that discretion to punish someone.

And given the fact that these issues have been developed in the evidence, that both sides have submitted evidence, including all the immigration filings, this issue has been teed up, and the fact that there is a strong First Amendment issue that will be litigated over the course of this case is an extraordinary circumstance such that Mr. Khalil should not be remaining in detention, having his First Amendment rights be impaired as these issues are further litigated.

THE COURT: What do you do with the argument that Mr. Sampat has made that is essentially the consequences for this petitioner of being detained are, while difficult for him undoubtedly, quite a bit like the consequences for many, many, many detainees?

And in terms of showing that they are, quote, unquote,

extraordinary as the law requires, why is this petitioner's situation any different or worse than that of many, many, many other people who are in detention who have their own collateral consequences, who have their own life disruptions?

MS. DAS: Well, Mr. Khalil's case is unique because this is a First Amendment case.

THE COURT: I've got you on that. Bracket that for half a moment if you could, but I took Mr. Sampat to be saying in the brief he filed in March on this subject that the normal extraordinary circumstance is something like a person who is very ill and at the end of their life and they can't wait for a habeas remedy because they will otherwise not make it, they need to go to a hospital or something like that, and that there's nothing like that that you all have put forward with respect to the petitioner here.

What do you do with that argument, Ms. Das?

MS. DAS: Our position in this case has been all along that both the retaliation and the punishment are the two impermissible motivations and goals behind what the Government is doing. And if he has to remain in detention only to get a victory on those claims, you know, several months from now, then the Government wins.

If the argument is, no, he should have never been detained, that they are doing this to punish him for speaking out about issues that he cares about, matters of pressing

public concern, the fact that he will have to remain in detention for those punitive or retaliatory reasons, that is the extraordinary circumstance and that his ability to live his life freely is the controversy that preceded all of this. That is the status quo to which he should be restored.

I think in this case that is not true for every non-citizen who faces detention and there are processes that are available to them in the ordinary course, but for Mr. Khalil this has never been an ordinary immigration case.

Our entire theory is that the Government is abusing the ordinary processes of immigration court of putting someone in removal proceedings, of detaining them for a constitutionally improper purpose.

And of course in Mr. Khalil's case we have alleged that there are the kinds of concerns that are extraordinary, that the loss that he's already suffered in terms of his ability to be there for the birth of his first child, to attend his graduation. These are the punitive experiences he's experienced, again, not just in the way that every person who is detained experiences them but because that is part of the punishment.

That's what makes this case extraordinary. I am aware, you know, in my 20 years of representing immigrants of no other case where the Government announced the day that it detains someone that they were detaining them in order to send

a message that their arrest would be the first of many, that they were going after student protestors.

That chilling effect has made this case an extraordinary case, and it's something that's been recognized in the small handful of cases that have emerged over the last several months that have dealt with similar issues, in the *Ozturk* case, *Concerti*, *Mahdawi*, *Aditya*, *Muhammad*, these are all cases where the First Amendment concerns, the chilling effect, the punitive effect it's having on the individuals have demonstrated extraordinary circumstances.

I certainly agree that in the Third Circuit the standard here is a very capacious one and that goes back not just to *Lucas* but to *Johnston v. Marsh*, really talking about the inherent power to grant petitioner's bail in the exercise of the judge's discretion.

I think in some of the other cases some of the extraordinary circumstances have been really discussed more as a kind of interest of justice model. Here we can see, given the extensive record, including the record on lack of a flight risk or dangerousness, of the Government never coming forward with a valid justification for why Mr. Khalil must remain detained while we litigate these very weighty issues. Those are all extraordinary circumstances that set this case apart.

I think one very illustrative case is the *Ozturk* case in many ways. It's very similar to what we are seeing here.

In her case, Ms. *Ozturk*, like Mr. Khalil, she was originally detained based on these foreign policy allegations; but in her case her student visa was revoked and ICE ultimately decided to pursue removal proceedings on the basis of the revoked visa charge alone and not the foreign policy ground.

She raised her First Amendment and due process challenges to detention. Initially the district court in Ms. Ozturk's case concluded it was too soon to consider bail, given the foreign policy allegations and the limited factual record; but after the Government declined to present any evidence to controvert Ms. Ozturk's allegations and submissions, the court granted bail and did so even when the immigration judge had denied bail.

It held that Ms. Ozturk had raised substantial claims that her detention violated First Amendment and due process and that there were several extraordinary circumstances, including the chilling effect that her detention had on her speech.

So this is a case in which those extraordinary circumstances are clear from every method that the Government has used and every decision they have made in this case to pursue Mr. Khalil's detention and their plan to remove him.

THE COURT: Ms. Das, anything else you want to add?

MS. DAS: I wanted to address the idea about waiting for immigration court bond proceedings.

I think, as the Court has already noted, there is no statutory exhaustion requirement in this case. I would also note that the 1252(d) exhaustion requirements do not apply to detention matters because there's no avenue in which detention issues ever get to a court of appeals on a petition for review because it's not --

THE COURT: Ms. Das, let me pause you there. I see the argument you're making, and on a blank slate it's not clear how to think about it. The complexity is that in *DeValle* the Third Circuit suggested that decisions on the way to a final order of removal may require a kind of common law exhaustion.

How *DeValle* might or might not play in a detention context and how *DeValle* might or might not work as to that point, as to that point, after the Supreme Court's decision in *Santos-Zacaria*, I don't know the answer to that. But that's why I presumed arguendo that prudential exhaustion is required in the circumstances; but, as you've heard, I've determined that on the facts of this case, given when the record was built, how thickly the record has been developed, how much time has been put into it, and what the record shows about flight and dangerousness, which are those same two things the immigration judge would need to look to, given all of that, I have concluded that -- even assuming arguendo that there is an exhaustion obligation under *DeValle* there is no need for exhaustion here under the factors laid out by the

United States Supreme Court in *Santos-Zacaria* in 2023.

So that's where we are on that. I mention all that at this moment, Ms. Das, because I think that if you want to tell me that there's no exhaustion in the detention -- excuse me, in the habeas bail context, you're gonna have to explain to me why *DeValle* doesn't work. I don't know if you want to do that or not, but that's the key data point here.

MS. DAS: No, Your Honor. I simply -- to the extent that there is a prudential exhaustion requirement in the detention context, our position would be that it doesn't stem from 1252. It's a prudential exhaustion requirement that may stem from general principles, and we would agree that exceptions -- normal exceptions would certainly apply here on this record, so I don't need to belabor that particular point.

We are concerned that the ordinary immigration court processes will not provide Mr. Khalil with the opportunity to protect his rights, and certainly this is a case -- and this is something that was also considered in the *Ozturk* decision -- where it's not fair that an immigration court proceeding could ever be a substitute for this Court's consideration of release since an executive branch employee would not be able to address First and Fifth Amendment issues, powerless to consider constitutional claims, and certainly it would be unusual for them to be considering evidence of the executive branch as retaliatory or punitive motives.

So it just isn't a substitute for the power that this Court has and the issues that this Court would be considering.

Fundamentally, you know, we would just ask that this Court grant Mr. Khalil bail, and, you know, we certainly believe that ordering Mr. Khalil's return to this jurisdiction in the alternative would be appropriate if the Court were not to grant bail. And I'd be happy to address any concerns the Court has about that.

But release at this stage, given the development of the record and the opportunity that both sides have had to explain why Mr. Khalil is being detained and given all of the harms that he suffered over the 104 days that he's been in detention, we hope that this Court will grant his immediate release on bail.

THE COURT: Ms. Das, thank you very much.

Mr. Sampat, over to you.

MR. SAMPAT: Thank you, Your Honor.

If I may just make a quick point on factual -- a factual point that my friend made on the other side regarding the *Ozturk* case.

THE COURT: Sure.

MR. SAMPAT: If I remember that case correctly, I don't believe Ms. Ozturk was held on the foreign policy ground. I think there was some debate as to whether she was or was not being held on that ground; but I think at the end of the day

when the Government submitted its briefing, it was the fact that she was out of status after her student visa was terminated. That was the reason that she was detained and placed into proceedings.

I wanted to make that point very quickly.

As to the extraordinary circumstances, Your Honor, I think it's important to note, at least on the Fifth Amendment issue, that the detention -- detention of aliens has been upheld by the Supreme Court as being constitutional. It's part of the process.

It's integral to determine whether somebody is -- should be found removable, is removable, and then is ultimately ordered removed. I think that's an important point to note as the Court is considering the Fifth Amendment issues.

On the First Amendment issues, I'll just note that the Court hasn't ruled on the First Amendment issues yet. Obviously my concern -- you know, the Government's concern with the argument that Mr. Khalil -- that the petitioner is posing here is that it kind of invites a magic word test where petitioners could raise First Amendment claims in habeas and then that by itself would be deemed extraordinary circumstances.

I don't think that's what the Third Circuit had in mind when it kept saying that the extraordinary circumstances

standard is a very high bar, that that high bar could be circumvented by some sort of artful pleading or coloring their claims in constitutional guard that way.

THE COURT: The problem with that -- look, I think that is potentially your real issue. And Ms. Das left out one of the key First Amendment cases in this area which is the case I believe she litigated, the *Ragbir* case, in front of the Second Circuit.

It is the case that treating First Amendment chilling as potentially a basis for extraordinary circumstances could open the door to more people seeking extraordinary circumstances, but there are two answers to that.

The first is, it is then on district judges to not simply accept magic words and be done with it.

As you know, Mr. Sampat, I previously found that the petitioner here -- I found as a matter of fact that the petitioner here engaged in, quote, unquote, political speech within the meaning of the Supreme Court's jurisprudence; and I found as a matter of fact that he wishes to and would return to such speech. So it's not simply a question of magic words.

But the other point is that the mere -- we had this back-and-forth, you and I, in our first interaction with Mr. Flentje, but the mere fact that a claim might be made under a standard is not an argument against that standard. It's just a fact of the standard, number one.

Number two, I'm not in the standard-making business. I'm in the standard-applying business. So Ms. Das's argument that First Amendment chilling is an extraordinary circumstances, that argument may work or may not, but the fact that it might doesn't tell me whether it should or should not. It's simply a restatement of the question.

Her argument is that First Amendment chilling might count as an extraordinary circumstances, and what you're saying back is, well, if it does, that would allow those claims to go forward. True, but that doesn't tell me anything. That just restates the issue.

If what it means to tell me is that people could use magic words, well, then, A, it's over to district judges to not simply accept magic words, and, B, you know the factual findings I've made here as to First Amendment speech.

I'm not sure I'm fully persuaded by the argument, at least as you've made it until now, on that particular piece.

MR. SAMPAT: I absolutely hear you, Your Honor. I would just say that, you know, if we're gonna get to the First Amendment issue, we are getting to the merits of his First Amendment claim which then goes back to our point of, like, why just extraordinary circumstances by itself can't be the standard for bail pending -- in a habeas case that needs to be likelihood of success on the merits, as well. This is how it all -- we think that it all sort of ties together.

THE COURT: I want to just say, Mr. Sampat, that's why we spent so much time discussing the standard. I appreciate that point, which is to say I have held that the petitioner has failed to develop any likely to succeed argument on anything other than the vagueness ground as to the Secretary of State's determination. And Ms. Das, 15 minutes ago, noted the petition has been verified.

But as we all understand, the petition was very belatedly verified. It was -- in Mr. Khalil's latest declaration, there was a reference in sentence two or three to: And, yes, I have gone back and verified the petition.

But the point is, in terms of the materials I've had before me in a merits-type context, I have indeed found that there is no factual evidence because at the relevant point no one had put any evidence in front of me, including no verified petition, and no meaningful legal arguments had been made.

So I have already held that there is no likelihood of success as developed by the petitioner on those things.

So I agree with you, Mr. Sampat, that the standard here matters a great deal, because if the standard requires likelihood of success on an underlying claim, as I've already held, that has simply not been shown by the petitioner to this point.

So I think you're right to say it all flows together, but that's of course why it was so important to spend time and

explain, in my judgment, why *Lucas* does not involve likelihood of success on the merits and indeed even *Mapp* doesn't. That's part of how I'm thinking about the situation that the case is currently in.

Mr. Sampat, back to you.

MR. SAMPAT: Thank you, Your Honor. If I may have just a quick moment to just consult my notes.

THE COURT: Of course, of course. Take your time.

MR. SAMPAT: Thank you.

MS. DAS: Your Honor, I don't want to interrupt Mr. Sampat, but there is a development in the immigration case that's relative.

THE COURT: Hang on for just one second. Let Mr. Sampat do his thinking and we'll get to it in a half a moment.

MS. DAS: Yes, Your Honor.

THE COURT: Thanks.

(Brief pause.)

MR. SAMPAT: Thank you, Your Honor.

I don't think we have anything else to add on the extraordinary circumstances point, other than what's in our briefing; but if Your Honor has questions, we're of course -- I'm ready to answer them.

THE COURT: Okay. No. I appreciate that.

Mr. Sampat, while you're looking at your notes, Ms. Das

had something that she wanted to bring to all of our attention.

Ms. Das, over to you.

MS. DAS: Mr. Khalil's immigration counsel just informed me that the immigration judge has just denied a bond hearing, relying on the foreign policy ground.

THE COURT: Okay.

MS. DAS: So I think that alone is an extraordinary circumstances that would be relevant both to, even if there were at the highest level, the *Landano* substantial constitutional claim that Your Honor has already found. And it goes to demonstrate that there's no administrative proceeding that will otherwise resolve this being an extraordinary circumstance.

It also appears that she's found him removable on the remaining charge and denied asylum, but we can certainly -- obviously this is coming in now. We can send a letter to the Court immediately with these developments.

THE COURT: Right. I appreciate that.

Mr. Sampat, do you know anything about any of that?

MR. SAMPAT: No, Your Honor. I'm hearing it for the first time right now.

THE COURT: I get it. If we were in court physically with nobody checking their phones, we wouldn't have known this, but here we are remotely, and at least Ms. Das had some

information. Okay.

Ms. Das, we've heard from yourself, we've heard from Mr. Sampat.

Anything else that you feel compelled to add at this point?

MS. DAS: Just briefly, Your Honor.

I would note that in addition to the verified petition much of the evidence that we referred to in our latest letter also comes from the submissions that were attached to the declaration, I believe at ECF-284, which go to the irregularities around the foreign policy ground, around the misrepresentation charge.

And certainly the fact now that it appears that the Government or at least the immigration court is not complying with this Court's injunction is another extraordinary circumstances, so we do believe that the factual record at this stage has been sufficiently developed under any standard that's applicable to bail.

THE COURT: I appreciate all that.

I want to learn more before suggesting even for a moment that anyone has not complied with the judgment order, but we'll learn more.

Ms. Das, you indicated you would file a letter, and I'm sure you and Mr. Sampat can huddle after today's proceeding just so we have a fuller understanding of what's going on with

the immigration judge and what advice is being provided to the immigration judge about the meaning of the Court's preliminary injunction.

Let me take you through my thinking as to the compliance with the relevant standards here, which is to say the standards set out in *Lucas* and subject to the full discussion we had earlier about *Landano* and about *Mapp v. Reno* and *Iuteri* and all the rest of it.

The first thing that I just want to indicate here is that there is -- you know, here is some of the evidence in the record:

That the petitioner is married to a United States citizen, that he is the parent of a child in the United States who is -- the child is itself a United States citizen, the petitioner's wife is employed in the United States, the petitioner has pursued education in the United States, has had United States career plans which may be displaced at this point. In fact, some of them were displaced, which I previously found.

In addition, the petitioner has made himself into a highly public figure from the very get-go of the case. In the first and timely verified petition, there are references to his speaking to the media, et cetera.

All of that suggests very low flight risk, connections to the United States and publicness in terms of his person.

There are any number of sources for what I have laid out. They are in the petition itself, they're in the petitioner's various declarations, they're in the petitioner's wife's, one of her declarations, one of them doesn't speak to it. It's at ECF 56-6. The first letter speaks to some of these connections to the community, but that's just a portion of it.

There is strong evidence of lack of flight risk. All of this is drawn from sworn affidavits that were put forward March 15, March 20, May 8th, June 4th by petitioner; and as to all of that, the respondents have opted not to controvert any of the evidence.

And so I find as a matter of fact that the petitioner here, based on the evidence that has been put in front of me, is not a flight risk. The respondents have opted not to controvert the evidence, as Ms. Das noted, and the uncontroverted evidence points in only one direction.

The second issue here that is relevant -- and I'll come in a moment as to how all of this is relevant -- is danger to the public, danger to the community.

Again we're in a place where the petitioner has put in sworn evidence March 15, March 20, May 8th, June 4th, and the respondents have simply opted not to take on any of this evidence. They haven't argued through affidavits, through declarations, through any other evidentiary means that the evidence put forward by the petitioner is wrong, is

unreliable.

They haven't attempted to put in their own evidence. They have done nothing of the kind. And so we're left with what the evidence that has been put forward by the petitioner that is uncontroverted shows.

That evidence shows that the petitioner has no criminal record. And there is some evidence in the record from which -- well, let me just emphasize what it is.

Exhibits 93 -- excuse me. Forgive me. ECF 93-1, that is ECF 93-1, the first letter and the third letter; ECF 56-1, ECF 56-1, letter 4, letter 7, letter 9. All of these shed evidentiary light on the petitioner's actions in what everyone assumes is the relevant context.

And the evidence that all of those -- excuse me. What all of that evidence adds up to is a lack of violence, a lack of property destruction, a lack of anything that might be characterized as incitement to violence.

All of that is simply uncontroverted here by the respondents. That evidence has been put before the Court in affidavits, in declarations, in letters that are sworn to, and the respondents have opted to say nothing in response of an evidentiary nature. And so where we are is similar to where we are, risk of flight.

All of the evidence in the record points to lack of danger to the community; that is, all evidence that has been

put on by the petitioner. It might have been challenged as unreliable, it might have been challenged as an incomplete picture, but no such challenge has been made, even as there have been many opportunities for the respondents to do that.

So what I find as a matter of fact, given the evidence before me as it's been developed by the petitioner and as the respondents have simply opted not to develop anything on the flipside, is that the evidence, I find, is that the petitioner is not a flight risk, and the evidence that has been presented to me, at least, is that he is not a danger to the community. Period. Full stop.

So, given those findings of fact, that is highly, highly unusual that in those settings the respondents and in particular the Secretary of the Department of Homeland Security would continue to seek the detention of a person in that setting.

It is of course the case that in the beginning of a proceeding there is ample room -- and the United States Supreme Court has made this clear in a set of recent opinions. There is ample room for a presumption of flight risk or a presumption of danger to justify short-term detention.

And in the first days or weeks or even beyond, the Supreme Court has made clear that that's consistent with the law. But at this point what we have is a thick record that has not been objected to by the respondents, that has not been

supplemented by the respondents, and where we are is that it's not the first day or week or month. There's been ample time to make a contrary submission if that was wanted.

So given the fact that, in my judgment, the standards for detention would clearly not be met in front of an immigration judge, it is highly, highly, highly unusual to be seeking the detention of the petitioner, given the factual record as of today.

That unusualness is amplified by the findings of fact that I made during the middle of last week, and those findings of fact were based on three declarations by seasoned, expert practitioners.

Those declarations were simply not objected to factually, they were not controverted in any way factually by the respondents, and those added up to the idea that it's overwhelming unlikely, I found, that a lawful permanent resident would be detained on the remaining available charge here -- not "available," the remaining charge here, which is to say a charge of failing to fill out accurately and honestly certain particular pieces of the LPR application, certain particular pieces of the LPR application as to things like groups, et cetera.

So where we are is that, given the evidence it is, as I said, highly unusual that there would be detention, which is to say the evidence that I have found as to flight risk and

danger. And layered on top of that is the highly unusual aspect of seeking detention and of keeping someone detained, given the background charges here and in particular the pieces of the LPL application that this lawful permanent resident did not allegedly fill out properly.

That's another factor that leans in the direction of a finding of extraordinary circumstances: evidence of no flight risk, evidence of no danger, and evidence that I have already found is that it's overwhelming unlikely that a person would be detained on the charge that is not currently enjoined.

There are a couple of other things here. One of them is that there is an extraordinary circumstance that flows in part from a chilling effect. I have found previously that this petitioner, as I alluded to with Mr. Sampat a few moments ago, that this petitioner engaged in what counts as political speech under the Supreme Court's jurisprudence and would seek to return to it in a form that is inconsistent with detention, which is to say the petitioner has engaged in protests, and that is something that is not doable from inside of custody.

So it's a kind of chilling that is not obviated, for example, by giving an interview from a detention facility or sending a communication from a detention facility.

So another part of the extraordinary circumstances calculus here is a finding of fact that I make and that I previously made that the petitioner is being prevented from

engaging in his speech and that that chilling effect is another part of the extraordinary circumstance that is here.

I also agree that another piece of the extraordinary circumstance is that part of the theory here for release would require assessment by the immigration judge of issues that the immigration judge is almost surely not legally permitted to consider, which is whether or not detention continues to be appropriate or if release is more appropriate when those kinds of questions are bottomed on alleged constitutional violations.

It's an extraordinary circumstance if the argument that might be made is one -- if the argument for release that might be made is one that the immigration judge literally cannot address. That is both an additional argument for non-exhausting remedies but it's also part of what makes this circumstance unusual.

The final thing I want to note is that while it seems to me that *Lucas* does not require any showing of some kind of substantialness to the underlying legal claim, I see of course that the law is not thickly developed in this area and that it might be that *Mapp v. Reno* at least in part is relevant; and *Mapp v. Reno* suggests there needs to be some kind of showing as to the underlying merits of the claim.

There needs to be some kind of showing that there's something to them, that they're not trivial, that they're

serious, et cetera.

I don't take *Mapp v. Reno* as suggesting they need to be likely to succeed on the merits, not at all. If I took *Mapp v. Reno* as governing, point one, and if I took *Mapp v. Reno* as requiring likelihood on the merits, point two, well, then, there could be no release here for the petitioner because, as I've already held, there has been no showing by the petitioner of likelihood of success on the merits as to the lawful permitting application charge, but that's not -- *Mapp v. Reno* is not obviously governing and that's not what *Mapp v. Reno* says. It requires some kind of substantialness but not all the way to likelihood of success on the merits.

What I would say as to the claims here, Ms. Das today invokes a First Amendment claim and a due process punishment claim. The due process punishment claim is based, as we know, on the idea -- and it's in the petition, of course. It's at pages 25 or 26 of the petition.

But the due process punishment idea is that, as the Supreme Court held in the 19th century in the *Wong* case, as it's held more recently in the *Zadvydas* case, the criminal law is for punishment, the criminal law with all of its protections.

The civil law, including immigration law -- and that's what those Supreme Court cases hold -- are not a place for punishment. They're a place for effectuating other government

interests.

One of the arguments the petitioner has made here is that he is being punished, that there is a disapproval of certain things he has said and done in the past, and that the immigration process is being used not to vindicate the immigration laws but to punish the petitioner for those things.

The petition has -- the verified petition has facts along those lines at paragraphs 33 and 73 and 82 and 83 and 84. And when you combine those facts with the current fact, which is that the petitioner -- the respondent, one of them, the Department of Homeland Security Secretary, is detaining and seeking to keep detained the petitioner in the absence -- not "in the absence," in the face of thick evidence that has not been controverted as to flight, as to dangerousness, and is keeping and seeking to keep the petitioner detained in light of strong evidence that I have found, that this is overwhelming unlikely to be the ordinary course.

All of that, the evidence that strongly suggests that there is no basis for detention here, combined with the paragraphs I've mentioned in the petition at 33 and 73 and 82 and 83 and 84, when you put all those together, they suggest that there is at least something to the underlying claim that there is an effort to use the immigration charge here to punish the petitioner, and of course that would be

unconstitutional.

There is at least enough to that claim that even if *Mapp v. Reno* were to apply here and even if there is some need to show a meaningful move in the direction of meritoriousness in the substantial claim, that part of the *Mapp v. Reno* test would be satisfied.

I do not hold that there is a likelihood of success on the merits based on what I have just said. It's a question that I don't need to reach in light of what I've said about the standard; and it's indeed a question that, as I have made clear in a prior decision, at least in the absence of all the extra things we now have would not have been made out by the petitioner.

So my finding is that there are extraordinary circumstances here. They relate to my findings on risk of flight, my finding on dangerousness to the community, my finding on the overwhelming unlikeliness the detention would be sought in a case of this sort in a context like this one, my finding as to chilling effect, my finding as to the inability of an immigration judge to take on these issues, and, finally, my finding that while it does not rise to the likelihood of success level, the claim that there is a due process violative effort to punish the petitioner is substantial enough that even if *Mapp v. Reno* is in play here, there would be enough as to that claim to justify release.

So given all of those factual findings, I'm gonna exercise the discretion that I have to order the release of the petitioner in this case.

I don't plan to write an opinion on this. I will simply issue a very brief release order, and I'll do it shortly, and refer the Court of Appeals, should there be an effort to take an appeal, back to today's transcript.

I haven't been reading from an opinion, as I'm sure you've all perceived, so things will be -- I'm sure the transcript will reflect that. But I'm hopeful that should there be an effort to seek review from the Third Circuit, this will give the Third Circuit a strong sense of my own factual findings and the basis for my exercise of discretion here as well as my decisions as to jurisdiction and exhaustion and the relevant standard.

So that's my decision, that the petitioner's motion for release will be granted and that obviates the need for consideration of the petitioner's motion to transfer.

Mr. Sampat, let me go to you for half a moment. Are there any conditions that the respondents would seek be imposed after the entry of the release order?

MR. SAMPAT: Your Honor, I think we would need time to consult with our clients on that to see what conditions would be appropriate, but what we would also ask is, understanding Your Honor's order granting the motion, we would ask that the

Court stay the effect of that order for seven days so that the respondents could seek emergency appeal and stay if so necessary.

THE COURT: Let's stick with the first one, though, Mr. Sampat.

MR. SAMPAT: Sure.

THE COURT: I would -- the question of the conditions that are imposed upon a release, they're not usually very complicated. I deal with criminal cases every single day.

They're usually about things like limits on where someone might travel to and they're usually about things like surrendering of a passport and they're usually about things like no applications for further travel documents, and that's usually the end of it.

I will also say that in my experience those things are usually pretty quickly consented to between the parties. You'll take whatever position you want, of course. I respect that entirely. But what I would just suggest is this probably doesn't take a whole lot of consultation with your client.

How long do you think you need to figure those things out?

MR. SAMPAT: Your Honor, I think it's a little difficult to say how much time we need. I'd say probably at least the rest of the day. Understanding Your Honor's point on the criminal context in criminal proceedings, the

conditions are pretty quick.

I will just note that immigration detention -- when individuals are released, there's report requirements and things like that that we would have to consult with our clients about what would be appropriate, especially in light of the fact --

THE COURT: But my point, Mr. Sampat, is not that it's easy or hard, and I hope I wasn't misunderstood that way, and if I was, my apologies.

My point is, these are high-volume affairs and they're pretty standard approaches in our country to release conditions, and so I would urge you to consult very quickly with respect to that because this is not the first time anyone has thought through these issues of what to do with a person who is released.

You know, for example, the reporting requirements you alluded to, these are pretty standard operating procedure things. So let's just -- let's pause for a moment on that.

Ms. Das, I'm imagining that you will not have any issues with -- and you'll correct me if I'm wrong. Just as with the respondents, the position is for you to formulate.

But I'm presuming you would not have issues with some reasonable geographic limitations on where the petitioner might go and the need for him to surrender his passport and to not apply for any new travel documents.

Would there be any disagreement with those things?

MS. DAS: Your Honor, we would agree to reasonable conditions in terms of travel and the issues related to the passport. I think in addition to that, we would hope that the order would specify that he should be released on his own recognizance, that there would be no electronic monitoring, and that there would be a 72-hour notice prior to re-detention.

Those are some of the grounds that were issued in other cases such as *Chung*, *Concerti*, *Mahdawi*. They had different formulations of that, but essentially to ensure that the individual could travel and would be released on recognizance without GPS monitoring were particularly important.

THE COURT: Right. So what I would say is that there has been a thick record developed here with respect to the relevant bail considerations. There is simply nothing that even begins to suggest that an electronic bracelet is appropriate or necessary.

With respect to the 72 hours before re-detention, I don't understand the basis for something like that. There may be any number of reasons why a person is detained, and I'm not gonna presume that other bases that might be put forward are somehow infirm.

The idea of enjoining the United States, slowing it down from doing something it might do when I don't know what

that thing it might do is strikes me as not grounded in the record and something that would cause real problems in terms of this Court's ability, for example, under *Lyons* and under the limits of its own injunctive power as to prospective things.

So I'm not gonna go that way, Ms. Das. I will not tell the United States that it can't proceed in certain ways. If the United States proceeds in certain ways that are illegal, we will take it from there, Ms. Das.

MS. DAS: Thank you, Your Honor. That's understood. Two quick issues.

THE COURT: Sure.

MS. DAS: With respect to the passport, in our recent experience, he may need that passport to travel back to his home in New York. So if there could be a period of time by which that has to be surrendered, that would be helpful.

THE COURT: That's exactly why I'm a little bit surprised that this seems complicated. The normal thing one would have expected would be something like limits on travel from Louisiana back to New York and surrender of passport immediately upon return to New York, something like that.

But these are the kinds of things that parties just work out between themselves. This is not the kind of thing that a judge generally gets involved in. Because while Mr. Sampat -- and I respect his position -- doesn't agree with

where I've ruled, it's not usually very tricky to fix these things between thoughtful lawyers such as yourself, Ms. Das, and such as Mr. Sampat. I'm confident you all can figure that out.

MS. DAS: Yes, Your Honor. I think that's what we've done in the normal course. If Your Honor were willing, we would ask that there be an order of his release immediately and then that release can start getting processed right away, and during that processing time we could work out with the Government if there are -- what those reasonable terms would be.

THE COURT: Mr. Sampat, what is the argument for a seven-day stay? What is that about?

MR. SAMPAT: Your Honor, that's to give us enough time to process Your Honor's order and go through the necessary channels that we need to to get authorization -- to seek whether or not an appeal is warranted; and if so, then to go through the necessary channels to get authorization to pursue that appeal, Your Honor, and then potentially seek a stay of Your Honor's order at the Third Circuit, as well.

THE COURT: Ms. Das, your view?

MS. DAS: Your Honor, we don't think a stay is warranted for the reasons that Your Honor has already made with respect to the findings. There's no risk of flight or dangerousness.

Ultimately, if the Government prevails on some sort of appeal, it has the ability to re-detain the petitioner, so there's no reason for this Court to stay its order based on the substantial findings it's already made.

THE COURT: Mr. Sampat, what is -- the standard kind of argument for a district judge to stay its own order generally runs through, among other things, the applicant for the stay, this would be you here, being irreparably injured by the non-entry of a stay.

What would be the irreparable injury here?

MR. SAMPAT: It is the release, Your Honor. Obviously we're also seeking -- we're contemplating the appeal of Your Honor's PI order, as well.

THE COURT: Sure.

MR. SAMPAT: So it's whether or not -- that irreparable injury would be the potential that Mr. Khalil would be released and we wouldn't be able to re-detain him.

THE COURT: But the problem with that argument is that, as Ms. Das has pointed out, the factual record here doesn't suggest any risk of flight. To the extent the United States had that kind of concern, well, the time for putting in evidence on that was not -- it's not today or tomorrow. It's over the course of these last days and weeks.

So if the irreparable injury is the concern that the Third Circuit will undo what I have done and you will not be

able to find and re-detain the petitioner, there's just no evidence of that. And there was ample opportunity for the respondents to build an evidentiary record that might have suggested that.

Any other irreparable injury here?

MR. SAMPAT: Nothing that I can find, Your Honor, but I'm consulting my notes, just making sure that I haven't missed anything.

THE COURT: Take your time. I don't mean to rush you.

(Brief pause.)

MR. SAMPAT: Your Honor, just a couple points on irreparable injury. There's also irreparable injury when courts do enjoin the effectuating of statutes enacted by Congress. That's *Maryland v. King* at 567 --

THE COURT: But the problem with that, Mr. Sampat, as you know, is that the Second Circuit in *Ozturk* made pretty quick work of that. I'm not enjoining any statute, far from it. I'm not saying a statute is unconstitutional, I'm not enjoining a statute, not in the slightest. I'm simply ordering that a person be granted bail.

If it were the case that every time a federal litigant loses a granular decision like a bail decision they could say there's irreparable injury, there would be nothing left to the irreparable injury standard. It would simply mean that there is a stay of a judicial decision every time a federal litigant

loses. That's not the law.

MR. SAMPAT: Nothing else to add, Your Honor. Thank you.

THE COURT: All right. So I'm going to issue a release order.

Mr. Sampat, I don't want to put you in a difficult spot in terms of consultation, but what I'm gonna do is there's a United States magistrate judge on this case who you all have dealt with a little bit, Judge Hammer, who has been working on the case and who is, like all United States magistrate judges, enormously experienced with respect to issues of where a passport will go, what travel restrictions make sense.

I'm really hopeful the parties can simply agree to reasonable restrictions here, but if need be, there will be an order releasing the petitioner by a time certain today subject to conditions that Judge Hammer can impose if the parties are not themselves able to agree to, you know, reasonable conditions together.

I think that will allow everybody to have a little bit of time for consultation, but, candidly, these are just not issues that are so terribly complex that they require a great deal more than that.

Mr. Sampat, anything that you want to add before we wrap up?

MR. SAMPAT: Not from the Government, Your Honor.

Thank you for your time this afternoon.

THE COURT: Mr. Sampat, thank you, as always.

Ms. Das, from your perspective, anything that you want to add before we wrap up?

MS. DAS: No, Your Honor. But just to clarify, I understand that some of the conditions we may need to hash out as part of the release order, but our understanding is that Your Honor would be issuing an order that he be released by a time certain today. And we're hoping that that order would specify that he would not be subject to electronic monitoring and would be allowed to travel to New York with his passport, and then any other conditions that we need to negotiate we could speak to the magistrate judge about. I just wanted to clarify that point.

THE COURT: Two things: First, I'm going to write the order. It will take a few moments to write. I haven't pre-written it or anything like that.

It will direct that the petitioner be released today, subject to the conditions that are set today by the United States magistrate judge.

It just seems, to me, pretty straightforward that you all, Ms. Das, and you, Mr. Sampat, should rapidly consult as to these issues so that the United States magistrate judge has the benefit of your thoughts on these subjects and hopefully your agreement.

I don't want to micromanage the process. There are things I don't know. For instance, I don't know if the petitioner's passport is in his pocket or is somewhere in New York. There are just things I don't know.

Those are not the kind of things that judges should take the first cut at. Those are things that you all should work together on, but the release order will be drafted shortly by me and it will hit the docket and you'll see it, Ms. Das, and Mr. Sampat, as well.

MR. SAMPAT: Thank you, Your Honor.

THE COURT: As to the stay application, it's simply denied. The stay factors are ones I understand. There's no need, I don't think, to cite them here. One of the two key stay factors -- I'm thinking, for example, of the *Hilton* case, which is the Supreme Court's case from 1987 that relates to this, and *United States v. Smith*, which is the Third Circuit's 1987 decision. The stay applicants here are the respondents and their arguments as to irreparable injury, given the factual record that's been built here, that they haven't contested, there's just not an argument to move for a stay.

I appreciate that that means that the respondents will have to work quickly to seek an appeal, should they wish to, but that is a little bit the wages of having not contested over the course of this period the record and having the record lean in one direction with respect to the relative ease

of the re-detaining issue should the Third Circuit indicate that its decision will order him detained.

I also don't think that there's been the requisite showing by the respondents as to the likelihood of success as to jurisdiction, as to exhaustion, as to the standard, as to my factual findings, and as to exercise of discretion as to detention.

So the application for a stay is denied, as we just discussed, and an order will follow shortly with respect to the granting of a motion for release.

Having said that all, Ms. Das, any final things you wanted to convey, Ms. Das?

MR. SAMPAT: No. Thank you so much, Judge.

THE COURT: Mr. Sampat, any final things that you wanted?

MR. SAMPAT: Nothing from the Government, Your Honor. Thank you.

THE COURT: Thank you all very much. And I will prepare the order in a short while. Thank you all very much. Appreciate it.

(Which were all the proceedings held in the above-entitled matter on said date.)

FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE

I, **Lisa A. Larsen, RPR, RMR, CRR, FCRR**, Official Court Reporter of the United States District Court for the District of New Jersey, do hereby certify that the foregoing proceedings are a true and accurate transcript from the record of proceedings in the above-entitled matter.

/S/Lisa A. Larsen, RPR, RMR, CRR, FCRR

Official U.S. District Court Reporter ~

District of New Jersey

DATED this June 21, 2025

* * * * *

Nos. 25-2162 & 25-2357

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MAHMOUD KHALIL,

Petitioner-Appellee,

v.

PRESIDENT UNITED STATES OF AMERICA; DIRECTOR NEW YORK FIELD OFFICE IMMIGRATION AND CUSTOMS ENFORCEMENT; WARDEN ELIZABETH CONTRACT DETENTION FACILITY; DIRECTOR UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; SECRETARY UNITED STATES DEPARTMENT OF HOMELAND SECURITY; SECRETARY UNITED STATES DEPARTMENT OF STATE; ATTORNEY GENERAL UNITED STATES OF AMERICA,

Respondents-Appellants.

On Appeal from the United States District Court
for the District of New Jersey, No. 25-1963 (MEF) (MAH)

APPENDIX: VOLUME II (390-678)

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

M.K.,

Petitioner,

v.

William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; and Pamela BONDI, Attorney General, U.S. Department of Justice,
.

Respondents.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner, M.K., is a lawful permanent resident and student at Columbia University. M.K. is married to a U.S. citizen, who is pregnant with their first child and due to give birth next month. On March 8, 2025, agents from the Department of Homeland Security ("DHS") arrested M.K. with no prior notice.

When agents[1] arrested M.K. at his Columbia University student housing, the agents stated that they were detaining him because his student visa had been revoked by the U.S. Department of State. When M.K. showed the officers his immigration documents demonstrating that he is a lawful permanent resident—not a student visa holder—they arrested him anyway,

[1] On information and belief, agents from Immigration and Customs Enforcement ("ICE"), a subset of DHS, arrest and detain noncitizens in the community.

saying that his green card had also been revoked, but providing no basis for the revocation.

ICE's arrest and detention of M.K. follow the U.S. government's open repression of student activism and political speech, specifically targeting students at Columbia University for criticism of Israel's assault on Gaza. The U.S. government has made clear that they will use immigration enforcement as a tool to suppress that speech.

M.K. has been an outspoken activist regarding these issues. Given that there is no other basis for M.K.'s arrest and detention, it is clear that Respondents are engaging in blatant efforts to target and chill M.K.'s speech and to discriminate against particular viewpoints in contravention to the First Amendment and M.K.'s Due Process Rights. By detaining M.K. without providing a reason and perhaps based on the misunderstanding that he is a student visa holder rather than a lawful permanent resident, ICE's actions violate M.K.'s rights under the First and Fifth Amendments of the U.S. Constitution, the INA, the Administrative Procedures Act, and its own federal regulations. Accordingly, this Court should declare ICE's actions unlawful, enjoin his transfer outside of this District and order his immediate release.

PARTIES

1. Petitioner M.K. is a student at Columbia University who is married to a U.S. citizen who is 8 months pregnant. On March 8, 2025, Officers from the Department of Homeland Security arrested M.K. in front of his Columbia University housing.

2. Respondent William P. Joyce is named in his official capacity as the Acting Field Office Director of the New York Field Office for ICE within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a custodian of Petitioner. Respondent Joyce's address is New York ICE Field Office Director, 26 Federal

Plaza, New York, New York 10278.

3. Respondent Caleb Vitello is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a custodian of the Petitioner. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

4. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. Respondent Mayorkas's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

5. Respondent Pamela Bondi is Attorney General of the United States. In this capacity, she routinely transacts business in the Southern District of New York; is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g) (2007); and as such is a custodian of the Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.

JURISDICTION & VENUE

6. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241, Article I, §9, cl. 2 (the Suspension Clause) and Article III of the U.S. Constitution, the Administrative Procedure Act, 5 U.S.C. § 701 et seq.; and 28 U.S.C. § 2201 (Declaratory Judgment).

7. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.

8. Venue is proper in the Southern District of New York Under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. At the time this proceeding was initiated, M.K. was detained at 26 Federal Plaza in New York, New York. The petitioner has been and is presently detained at the direction of Mr. Joyce, and a substantial part of the events giving rise to the claims and relevant facts occurred within this district.

FACTS

Background

9. M.K. is Palestinian, but he grew up in Syria because his grandparents were forcibly removed from their ancestral home in Tiberius, Palestine. Since the war in Syria, his family was again displaced and are now dispersed throughout Europe and West Asia.

10. M.K. entered the United States on a student visa in or around December 2022 in order to pursue a Master's degree in Public Administration from the Columbia University's School of International and Public Affairs ("SIPA"). M.K. completed his program in December 2024, and has an anticipated graduation date of May 2025.

11. M.K. married his U.S. citizen wife on November 16, 2023. He became a lawful permanent resident in 2024. M.Z. and his wife are expecting their first child together next month, April 2025.

M.K.'s Student Activism and Speech on Matters of Public Concern

12. As a Palestinian, M.K. has felt compelled to be an outspoken advocate for Palestinian human rights and more recently, to speak out against Israel's genocide in Gaza and the role of Columbia University in financing and in other ways facilitating the genocide. M.K. is

committed to being a voice for his People, and calling on the rest of the world to stop providing weapons and support to enable the genocide in contravention with international law.

13. Additionally, M.K. has been a mediator and negotiator, facilitating dialogue between Columbia University's administration and its students. In this role, M.K. has advocated on behalf of his peers to be treated humanely and fairly by the University. This role has placed M.K. in the public eye, particularly through numerous interviews with national media outlets.

14. Speech regarding international law, the obligations that the U.S. and Columbia University have under that law, the human rights of the Palestinian people, and related matters are all topics of public concern clearly protected by the First Amendment.

M.K.'s Arrest by the Department of Homeland Security

15. On the evening of March 8, 2025, at approximately 8:30 p.m., M.K. and his wife were returning to their Columbia University-owned apartment from a friend's home. When they arrived at their apartment building, M.K. and his wife were approached by approximately four people who were dressed in plain clothes. All of them entered the lobby of the apartment building.

16. When the people approached M.K. and his wife, they asked, "Are you M.K.?" When M.K. answered in the affirmative, the men identified themselves as being with the Department of Homeland Security ("DHS") and that they have to take M.K. into custody. The agents told M.K.'s wife to go up to her apartment, and that if she would not leave M.K., they threatened to arrest her, too.

17. M.K.'s wife retrieved M.K.'s immigration documents to show the agent that M.K. is a lawful permanent resident. She handed the documents to the agent, who was talking to someone on the phone. The agent looked confused when he saw the documents and said, "He has a green card." M.K.'s wife heard the agent repeat that they were being ordered to bring M.K. in anyways.

18. While M.K.'s wife went to their apartment, M.K. was able to place a call to his attorney, Amy

Greer. Attorney Greer advised M.K. to ask if the ICE agent had a warrant, and they advised that they did. Attorney Greer then heard a voice tell M.K. to hand him the phone. Attorney Greer identified herself as M.K.'s attorney and asked who she was speaking with. The agent identified himself as Special Agent Elvin Hernandez of Homeland Security. Attorney Greer asked if Agent Hernandez had a warrant, and he answered in the affirmative, stating that M.K.'s student visa had been revoked by the U.S. Department of State and therefore they were detaining him. Attorney Greer advised Agent Hernandez that M.K. is a lawful permanent resident and has the right to due process. Agent Hernandez responded that the Department of State had revoked M.K.'s green card, too, and that he would be brought in front of an immigration judge. The agent stated that he would be taking M.K. to 26 Federal Plaza.

19. The agents then handcuffed M.K. and brought him outside where there were multiple vehicles waiting. M.K.'s wife asked for the names of the agents, their contact information, and how to reach them to follow up on her husband's detention, but they only advised her that M.K. would be taken to 26 Federal Plaza, and otherwise refused to speak with her. They left her no business card or any information at all as to how to find out where her husband will be taken, on what grounds, or who she can contact.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

RETALIATION, DISCRIMINATION, AND PRIOR RESTRAINT IN VIOLATION OF THE FIRST AND FIFTH AMENDMENTS AND FEDERAL REGULATIONS

20. Petitioner incorporates the preceding paragraphs as if fully set forth herein.

21. The First Amendment to the United States Constitution provides in part that "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances." U.S. Const. Amend. I.

22. The First Amendment protects past and future speech. *Fairley v. Andrews*, 578 F.3d 518, 525 (7th Cir. 2009) ("The first amendment protects speakers from threats of punishment that are designed to discourage future speech."); *Saleh v. City of New York*, No. 06 Civ. 1007(SHS), 2007 WL 4437167, at *3 (S.D.N.Y Dec. 17, 2007) (noting that First Amendment retaliation claims can be brought "alleging punishment for past speech and those complaining of suppression of future speech"). The First Amendment protects "[t]he rights to complain to public officials and to seek administrative and judicial relief." *Gagliardi v. Vill. of Pawling*, 18 F.3d 188, 194 (2d Cir. 1994). The First Amendment applies to actions taken against people in custody, *Gill v. Pidlypchak*, 389 F.3d 379 (2d Cir. 2004), and those threatened with deportation, *Ragbir v. Homan*, 923 F.3d 53, 66 (2d Cir. 2019) (internal citations omitted*), cert. granted, remanded, and vacated sub nom. on other grounds*, *Pham v. Ragbir*, 141 S. Ct. 227 (2020).

23. Speech on matters of public concern is entitled to the highest level of protection under the First Amendment. *See, e.g., Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1034 (1991) ("[S]peech critical of the exercise of the State's power lies at the very center of the First Amendment."). Moreover, government action that targets private speech based on the viewpoint taken by the speaker is an egregious form of content discrimination and presumptively unconstitutional. *See Matal v. Tam*, 137 S. Ct. 1744 (2017).

24. "To state a First Amendment retaliation claim, a plaintiff must show that: '(1) he has a right protected by the First Amendment; (2) the defendant's actions were motivated or substantially caused by [the 's] exercise of that right; and (3) the defendant's actions caused [the plaintiff] some injury.'" *Ragbir v. Homan*, 923 F.3d 53, 66 (2d Cir. 2019) (internal citations omitted*), cert. granted, remanded, and vacated sub nom. on other grounds*, *Pham v. Ragbir*, 141 S. Ct. 227 (2020).

25. In addition, "the Constitution prevents governmental actors from forbidding, or

penalizing, speech that is protected under the first amendment.....Threatening penalties for future speech goes by the name 'prior restraint,' and a prior restraint is the quintessential first-amendment violation." *Fairley*, 578 F.3d at 525. To establish a claim of an unconstitutional "prior restraint" on future testimony, a plaintiff must show (1) that defendants presented "threats of punishment that are designed to discourage" the future testimony, (2) "that [plaintiff's] potential testimony . . . caused the threats," and (3) that the defendants actions caused some injury. *Id.*

26. M.K.'s past speech pertains to matters of prominent public concern—Israel's war on Gaza and criticism of U.S. institutions that support Israel. These issues have garnered national attention, particularly since the Trump administration has vowed to crack down on student activists.

27. Respondents have taken adverse actions against M.K. that are motivated by his past and future exercise of First Amendment-protected speech, and have taken action to discourage him from speaking out in the future. By detaining M.K. and holding him in isolation, possibly for removal proceedings, Respondents threaten M.K. with the ultimate punishment for speaking out and discourage M.K. from speaking out in the future. If ICE eventually deports M.K., Respondents will effectively prevent him speaking at all.

28. There is a substantial causal connection between M.K.'s protected speech and Respondents' adverse actions and threats. M.K. has been outspoken in his campus activism. There is no other basis that ICE could possibly arrest and detain him other than as retaliation against his protected speech.

29. M.K. suffers severe and ongoing harm as a result of Respondents' actions, including the unjustified isolation and silencing of his protected speech. He is not able to speak publicly about Israel's continued assault on Gaza, divestment from Israel, Columbia's treatment of student activists, or even how his current unlawful arrest and detention by ICE, which is a current First

Amendment injury. Moreover, even the threat of detention and deportation has a chilling effect on speech. Left undisturbed, Respondents' action in this case would have a devastating effect on vital political speech, allowing a government agency to abuse noncitizens and then detain and maybe even deport the victims of its illegal actions.

30. Respondents' actions against M.K. on the basis of his protected speech does not serve a compelling state interest, and is not narrowly tailored to any legitimate government interest. Respondents' actions operate as a prior restraint that will prevent him from speaking out about government repression of political speech and student activism. Furthermore, he has been deprived of his liberty with no notice and opportunity to be heard on his First Amendment claim prior to his arrest and detention.

31. As a result, this Court should declare that Respondents' retaliatory and discriminatory actions, including the arrest and detention of M.K., violate the First Amendment and the Due Process Clause of the Fifth Amendment; order the release of M.K. under reasonable conditions of supervision; and enter an injunction restraining Respondents from transferring M.K. outside of this Court's jurisdiction, unless Respondents demonstrate that such action is untainted by unlawful First Amendment retaliation and discrimination.

FIRST CLAIM FOR RELIEF

RELEASE PENDING ADJUDICATION PURSUANT TO *MAPP v. RENO*

32. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

33. This Court has the "inherent authority" to grant bail to habeas petitioners like M.K. *See Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001) (holding that federal courts have inherent authority to set bail pending the adjudication of a habeas petition when the petition has raised

substantial claims and extraordinary circumstances "make the grant of bail necessary to make the habeas remedy effective").

34. Numerous courts within the Second Circuit have ordered the release of petitioners like M.K. in light of their extraordinary circumstances. *See, e.g.*, *S.N.C. v. Sessions*, No. 18 Civ. 7680 (LGS), 2018 WL 6175902, at *6 (S.D.N.Y. Nov. 26, 2018) (ordering immediate release of petitioner pending consideration of her claim that her abrupt deportation would violate her due process right to an opportunity to be heard on her application); *Kiaddii v. Sessions*, No. 18 Civ. 1584, at *3 (S.D.N.Y. Mar. 2, 2018) (ECF No. 9) (ordering immediate release when the petitioner presented evidence she may be a U.S. citizen.

35. Here, ICE officers informed M.K. that they were arresting him because his student visa was revoked. Based on this statement, it very well could be that ICE made an error and arrested, detained, and are currently holding M.K. in ICE detention based on a mistake. Release is necessary to make the remedies this civil action and petition seeks effective, in particular because as long as M.K. remains in ICE custody, his ability to speak freely and openly will be chilled. In custody, his speech is severely curtailed and controlled by ICE. He should not remain in ICE custody while pursuing his claims against the agency.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Declare that Respondents' actions to detain M.K. violate the First Amendment and the Due Process Clause of the Fifth Amendment;

3) Enjoin Respondents from transferring the Petitioner from the jurisdiction of this District pending these proceedings;

4) Order the release of Petitioner under reasonable conditions of supervision;

5) Award Petitioners their costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, FTCA, or other statute; and

6) Grant such further relief as the Court deems just and proper.

Dated: March 9, 2025
New York, NY

/s/ Amy E. Greer

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Mahmoud Khalil, *Petitioner*, v. William P. JOYCE, in his official capacity as Acting Field Office Director, New York City Field Office, U.S. Immigration & Customs Enforcement, *et al*., *Respondents.*	Civil Action No. 25-cv-1935

DECLARATION OF AMY E. GREER

I, Amy E. Greer, under penalty of perjury, declare as follows:

1. I am an attorney with Dratel & Lewis, a law firm that specializes in criminal defense in New York. I have been representing Mahmoud Khalil in his disciplinary cases at Columbia University since November 2024.

2. Mahmoud has been experiencing a profound doxing[1] campaign for over two months related to his First Amendment protected activities in support of Palestinian human rights. The harassment was so pervasive that Mahmoud emailed the Columbia University administration repeatedly asking for support.

3. At 6:46 AM on Friday, March 7, 2025, Mahmoud wrote to Interim President Katrina Armstrong at Columbia University describing the vicious and dehumanizing doxing campaign against him – including people falsely labeling him a terrorist threat and calling for his

[1] Doxing includes instances of individuals' addresses, pictures, and other personal information being shared online for the purpose of harassment by those who disagree with their opinions.

deportation. He closed the email by saying he was not able to sleep fearing U.S. Immigration and Customs Enforcement ("ICE"), or other dangerous individuals would target him and his family and urging Interim President Armstrong to provide legal support and other protections.

4. At 8:26 PM on Saturday, March 8, 2025, Mahmoud called me and said he was surrounded by people claiming to be from the U.S. Department of Homeland Security ("DHS") at his Columbia-owned apartment and that they were going to arrest him. An agent told Mahmoud to give him the phone and identified himself to me as special agent Elvin Hernandez. Agent Hernandez told me he was an agent with DHS, but I do not recall whether he specified what branch. I asked why DHS was detaining Mahmoud and whether they had a warrant. Agent Hernandez said they had an administrative warrant. I asked the basis of the warrant, and he said the U.S. Department of State revoked Mahmoud's student visa.

5. When I told Agent Hernandez that Mahmoud does not have a student visa because he is a green card holder and permanent resident in the U.S., he said DHS revoked the green card, too. I explained to Agent Hernandez that Mahmoud is entitled to due process as a green card holder before his green card can be revoked and he responded that Mahmoud would have the chance to go before an immigration judge. When I began to ask more questions about what grounds they would have to put Mahmoud in immigration proceedings, Agent Hernandez started to grumble at me. I asked him to show me, Mahmoud, or his wife the warrant and he hung up on me.

6. A couple of minutes passed and around 8:34 PM Mahmoud's wife called using Mahmoud's phone. I was talking to a partner at my firm so we both joined the call. We could hear everything happening. Mahmoud's wife was also narrating everything. DHS agents handcuffed Mahmoud. His wife asked do you have a warrant, but the DHS agents did not respond. Mahmoud's wife asked the agents where they were taking him and again, they did not answer

her. She continued to follow them and narrate what was happening and explained to me that there were more agents and cars outside, but nobody would tell her what was happening.

7. DHS agents put Mahmoud in an unmarked vehicle. Finally, one agent told his wife that they were taking him to 26 Federal Plaza. The agent did not take my information as Mahmoud's lawyer or leave any information about who we should contact about his case.

8. I called an immigration attorney to figure out next steps and the partner at my firm helped me draft a letter that I emailed to a generic ICE email stating that Mahmoud is represented by council and invoking his right to remain silent.

9. I worked all night to draft a habeas petition for Mahmoud. The petition was filed at 4:40 AM on March 9, 2025, in the Southern District of New York. At the time of filing the petition, we had every reason to believe that Mahmoud was detained in New York because of what the DHS agent told his wife and the ICE Online Detainee Locator System[2].

10. I originally checked the ICE locator around 10 PM on Saturday, March 8th and Mahmoud was not in the system. I checked again at 1:35 AM on Sunday, March 9th and it said he was in custody in New York and to call the field office. I checked again at 4:29 AM on Sunday, March 9th and it said the same thing. I checked again at 8:30 AM on Sunday, March 9th and Mahmoud was still listed as being detained in New York.

11. Sometime after 9 AM on Sunday, the ICE locator changed to say that Mahmoud was detained in Elizabeth, New Jersey. Around 11:20 AM, Mahmoud's wife notified my colleague that she went to the Elizabeth Detention Center and was told that Mahmoud was not showing up in the system. The person she spoke to at the facility said even if he was brought in, they would not be able to see him in the system for 24 hours.

[2] https://locator.ice.gov/odls/#/search.

12. An immigration attorney contacted ICE on Sunday, March 9th after filing the habeas. At 1:47 PM, ICE stated in an email that Mahmoud was en route to being transferred to a different facility. They said he would arrive late Sunday evening and his case will fall under the New Orleans ERO Field Office.

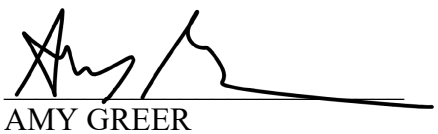
13. Around 3:10 PM the same attorney sent an email to the Assistant United States Attorneys ("AUSA") assigned to Mahmoud's habeas case. An AUSA wrote back quickly saying they would reach out to ICE contacts and asked for a copy of Mahmoud's green card which we sent. Around 4:22 PM we received an email from an AUSA saying ICE knows Mahmoud is a lawful permanent resident and that he was already en route to Louisiana. The same AUSA responded around 5:18 PM saying that based on information and belief Mahmoud is deportable. The AUSA then dropped off the email chain and told us he was conflicted out of the case.

14. I received press outreach around 8 PM on Sunday saying that Mahmoud was in Louisiana. I confirmed this morning around 7:30 AM on the ICE online locator and Mahmoud was listed as being detained at the Central Louisiana ICE Processing Center ("CLIPC") in Jena, Louisiana.

15. Mahmoud's wife called me at 9:36 AM and informed me that he had called her, and they were able to talk for the first time since Mahmoud was taken into custody. Mahmoud then called me at 10:17 AM and confirmed he is in Jena, Louisiana before our call got cut off.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 10th day of March, 2025 in Baltimore, MD.



AMY GREER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAHMOUD KHALIL,

Petitioner,

- against -

WILLIAM P. JOYCE, *et al*.,

Respondents.

No. 25 Civ. 1935 (JMF)

RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS OR TO TRANSFER THE CASE

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Preliminary Statement

The petitioner brings this habeas action under 28 U.S.C. § 2241 to challenge his detention by U.S. Immigration and Customs Enforcement ("ICE") during the pendency of his removal proceedings. But this Court is not the proper forum for this habeas action. Federal district courts possess limited authority to grant writs of habeas corpus within their respective jurisdictions. As the Supreme Court has explained, "the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). And for challenges to detention, "jurisdiction lies in only one district: the district of confinement." *Id.* at 443.

At the time that this action was filed, the petitioner was physically present and detained at the Elizabeth Detention Facility in Newark, New Jersey. He was not in the Southern District of New York. Thus, this Court did not acquire habeas jurisdiction over this matter, and venue is improper in this district. This Court has already decided the precise legal issue underlying the government's motion in at least five cases. *See Thomas v. Decker*, No. 19 Civ. 8690 (JMF), ECF No. 26 (S.D.N.Y. Oct. 16, 2019); *Tazu v. Barr*, No. 19 Civ. 1716 (JMF), ECF No. 16 (S.D.N.Y. Mar. 1, 2019); *Traore v. Decker*, No. 18 Civ. 7909 (JMF), ECF No. 9 (S.D.N.Y. Sept. 13, 2018); *Suraiya v. Cioppa*, No. 18 Civ. 6628 (JMF), ECF Nos. 17 (Order), 18 (Transcript) (S.D.N.Y. July 31, 2018); *Singh v. Holder*, No. 12 Civ. 4731 (JMF), 2012 WL 5878677, at *2 (S.D.N.Y. Nov. 21, 2012). There has been no intervening change in controlling law, and thus this Court should adhere to its prior decisions and conclude that this action cannot proceed in this Court.

Accordingly, this Court should dismiss this action without prejudice for lack of jurisdiction/venue, or alternatively transfer it. If the Court decides to transfer the case, to minimize any delay, the government respectfully requests that the Court waive the seven-day waiting period contained in Local Civil Rule 83.1.

BACKGROUND

A. Khalil's immigration detention

Mahmoud Khalil ("Khalil"), a native of Syria and citizen of Algeria, entered the United States on a student visa in December 2022. *See* Declaration of Acting Field Office Director William Joyce ("Joyce Decl.") ¶ 5. He adjusted to lawful permanent resident status in November 2024. *Id.* ¶ 6. On March 8, 2025, Special Agents from the U.S. Immigration and Customs Enforcement ("ICE") Homeland Security Investigations ("HSI") Office of the Special Agent in Charge for the New York Area of Responsibility arrested Khalil at 8:35 p.m. in front of 195 Claremont Avenue in Manhattan, New York, for the purpose of placing him in removal proceedings. *Id.* ¶ 7. HSI transported him to 26 Federal Plaza at 8:44 p.m. for processing. *Id.* While at 26 Federal Plaza, HSI served Khalil with a Notice to Appear ("NTA"), the charging document used to commence removal proceedings, which charged him as being removable pursuant to 8 U.S.C. § 1227(a)(4)(C)(i), in that the Secretary of State has reasonable grounds to believe that his presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States. *Id.* ICE also served Khalil with a Notice of Custody Determination, notifying Khalil that his detention was governed by 8 U.S.C. § 1226(a) (immigration custody during removal proceedings). *Id.*

Upon completion of processing, ICE transported Khalil from 26 Federal Plaza to Elizabeth Detention Facility in Newark, New Jersey,[1] where he was physically present and booked into the detention facility at 2:20 a.m. Eastern Standard Time (3:20 a.m. Eastern Daylight Time) on

[1] Elizabeth Detention Facility has comprehensive overnight accommodations for detainees, such as bends and 24-hour medical staff, whereas 26 Federal Plaza is a Hold Room facility used for detention of individuals awaiting removal, transfer, immigration court hearings, medical treatment, intra-facility movement, or other processing into or out of a facility, and it does not have beds or overnight medical staff. Joyce Decl. ¶ 10.

March 9, 2025. *Id.* ¶ 8. Shortly before noon on March 9, Khalil departed Elizabeth Detention Facility and was brought to the airport to be transported to the Central Louisiana ICE Processing Facility in Jena, Louisiana. *Id.* ¶ 10. Khalil was booked into the Central Louisiana ICE Processing Facility at 12:33 a.m. on March 10, 2025, and he remains detained at that facility. *Id.* ¶ 11.

B. Khalil's habeas petition

At 4:41 a.m. on March 9, 2025, Khalil's attorney filed the instant habeas petition under 28 U.S.C. § 2241, while Khalil was physically present and detained in New Jersey. Joyce Decl. ¶¶ 8-9; *see also* ECF No. 11 at 6 ("Counsel filed the instant habeas corpus petition on Mr. Khalil's behalf on March 9, 2025, at 4:41 a.m."). By her account, Khalil's attorney filed the instant habeas petition in this District, because (i) DHS agents had previously told Khalil's wife that he was being sent to 26 Federal Plaza (as he was), and (ii) the public "ICE Online Detainee Locator System" had not yet been updated at that hour to show he had been transferred to New Jersey. Greer Decl. (ECF 11-1) ¶¶ 7, 9. Khalil's petition challenges his current immigration detention as unlawful, and he seeks an order from this Court requiring ICE to immediately release him. Pet. (ECF No. 2).

ARGUMENT

THE COURT SHOULD DISMISS THIS ACTION OR ALTERNATIVELY TRANSFER THIS ACTION

A. Venue is Improper in this Court

A habeas petition brought under 28 U.S.C. § 2241 challenging detention must be brought against the immediate custodian and filed in the district in which the petitioner is detained. Venue is improper in the Southern District of New York because Khalil was not detained in this district at the time he filed his habeas petition. Joyce Decl. ¶ 9. Rather, the petitioner's attorney filed the habeas petition in this Court while Khalil was physically present in and confined at the Elizabeth Detention Facility in Newark, New Jersey. *Id.* ¶ 8; ECF No. 11 at 6. Thus, the Court lacks

jurisdiction over the habeas petition and the Southern District of New York is not the proper venue for this habeas action. Consequently, the Court should either dismiss this action or transfer it.

The Supreme Court has made clear that in "core" habeas petitions—*i.e.*, petitions like the instant one that challenges the petitioner's present physical confinement—the petitioner must file the petition in the district in which he is confined (*i.e.*, the district of confinement) and name his warden as the respondent. *See Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004). In *Padilla*, the Supreme Court described habeas petitions challenging a petitioner's present physical confinement (*i.e.*, detention) as "core" habeas petitions. *Id.* at 445. For review of such "core" petitions, "jurisdiction lies in only one district: the district of confinement." *Id.* at 443. Accordingly, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement."[2] *Id.* at 447; *see also id.* at 443 (explaining that "[t]he plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement").

In embracing the "immediate custodian" rule, the Supreme Court explained that limiting a district court's jurisdiction to issue a writ to custodians within their jurisdiction "serves the important purpose of preventing forum shopping by habeas petitioners." *Padilla*, 542 U.S. at 447 (observing that the result of disregarding the immediate custodian rule "would be rampant forum shopping, district courts with overlapping jurisdiction, and the very inconvenience, expense, and embarrassment Congress sought to avoid when it added the jurisdictional limitation [in 1867]").

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[2] In adopting the "immediate custodian" rule, the Supreme Court rejected the "legal reality of control" standard and held that legal control does not determine the proper respondent in a habeas petition that challenges present physical confinement. *See Padilla*, 542 U.S. at 437-39; *see also id.* at 439 ("In challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.").

Although *Padilla* addressed a habeas petition outside of the immigration context, based on *Padilla*'s holding and logic, a "clear majority of district courts" within the Second Circuit have applied "the immediate custodian rule to habeas petitions filed by incarcerated aliens challenging their physical detention prior to deportation." *Guo v. Napolitano*, No. 09 Civ. 3023 (PGG), 2009 WL 2840400, at *3 (S.D.N.Y. Sept. 2, 2009) (collecting cases). "The substantial majority of judges in this District to consider this question have reached the same conclusion, holding that a [petitioner] detained in New Jersey who seeks to challenge his detention, even if under the supervision of ICE personnel in this District, must bring a habeas action in the District of New Jersey." *Andoh v. Barr*, No. 19 Civ. 8016 (PAE), 2019 WL 4511623, at *2 (S.D.N.Y. Sept. 18, 2019).

This Court has addressed this exact issue in at least five cases: *Thomas v. Decker*, No. 19 Civ. 8690 (JMF), ECF No. 26 (S.D.N.Y. Oct. 16, 2019); *Tazu v. Barr*, No. 19 Civ. 1716 (JMF), ECF No. 16 (S.D.N.Y. Mar. 1, 2019); *Traore v. Decker*, No. 18 Civ. 7909 (JMF), ECF No. 9 (S.D.N.Y. Sept. 13, 2018); *Suraiya v. Cioppa*, No. 18 Civ. 6628 (JMF), ECF Nos. 17 (Order), 18 (Transcript) (S.D.N.Y. July 31, 2018); *Singh v. Holder*, No. 12 Civ. 4731 (JMF), 2012 WL 5878677, at *2 (S.D.N.Y. Nov. 21, 2012). In *Singh*, this Court held that the proper forum for a habeas petition brought by an alien challenging his continued physical detention—*i.e.*, "core" habeas claims—was "the district of confinement." 2012 WL 5878677, at *2; *see also id.* ("Applying the 'immediate custodian' rule, the Court therefore holds that jurisdiction lies only in the Northern District of Alabama, where Petitioner is detained, and that the only proper respondent is Petitioner's immediate custodian, Warden Scott Hassel."). In reaching this conclusion, the Court noted that it was unpersuaded by the analysis in *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488 (S.D.N.Y. 2009), where Judge Baer had reasoned that the Attorney General and Secretary of the

Department of Homeland Security were proper respondents in an immigration habeas action, and, despite the petitioner's detention in New Jersey on the day the petition was filed, held that the Southern District of New York was the proper venue based on a finding that the "traditional principles of venue" governed immigration habeas cases. *See id.* at 495-97. This Court found the analysis in *Farez-Espinoza* to be flawed because that decision relied on cases that pre-dated *Padilla* and that were otherwise inapplicable to venue consideration in immigration detention challenges. *See Singh*, 2012 WL 5878677, at *2; *see also Guo*, 2009 WL 2840400, at *4-5 (finding *Farez-Espinoza* unpersuasive for the additional reason that it relied on *Henderson v. I.N.S.*, 157 F.3d 106 (2d Cir. 1998), which was issued six years prior to *Padilla*, and which relied on the "legal control" argument that *Padilla* subsequently rejected).

Similarly, in *Suraiya*, this Court held a conference eight days after the petition was filed at which the Court acknowledged its application of *Padilla* in its prior ruling in *Singh*, "a case bringing pretty much the same exact nature of claim," and then explained "that the immediate custodian rule applies to challenges of this nature and that jurisdiction is proper only in the district where the immigrant is detained." Transcript (attached), *Suraiya v. Cioppa*, No. 18 Civ. 6628 (JMF) (S.D.N.Y. July 31, 2018) (ECF No. 18) at 2:21-3:4. This Court proceeded similarly in *Traore* and *Tazu*. *See* Transcript of Proceedings (Sept. 6, 2018), *Traore v. Decker*, No. 18 Civ. 7909 (JMF) (S.D.N.Y. Sept. 21, 2018) (ECF No. 10) at 2:14-23; Transfer Order, *Traore v. Decker*, No. 18 Civ. 7909 (JMF) (S.D.N.Y. Sept. 13, 2018) (ECF No. 9); Transcript of Proceedings (Mar. 1, 2019), *Tazu v. Decker*, No. 19 Civ. 1716 (JMF) (S.D.N.Y. Mar. 19, 2018) (ECF No. 16) at 2:25-3:10; Transfer Order, *Tazu v. Decker*, No. 19 Civ. 1716 (JMF) (S.D.N.Y. Mar. 1, 2019) (ECF No. 14). Lastly, in *Thomas*, this Court received full briefing and was ultimately unpersuaded to change its position. *Thomas v. Decker*, No. 19 Civ. 8690 (JMF) (ECF No. 26) (S.D.N.Y. Oct. 16, 2019).

Moreover, in cases similar to this matter—where immigration habeas petitioners detained outside of the Southern District of New York nonetheless brought actions in this District challenging their present physical confinement—courts have routinely held that venue in this district is improper. These cases include challenges to immigration detention where aliens are currently in removal proceedings, as well as cases where aliens are subject to a final order of removal and awaiting removal. *See, e.g.*, *Benitez v. An Unknown Immigration Officer*, No. 19 Civ. 3153 (GHW), 2019 WL 3450743, at *1 (S.D.N.Y. July 22, 2019) ("The majority of courts in this district that have considered the issue have held that habeas petitions which challenge an alien's detention pending removal are subject to the immediate custodian rule, and thus jurisdiction over such a claim lies only in the district where Petitioner is physically confined."); *Kolev v. Sessions*, No. 17 Civ. 9477 (RA), 2019 WL 1748436, at *1 (S.D.N.Y. Apr. 16, 2019); *S.N.C. v. Sessions*, 325 F. Supp. 3d 401, 410 (S.D.N.Y. 2018) (same); *Cesar v. Shanahan*, No. 17 Civ. 7974 (ER), 2018 WL 1747989, at *1 (S.D.N.Y. Feb. 5, 2018) (same); *Chan Lo v. Sessions*, No. 17 Civ. 6746 (GHW), 2017 WL 8786850, at *1 (S.D.N.Y. Sept. 15, 2017) (same); *Adikov v. Mechkowski*, No. 16 Civ. 3797 (JPO), 2016 WL 3926469, at *1 (S.D.N.Y. July 18, 2016) (same); *Fortune v. Lynch*, No. 15 Civ. 8134 (KPF), 2016 WL 1162332, at *2 (S.D.N.Y. Mar. 22, 2016) (same); *Bacuku v. Shanahan*, No. 16 Civ. 0305 (LGS), 2016 WL 1162330, at *1 (S.D.N.Y. Mar. 1, 2016) (same); *Rone v. Holder*, No. 15 Civ. 2815 (ER), 2015 WL 13722402, at *1 (S.D.N.Y. June 5, 2015) (same); *Concepcion v. Aviles*, No. 14 Civ. 8770 (AT), 2015 WL 7766228, at *1 (S.D.N.Y. Mar. 12, 2015) (same); *Phrance v. Johnson*, No. 14 Civ. 3569 (TPG), 2014 WL 6807590, at *2 (S.D.N.Y. Dec. 3, 2014) (same); *Medina-Valdez v. Holder*, No. 12 Civ. 6002 (RA), 2012 WL 4714758, at *1-2 (S.D.N.Y. Oct. 1, 2012) (same); *Guo*, 2009 WL 2840400, at *5 (same); *Sikivou v. Dep't of Homeland Security*, No. 06 Civ. 5530 (PKC), 2007 WL 2141564, at *3 (S.D.N.Y. July 25, 2007)

(same); *Excellent v. Gonzales*, No. 04 Civ. 9748 (VM), 2006 WL 238986, at *1 (S.D.N.Y. Jan. 31, 2006) (same); *Washington v. District Director, INS*, No. 04 Civ. 3492 (RMB) (MHD), 2005 WL 2778747, at *2 (S.D.N.Y. Oct. 19, 2005) (same); *Drakoulis v. Ashcroft*, 356 F. Supp. 2d 367, 370-71 (S.D.N.Y. 2005) (same); *Shehnaz v. Ashcroft*, No. 04 Civ. 2578 (DLC), 2004 WL 2378371, at *4 (S.D.N.Y. Oct. 25, 2004) (same); *cf. German v. Green*, No. 15 Civ. 4691 (WHP), 2015 WL 7184992, at *2 (S.D.N.Y. Oct. 30, 2015) ("Since [petitioner] mailed his petition to this Court while physically detained in New Jersey . . . this Court has no jurisdiction over this case."); *Freire v. Terry*, 756 F. Supp. 2d 585 (S.D.N.Y. 2010) (dismissing habeas petition for lack of jurisdiction, without prejudice to refiling in the district of confinement)

There is no basis for this Court to depart from this practice in this case. During the March 12 conference, the Court raised Justice Kennedy's concurrence in *Padilla*—and how it contemplated an exception to the district-of-confinement rule in the face of certain governmental misconduct. But this "proposed" exception—from a concurring opinion where the Justices joined the majority opinion in full—is not the law. *Padilla*, 542 U.S. at 436.

And in all events, nothing here would implicate the concerns behind Justice Kennedy's concurrence. As the above makes clear, Khalil was transferred from a processing facility in New York City to a detention facility in New Jersey. And, as explained too, the reasons that the petition was filed in this District were that (i) Khalil's wife was told by DHS officials that he was being taken to 26 Federal Plaza (a completely accurate statement), and (ii) the ICE website had not updated with accurate information at that hour (around 4am on a weekend). In stark contrast to this, Justice Kennedy's concurrence raises the prospect of a narrow exception "in an exceptional case" for prolonged, wrongful conduct—*i.e.*, a sustained governmental effort to evade habeas jurisdiction. *Id.* at 454 (Kennedy, J.). That is not this case here: Over the span of a day, Khalil

was processed and transferred, after an overnight stay, to a detention facility where he will be held for the foreseeable future; and where he can file a proper petition in that District (as discussed next). His detention is not unique in any way that would provide a basis for departure from the district-of-confinement/immediate custodian rule. *Id.* at 454; *see also id.* at 442.

This case thus provides no basis for deviating from the "the default rule . . . that the proper respondent is the warden of the facility where the prisoner is being held." *Id.* at 435 (opinion of the Court); *see also id.* at 447 ("Whenever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement."). Because the petitioner was detained in New Jersey at the time he filed this habeas petition, the Court lacks habeas jurisdiction over this matter and venue is not proper in the Southern District of New York.

B. The Court Should Either Dismiss or Transfer this Action

Because this Court lacks jurisdiction and is not the proper forum for this habeas action, the Court should either dismiss this action without prejudice or transfer the petition forthwith.[3] *See Shehnaz*, 2004 WL 2378371, at *4.

Should the Court consider transferring the petition, the proper venue is the Western District of Louisiana. *See Azize v. Bureau of Immigration and Naturalization Service*, No. 04 Civ. 9684 (SHS) (JCF), 2005 WL 3488333, at *1 (S.D.N.Y. Oct. 7, 2005) (noting that "*Padilla* controls," and transferring detention challenge to the Western District of Louisiana, which was the place of petitioner's "present physical custody"). In *Padilla*, the Supreme Court recognized a "limited" exception to the district-of-confinement rule, only "when the Government moves a habeas

[3] Should the Court transfer the case, to minimize any delay in having the case heard in the proper forum, the government respectfully requests that the Court waive the seven-day waiting period contained in Local Civil Rule 83.1.

petitioner after she *properly files* a petition naming her immediate custodian." *Id.* at 441 (emphasis added) (discussing *Ex Parte Endo*, 323 U.S. 283 (1944)). In that event, the court where jurisdiction originally vested can retain the case.

Here, the petitioner did not properly file a petition naming his immediate custodian because the habeas petition was filed in this District when Khalil was being detained in New Jersey. Accordingly, jurisdiction did not vest in the District of New Jersey because he did not file his petition in that court. Consequently, the District of New Jersey cannot "retain[]" habeas jurisdiction, as it never acquired it to begin with. *Id.*

A proper course is thus to transfer this case to the Western District of Louisiana—*i.e.*, the only district where Khalil could refile a petition today, if this Court were to dismiss his improper one. Put simply, "jurisdiction lies in only one district: the district of confinement." *Id.* at 443.

The District of New Jersey has been raised as a potential proper forum. Given that the District of New Jersey never acquired jurisdiction over this case, and does not have jurisdiction over Khalil's present custodian, it is difficult to see how that court could adjudicate this dispute, simply because Khalil was present there at the time of his original (improper) filing.[4]

Nevertheless, in the event the Court harbors doubt about whether New Jersey or Louisiana is the proper forum, what should be plain is that venue does not lie in this Court. And if this Court

[4] It is true that in at least two cases in this District, judges concluded that, notwithstanding (i) an improperly filed petition in this District because the petitioner was detained elsewhere, and (ii) a subsequent transfer of the petitioner after the habeas petition was filed to a different facility in another District, the case should be transferred to the District where the petitioner was detained at the moment the original habeas petition was filed. *See, e.g.*, *Alvarado v. Gillis*, No. 22 Civ. 10082 (JLR) (KHP), 2023 WL 5417157 (S.D.N.Y. Aug. 3, 2023), *rep. and rec. adopted* at ECF 16 (S.D.N.Y. Aug. 22, 2023); *Ali v. Dep't of Justice*, No. 19 Civ. 8645 (LGS), 2020 WL 3057383, at *2 (S.D.N.Y. June 9, 2020). In these cases, however, the government did not seek transfer to the district of confinement and therefore the court did not address the issue presented here.

is inclined to transfer this case to the District of New Jersey, the government respectfully preserves the right to argue there that transfer is proper to the Western District of Louisiana.

CONCLUSION

For the foregoing reasons, the Court should either dismiss this action or transfer the petition.

Dated: March 12, 2025

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAHMOUD KHALIL,

Petitioner,

v.

WILLIAM P. JOYCE, *et al.*,

Respondents.

No. 25 Civ. 1935 (JMF)

DECLARATION OF ACTING FIELD OFFICE DIRECTOR WILLIAM P. JOYCE

DECLARATION OF WILLIAM P. JOYCE

I, WILLIAM P. JOYCE, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am an Acting Field Office Director ("(A)FOD") in the New York City Field Office of Enforcement and Removal Operations ("ERO New York") at U.S. Immigration and Customs Enforcement ("ICE") within the U.S. Department of Homeland Security ("DHS").

2. I am aware that Mahmoud Khalil ("Khalil") has filed a Petition for a Writ for Habeas Corpus before this Court.

3. As the (A)FOD, I am responsible for, among other things, oversight of the civil immigration arrest and detention of aliens in the New York City area. In my role as the (A)FOD, I have access to records maintained in the ordinary course of business by ICE, including documentary records concerning ERO New York and the alien detainees who fall within its responsibility.

4. I provide this declaration based on my personal knowledge, reasonable inquiry, and information obtained from various records, systems, databases, other DHS employees, and information portals maintained and relied upon by DHS in the regular course of business.

5. Khalil is a native of Syria and citizen of Algeria who entered the United States under a F1 visa on December 20, 2022.

6. On November 16, 2024, Khalil obtained Lawful Permanent Resident ("LPR") status as the spouse of a United States citizen.

7. On March 8, 2025, Special Agents from the ICE Homeland Security Investigations ("HSI") Office of the Special Agent in Charge for the New York Area of Responsibility ("AOR") arrested Khalil at 8:35 p.m. in front of 195 Claremont Avenue in Manhattan, New York, for the purpose of placing him in removal proceedings. HSI transported him to 26 Federal Plaza at 8:44 p.m. While at 26 Federal Plaza, HSI served Khalil with a Notice to Appear ("NTA"), which charged him as removable pursuant to 8 U.S.C. § 1227(a)(4)(C)(i), in that the Secretary of State has reasonable grounds to believe that his presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States. ICE also served Khalil with a Notice of Custody Determination, notifying Khalil that his detention was governed by 8 U.S.C. § 1226(a) (immigration custody during removal proceedings).

8. Upon completion of initial processing, ICE transported Khalil to Elizabeth Detention Facility in Newark, New Jersey, where he was physically present and booked into the detention facility at 2:20 a.m. Eastern Standard Time (3:20 a.m. Eastern Daylight Time) on March 9, 2025.

9. At the time Khalil filed a petition for a writ of habeas corpus in the Southern District of New York, he was detained at Elizabeth Detention Facility in Newark, New Jersey.

10. Elizabeth Detention Facility in Newark, New Jersey has comprehensive overnight accommodations for detainees such as beds and 24-hour medical staff whereas 26 Federal Plaza is a Hold Room facility used for detention of individuals awaiting removal, transfer, EOIR hearings, medical treatment, intra-facility movement, or other processing into or out of a facility and it does not have beds or overnight medical staff.

11. On March 9, 2025, Khalil departed Elizabeth Detention Facility at 11:30 a.m. and was brought to the airport to be transported to the Central Louisiana ICE Processing Facility in Jena, Louisiana.

12. On March 10, 2025, Khalil was booked into the Central Louisiana ICE Processing Facility at 12:33 a.m., and he has been detained at that detention facility since that time.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ____ day of March 2025.

WILLIAM P JOYCE Digitally signed by WILLIAM P JOYCE
Date: 2025.03.12 21:53:13 -04'00'

William P. Joyce
Acting Field Office Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01935

AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT

INTRODUCTION

1. This case concerns the government's targeted, retaliatory detention and attempted removal of a student protestor because of his constitutionally protected speech. Petitioner Mahmoud Khalil is Palestinian, a lawful permanent resident of the United States, and a recent graduate student at Columbia University. Over the last year and a half, Mr. Khalil has been a mediator, an active participant in, and at times the public face of, student protests on Columbia's campus related to Israel's military campaign in Gaza. The Trump administration has made no secret of its opposition to those protests and has repeatedly threatened to weaponize immigration law to punish noncitizens who have participated.

2. On or before March 8, 2025, Respondents adopted a policy ("the Policy") to retaliate against and punish noncitizens like Mr. Khalil for their participation in protests concerning Israel's military campaign in Gaza. Under the Policy, Respondent Marco Rubio, the Secretary of State, would make determinations that the protestors' presence or activities in the United States would have potentially serious foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest. These determinations would then permit the Department of Homeland Security to seek to detain and deport the protestors.

3. Pursuant to the Policy, Respondent Rubio, the Secretary of State, purportedly made such a determination as to Mr. Khalil (the "Rubio Determination"). Secretary Rubio made this determination based on Mr. Khalil's lawful activity protected by the First Amendment: his participation in protests and his statements regarding Palestine and Israel.

4. Neither Secretary Rubio nor any other government official has alleged that Mr. Khalil has committed any crime or, indeed, broken any law whatsoever.

5. Pursuant to the Rubio Determination, the Department of Homeland Security decided to arrest Mr. Khalil, detain him, and place him in removal proceedings. On the evening of March 8, 2025, agents from the Department of Homeland Security ("DHS") arrested Mr. Khalil with no prior notice at his home and initiated proceedings to remove him from this country. After repeatedly transferring him across jurisdictions, the government ultimately detained Mr. Khalil in Louisiana, a thousand miles from his attorneys and his wife, who is a U.S. citizen and due to give birth next month.

6. During his arrest, the agents stated first that Mr. Khalil's "student visa"

was being "revoked." After learning that he was in fact a lawful permanent resident, they instead stated that status was being "revoked" too.

7. It later came to light that the Department of Homeland Security was charging Mr. Khalil with being removable based on Section 237(a)(4)(C)(i) of the Immigration and Nationality Act (the "Foreign Policy Ground") and the Rubio Determination.

8. The Rubio Determination and the government's subsequent actions, including its ongoing detention of Mr. Khalil in rural Louisiana, isolating him from his wife, community, and legal team, are plainly intended as retaliation and punishment for Mr. Khalil's protected speech and intended to silence, or at the very least restrict and chill, his speech now and in the future, all in violation of the First Amendment. Indeed, contemporaneous and subsequent statements by administration officials expressly characterize the invocation of this rarely used provision as punishment for Mr. Khalil's lawful and protected speech. The Rubio Determination and Mr. Khalil's unjustified detention also violate his due process rights. Finally, the government's unlawful Policy of targeting noncitizens for removal based on protected speech is arbitrary and capricious and contrary to law in violation of the Administrative Procedure Act, and viewpoint discriminatory in violation of the First Amendment. Accordingly, this Court should vacate the Rubio Determination and the Policy, order Mr. Khalil's immediate release, and set aside the government's unlawful policy.

PARTIES

9. Petitioner Mahmoud Khalil is a Palestinian, born in a refugee camp in Syria, who holds Algerian citizenship. He is married to a U.S. Citizen, a soon-to-be

father, a lawful permanent resident of the United States with no criminal history, and a Palestinian human rights activist on Columbia University's campus. In May 2025, he will graduate with a master's degree in public administration from the Columbia University's School of International and Public Affairs ("SIPA"), where he has been a student since January 2023. Mr. Khalil and his wife, who is eight months pregnant, live in Columbia's residential housing in New York City.

10. Respondent Donald J. Trump is named in his official capacity as the President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of State and Department of Homeland Security. Respondent Trump's address is the White House, 1600 Pennsylvania Ave. NW, Washington, D.C. 20500.

11. Respondent William P. Joyce is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a custodian of Petitioner. Respondent Joyce's address is New York ICE Field Office, 26 Federal Plaza, New York, New York 10278.

12. Respondent Caleb Vitello is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a custodian of the Petitioner.

His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

13. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

14. Respondent Marco Rubio is named in his official capacity as the United States Secretary of State. In this capacity, among other things, he has the authority to determine, based on "reasonable" grounds, that the "presence or activities" of a noncitizen "would have serious adverse foreign policy consequences for the United States." Following such a determination, DHS may initiate removal proceedings under 8 U.S.C. § 1227(a)(4)(C)(i) (INA § 237(a)(4)(C)(i).) In addition to his legal responsibilities under Section 237(a)(4)(C)(i), he routinely transacts business in the Southern District of New York and as such is a custodian of the Petitioner. His address is United States Department of State, 2201 C Street, NW, Washington, D.C. 20520.

15. Respondent Pamela Bondi is Attorney General of the United States. In this capacity, she routinely transacts business in the Southern District of New York; is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g) (2007); and as such is a custodian of the Petitioner.

Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.

JURISDICTION & VENUE

16. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241, Article I, § 9, cl. 2 (the Suspension Clause) and Article III of the U.S. Constitution, the Administrative Procedure Act, 5 U.S.C. § 701 et seq.; and 28 U.S.C. § 2201 (Declaratory Judgment).

17. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.

18. Venue is proper in the Southern District of New York Under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Petitioner is detained at the direction of Mr. Joyce, and a substantial part of the events giving rise to the claims and relevant facts occurred within this district. Moreover, according to the federal government's official records at the time of filing, Mr. Khalil was detained at 26 Federal Plaza at the time this habeas was initiated. The New York Field Office and Respondent Joyce directed Mr. Khalil's arrest and detention in New York, New York; told his counsel that he was being taken to 26 Federal Plaza in New York, New York; and entered his location on the ICE detainee locator as being in New York, New York. At the time of filing, the detainee locator stated that Mr. Khalil was held in New York, New York, information upon which his counsel reasonably relied to identify his location. To the extent the New York Field Office and Respondent

Joyce moved Mr. Khalil across state lines to New Jersey for a transitory period of time shortly before his habeas was filed, the New York Field Office prevented Mr. Khalil from communicating that information to his counsel in bad faith. Moreover, the New York Field Office then brought Mr. Khalil back across state lines to New York before then transferring him, after the filing of the instant petition, to Louisiana.

FACTS

Mr. Khalil's Background

19. Petitioner Mahmoud Khalil is Palestinian, but he grew up in a Palestinian refugee camp in Syria because his grandparents were forcibly removed from their ancestral home in Tiberias, Palestine. When war broke out in Syria, his family was again displaced and are now dispersed throughout Europe and West Asia.

20. Mr. Khalil entered the United States on a student visa in or around December 2022 to pursue a Master's degree in Public Administration from the Columbia University's School of International and Public Affairs ("SIPA"). Mr. Khalil completed his program in December 2024, and has an anticipated graduation date of May 2025.

21. Mr. Khalil became a Lawful Permanent Resident in 2024. Mr. Khalil and his wife, a U.S. citizen, are expecting their first child next month, in April 2025. Together, they live in an apartment building owned and operated by Columbia University.

Mr. Khalil's Student Activism and Speech on Matters of Public Concern

22. As a Palestinian, Mr. Khalil has felt compelled to be an outspoken

advocate for Palestinian human rights and, since October 2023, has spoken repeatedly about Israel's military operation in Gaza. Mr. Khalil has called Israel's actions in Gaza a genocide and criticized Columbia University for, in his view, financing and in other ways facilitating such violence. Mr. Khalil is committed to peaceful protest and being a voice for his people.

23. That commitment has taken on many forms. For example, in April 2023, Mr. Khalil became co-president of the Palestine Working Group at the School of International and Public Affairs (SIPA), where he helped organize educational events and lectures on Palestine. In the fall of 2023, Mr. Khalil became president of the Palestinian Student Society at Columbia (DAR), which "serves to engage with and celebrate Palestinian culture, history, and identity."

24. Additionally, Mr. Khalil has acted as a mediator and negotiator, facilitating dialogue between Columbia University's administration and its students. In this role, Mr. Khalil has advocated for his peers to be treated humanely and fairly by the university, while helping to ensure student safety and the smooth functioning of the university. For example, in the Spring of 2024, Mr. Khalil facilitated negotiations between members of the Gaza Solidarity Encampment[1] and the university administration. Indeed, Mr. Khalil was approached to take on this role because of his prior work at a British Embassy overseas, an internship with the United Nations in New York, as well his established relationships with the university administration.

25. Mr. Khalil stated in a CNN interview in Spring of 2024 that "as a

[1] *See* Isha Banerjee, *Timeline of the Gaza Solidarity Encampment*, Columbia Spectator (May 2, 2024), *available at* https://www.columbiaspectator.com/news/2024/05/02/timeline-the-gaza-solidarity-encampment/.

Palestinian student, I believe that the liberation of the Palestinian people and the Jewish people are intertwined and go hand-by-hand and you cannot achieve one without the other." Mr. Khalil also explained that the student movement "is a movement for social justice and freedom and equality for everyone."[2]

26. Mr. Khalil's prominence as an outspoken student activist, along with Columbia University's position as a national focal point of student protests against Israel's military campaign in Gaza over the past year and a half, has propelled Mr. Khalil into the public eye. His visibility has been further amplified through his continued participation in interviews with national and international media outlets, including the BBC and CNN, as well as local press conferences.

27. Mr. Khalil's speech regarding international law, the obligations that the U.S. and Columbia University have under that law, the human rights of the Palestinian people, and related matters is speech protected by the First Amendment, including because it is speech on matters of public concern and is political speech at the core of the protection of the First Amendment.

28. Like many student activists advocating for Palestinian rights, Mr. Khalil has endured immense scrutiny and personal attacks by private actors, including doxing and harassment. But until recently, he understood that because of the First Amendment, the government would not be able to retaliate against or punish him for his speech, or silence him by locking him up or banishing him from the country, even if powerful

[2] Chelsea Bailey, *Who is Mahmoud Khalil? Palestinian activist detained by ICE over Columbia University protests*, CNN (March 11, 2025), *available at*: https://www.cnn.com/2025/03/11/us/mahmoud-khalil-columbia-ice-green-card-hnk/index.html. Chelsea Bailey, *Who is Mahmoud Khalil? Palestinian activist detained by ICE over Columbia University protests*, CNN, *available at*: https://www.cnn.com/2025/03/11/us/mahmoud-khalil-columbia-ice-green-card-hnk/index.html.

government officials disagreed with what he had to say.

The Federal Government's Hostile Campaign Against Palestinian Rights Advocacy: A Concerted Effort to Silence Protected Political Speech

29. In the fall of 2023, students from diverse racial, ethnic, religious, and socioeconomic backgrounds—including Mr. Khalil—began to mobilize on their campuses, many criticizing what they characterized as their universities' and the United States government's unwavering support for Israel's policies. These protests included Jewish students who sought to convey the message that such policies were "not in our name." In response, opponents of these students' messages—including President Donald J. Trump—frequently characterized peaceful protest and any speech in favor of Palestinian rights as inherently supportive of Hamas and antisemitic. For example, in several instances, he President Trump described a Jewish lawmaker who had criticized Israeli Prime Minister Benjamin Netanyahu as "a proud member of Hamas" and "a Palestinian," using "Palestinian" as a slur.[3]

30. During his campaign for re-election, President Trump repeatedly vowed to revoke the visas of international students engaged in pro-Palestinian protests or who publicly criticized Israel's actions.

31. For example, at a rally in Las Vegas on October 28, 2023, Trump pledged to "terminate the visas of all of those Hamas sympathizers, and we'll get them off our

[3] Niha Masih, *Trump draws condemnation for using 'Palestinian' as a slur against Schumer*, Washington Post (March 13, 2025), https://www.washingtonpost.com/politics/2025/03/13/trump-schumer-palestinian-slur/. Indeed, in his first term, President Trump also issued Executive Order 13899, titled "Combating Anti-Semitism," which, among other things, adopted a definition of antisemitism that includes plainly protected criticism of Israel and its policies. *See* 84 Fed. Reg. 68779 (Dec. 11, 2019) (including as an example of antisemitism "drawing comparisons of contemporary Israeli policy to that of the Nazis").

college campuses, out of our cities, and get them the hell out of our country."[4]

32. While the Gaza Solidarity encampments at college campuses took place in the Spring of 2024, Trump promised campaign donors that he would deport pro-Palestinian student demonstrators to get them to "behave." Upon information and belief, at a round table event in New York, he stated, "One thing I do is, any student that protests, I throw them out of the country. You know, there are a lot of foreign students. As soon as they hear that, they're going to behave."[5]

33. Similarly, in a social media post on his official X account on October 15, 2023, then-Senator Marco Rubio, referring to ongoing student protests in support of Palestinians, stated the U.S. should "cancel the visa of every foreign national out there supporting Hamas and get them out of America."[6]

President Trump Issues Executive Orders to Target Speech of Noncitizen Protestors

34. Shortly after assuming office on January 20, 2025, President Trump signed two executive orders aimed at fulfilling the above campaign promises: Executive Order 14161, titled "Protecting the United States from Foreign Terrorists and other National Security and Public Safety Threats," signed on January 20, 2025, and Executive Order 14188, titled "Additional Measures to Combat Anti-Semitism," signed on January

[4] Andrea Shalal and Susan Heavey, *Trump administration to cancel student visas of pro-Palestinian protesters*, Reuters (Jan. 29, 2025), available at: https://www.reuters.com/world/us/trump-administration-cancel-student-visas-all-hamas-sympathizers-white-house-2025-01-29/.29, 2025), available at: https://www.reuters.com/world/us/trump-administration-cancel-student-visas-all-hamas-sympathizers-white-house-2025-01-29/

[5] *Trump told donors he will crush pro-Palestinian protestors*, Washington Post, available at: https://www.washingtonpost.com/politics/2024/05/27/trump-israel-gaza-policy-donors/.

[6] Twitter, *available at*: https://x.com/marcorubio/status/1713652113098539120. In the CNN interview he included as part of the same post, then-Senator Rubio stated that "people marching at universities" were "supporters of Hamas" and "need to go."

29, 2025.

35. Executive Order 14161 states that it is the United States' policy to "protect its citizens" from noncitizens who "espouse hateful ideology." It further articulates the administration's desire to target noncitizens who "advocate for, aid, or support designated foreign terrorists and other threats to our national security," those who hold "hateful" views, and those who "bear hostile attitudes toward [America's] citizens, culture, government, institutions, or founding principles." The order's broad framing of "hostile attitudes" towards the American government could encompass any form of political dissent, including Palestinian rights advocacy.

36. Executive Order 14188 states that, in order to "combat campus anti-Semitism," the administration will target for investigation "post-October 7, 2023, campus anti-Semitism." The order adopts a definition of antisemitism that includes constitutionally protected criticism of the Israeli government and its policies.[7] In a fact sheet accompanying Executive Order 14188, the White House described the measure as "forceful and unprecedented," specifically targeting "leftist, anti-American colleges and universities." It framed the order as a "promise" to "deport Hamas sympathizers and revoke student visas," sending a clear message to all "resident aliens who participated in pro-jihadist protests" that the federal government "will find you… and deport you."

The Government Responds to Groups Identifying Noncitizen Protestors for Deportation By Adopting the Unlawful Policy

37. In response to these Executive Orders and as part of an escalating attack

[7] *See supra* note 3 (describing definitions adopted in Executive Order 13899, titled "Combating Anti-Semitism," 84 Fed. Reg. 68779 (Dec. 11, 2019), and reaffirmed in Executive Order 14188).

on the core political speech at issue, prominent groups at Columbia University opposed to Palestinian rights protests began publicizing names of individuals they wanted the government to deport. Specifically, these groups compiled lists of students who had engaged in Palestine-related advocacy and, upon information and belief, submitted these lists to ICE's tip line.[8]

38. For example, Betar USA—a self-described "Zionist activist organization"[9]—has published lists of Columbia student protestors, urging ICE to deport them under the executive orders. In a statement to a media outlet, Betar stated that it had "already submitted names of hundreds of terror supporters to the Trump administration."[10]

39. Betar identified Mr. Khalil, specifically, as one of its targets for deportation, including him on their "deport list." On January 29, the organization posted on social media that ICE is "aware of his home address and whereabouts" and confirmed that they "have provided all his information to multiple contacts."[11]

40. Media reports in March of this year described widespread fear of retaliation for pro-Palestine speech among noncitizen students, noting that the executive

[8] https://theintercept.com/2025/02/15/columbia-alumni-israel-whatsapp-deport-gaza-protesters/

[9] https://betarus.org/; https://www.middleeasteye.net/explainers/betar-who-is-far-right-jewish-american-group-blood-gaza

[10] Nicholas Liu, *A pro-Israel group says it gave the Trump administration a list of students to deport*, Salon.com (Jan. 31, 2025), *available at* https://www.salon.com/2025/01/31/pledged-to-deport-pro-palestine--and-a-pro-israel-group-has-already-made-a-list/.

[11] https://x.com/Betar_USA/status/1884796686020550930. This social media post falsely accused Mr. Khalil of saying inflammatory statements. *See id. See also* https://zeteo.com/p/scoop-emails-show-mahmoud-khalil-ask-columbia-protection-ice

orders "already appear to be chilling political activism."[12]

41. Then, the week beginning Monday, March 3, 2025, ICE was spotted on Columbia's campus, increasing fears and further chilling students' ability to speak freely.

42. That same week, pro-Israel activists reportedly met with members of Congress as well as Secretary of State Rubio, specifically seeking Mr. Khalil's deportation.[13]

43. On March 7, 2025, Mr. Khalil emailed the Columbia University interim president writing that, "I haven't been able to sleep, fearing that ICE or a dangerous individual might come to my home."[14]

44. On or before March 8, 2025, Respondents adopted the Policy by which they would retaliate against and punish noncitizens like Mr. Khalil for their participation in protests concerning Israel's military campaign in Gaza. Under the Policy, Respondent Rubio, the Secretary of State, would make determinations that the protestors' presence or activities in the United States would have potentially serious foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest. These determinations would then permit the Department of Homeland Security to seek to detain and deport the protestors

DHS Arrests Mr. Khalil as a First Implementation of the Policy and a "Blueprint" for Future Investigations and Deportations of Prominent Student Activists

45. On the evening of March 8, 2025, at approximately 8:30 p.m., Mr.

[12] https://www.npr.org/2025/03/03/nx-s1-5307187/trump-executive-order-visa-pro-palestinian-foreign-students-protests-hamas-hezbollah-israel
[13] https://forward.com/news/703018/mahmoud-khalil-columbia-cuad-ice/
[14] https://zeteo.com/p/scoop-emails-show-mahmoud-khalil-ask-columbia-protection-ice

Khalil and his wife were returning to their apartment from an Iftar[15] dinner at a friend's home.

46. When Mr. Khalil and his wife arrived at their apartment building, two individuals in plain clothes followed them into the lobby of the apartment building, which is owned and operated by Columbia University.

47. The individuals approached Mr. Khalil and asked, "Are you Mahmoud Khalil?" When Mr. Khalil answered in the affirmative, the men identified themselves as being with the Department of Homeland Security ("DHS") and announced that they had to take Mr. Khalil into custody. Mr. Khalil heard them announce on a radio, "he's here," at which point Mr. Khalil noticed two other individuals approach from inside of the building. Based on their location, they would have required a key or otherwise been given permission to enter the building.

48. Mr. Khalil asked whether the agents had a warrant and they said that they had one on the phone and that they would show it to him. However, the agents never showed him a warrant. Mr. Khalil asked why they were here and they asserted that Mr. Khalil's visa was revoked. Mr. Khalil explained that he has a green card. At this point, the agents were creating a barrier between Mr. Khalil and his wife. The agents threatened Mr. Khalil's wife that she would also be arrested if she did not comply.

49. Mr. Khalil called his attorney, Amy Greer. Attorney Greer spoke with an agent who identified himself as Special Agent Elvin Hernandez. Agent Hernandez stated

[15] Iftar is the name of the evening meal eaten at sunset by Muslims to break their fast during the holy month of Ramadan.

they had an administrative warrant and that Mr. Khalil's student visa had been revoked by the U.S. Department of State and therefore they were detaining him. Despite several requests by Mr. Khalil to see the warrant, the agents never showed him the administrative warrant.

50. Mr. Khalil's wife then went to the apartment to retrieve Mr. Khalil's immigration documents. She saw another individual in plain clothes on their floor of the apartment building holding a radio.

51. Attorney Greer advised Agent Hernandez that Mr. Khalil is a lawful permanent resident and has the right to due process. Agent Hernandez responded that the Department of State had revoked Mr. Khalil's green card, too, and that he would be brought in front of an immigration judge. Agent Hernandez stated that he would be taking Mr. Khalil to 26 Federal Plaza, the location of the ICE Field Office in Manhattan, New York. When Attorney Greer began to ask more questions, Agent Hernandez hung up on her. When Mr. Khalil requested to call her back, Agent Hernandez refused to allow Mr. Khalil to speak to his attorney again.

52. Mr. Khalil's wife presented the DHS agents with documents confirming Mr. Khalil's status as a lawful permanent resident, handing them to an agent who was speaking on the phone. The agent looked confused when he saw the documents and said, "He has a green card" to the individual with whom he was on the phone. Mr. Khalil's wife heard the agent repeat that they were being ordered to bring Mr. Khalil in anyway.

53. The agents then handcuffed Mr. Khalil and brought him outside where

there were multiple unmarked vehicles waiting. Mr. Khalil's wife asked for the names of the agents, their contact information, and how to reach them to follow up on her husband's detention, but they only advised her that Mr. Khalil would be taken to 26 Federal Plaza and otherwise refused to speak with her. They left her no business card or any information at all as to how to find out where her husband would be taken, on what grounds, or who she could contact.

54. The night of the arrest, Attorney Greer checked the ICE Detainee Locator ("ICE Locator") several times to confirm her client's location. She first checked the locator at 10:00 p.m. on Saturday, March 8th and found that Mr. Khalil was not yet listed in the system. She checked again at 1:35 a.m. on Sunday, March 9th, and saw that Mr. Khalil was listed as being in custody in New York. The ICE Locator entry also included an instruction to contact the New York field office. At 4:29 a.m. on Sunday, March 9,[16] Attorney Greer checked the locator once more, and the information remained the same. Shortly thereafter, at around 4:40 a.m. on Sunday, March 9th, Attorney Greer filed the original habeas corpus petition in in this case (ECF 2) in the Southern District of New York, based on information and belief that ICE was still holding Mr. Khalil at 26 Federal Plaza. During this time, Mr. Khalil made continuous requests to contact his attorney, including when agents asked him to sign several documents, but he was repeatedly denied.

55. The next morning, around 8:30 a.m. on Sunday, March 9, the ICE locator indicated that Mr. Khalil was still in New York. Sometime after 9 a.m. on Sunday, the

[16] Daylight Saving time began on March 9, meaning that clocks moved forward from 1:59am to 3am over the course of these events.

ICE locator changed to say that Mahmoud was detained in Elizabeth, New Jersey, at the Elizabeth Contract Detention Facility, a detention center privately owned and operated by the corporation CoreCivic. At 9:29 am, Mr. Khalil's immigration attorney attempted to call the Elizabeth facility twice, but no one answered. Around 11:20 a.m., Mahmoud's wife went to the Elizabeth Detention Center to see him, but she was told that Mahmoud was not showing up in the system.

56. At 1:47 p.m. on Sunday, March 9, after counsel had submitted a G-28 and sent a 1:22 p.m. email to ICE asking to be connected with him immediately, ICE responded by email informing that Mr. Khalil was in the process of being transferred to a detention facility within the New Orleans ERO Field Office, over 1,000 miles away.[17] Counsel emailed the U.S. Attorney's Office for the Southern District of New York, which confirmed that Mr. Khalil was en route to Louisiana. Counsel requested Mr. Khalil's immediate return, but was told that ICE would not consent to his return absent a court order. When Mr. Khalil's counsel attempted to schedule a telephone call with Mr. Khalil—a process that typically occurs the same day or the next day in New York—authorities in the Louisiana ICE detention facility offered a date ten days away.

57. Mr. Khalil's wife, who is 8-months pregnant, is unable to travel to Louisiana to see Mr. Khalil.

Mr. Khalil's Experience being Transferred Repeatedly and in Detention in Louisiana

58. While at 26 Federal Plaza on the night of March 8, the ICE agents took Mr.

[17] According to the copy of the NTA that Mr. Khalil's Counsel received on March 11, ICE was already preparing to transfer Mr. Khalil to the Central Louisiana ICE Processing Center while he was still detained at 26 Federal Plaza a few hours after his arrest.

Khalil's biometrics. As they did so, Mr. Khalil saw an agent approach Agent Hernandez and say, "the White House is requesting an update."

59. Mr. Khalil was subsequently presented with several documents and asked to sign them, including a Notice to Appear ("NTA") for removal proceedings and a Custody Determination document. Mr. Khalil reviewed the NTA and Custody Determination and, because he did not fully understand the implications of signing them, he requested to speak with his lawyer before doing so. The ICE agent denied his request, prompting Mr. Khalil to refuse to sign.

60. The copy of the NTA states "YOU ARE ORDERED to appear before the immigration judge of the United States Department of Justice at: 830 Pinehill Rd, Jena, LA, 71342, LASALLE DETENTION FACILITY on March 27, 2025 at 8:30 AM to show why you should not be removed from the United States based on the charges set forth above." The copy is dated March 9, 2025, timestamped at 12:40 a.m., and signed by Supervisory Special Agent Timothy Moran at 26 Federal Plaza, New York, NY.

61. At some point in the night, Mr. Khalil was transported in handcuffs and shackles to Elizabeth Detention Center in New Jersey ("Elizabeth") but was not allowed to take his belongings—his shoes, jacket, and belt—with him. When Mr. Khalil asked about his belongings, he was told that he would be coming back to 26 Federal Plaza tomorrow, but that he could not spend the night there.

62. While at Elizabeth, Mr. Khalil again requested to speak with his lawyer, to which the officers responded that he would be allowed to do so after he was processed. Mr. Khalil spent the night in the cold waiting room for processing. Mr. Khalil requested a blanket but was denied. The next morning, as Mr. Khalil reached the front of the line to be

processed, he was informed that processing would not be completed because ICE was coming from New York to transport him.

63. Around 12 p.m., ICE officers—one of whom Mr. Khalil believes he recognized from the night before at 26 Federal Plaza—handcuffed and shackled Mr. Khalil and placed him in a van. The van had Mr. Khalil's belongings inside that were kept in 26 Federal Plaza. Mr. Khalil was told he was then going to JFK without further clarification.

64. At JFK, he was transferred to other government agents. None of the agents identified themselves or provided their badge information. At one point, Mr. Khalil noticed one of the agents received a text message instructing not to let his escort, Mr. Khalil, use his phone.

65. Mr. Khalil took an American Airlines flight from JFK around 2:45 p.m. to Dallas, Texas. During that flight, Mr. Khalil saw one of the officers receive a text message that instructed him not to let Mr. Khalil have a phone call.

66. Mr. Khalil arrived in Dallas, Texas around 5:30 p.m. and remained there until 9:30 p.m., at which time he was placed on another American Airlines flight—this time to Alexandria, Louisiana.

67. Mr. Khalil arrived in in Alexandria, Louisiana around 1:00 a.m. on Monday March 10. Upon his arrival, he saw between about four to five agents waiting for him. He was again shackled and placed in handcuffs. He was then placed in an ICE car, driven for about a minute, and then placed in a police car. The agents drove him to Jena, Louisiana.

68. Throughout this process, Mr. Khalil felt as though he was being kidnapped. He was reminded of prior experience fleeing arbitrary detention in Syria and

forced disappearance of his friends in Syria in 2013. It was shortly after this that Mr. Khalil left Syria.

69. At no time throughout this process did any of the agents identify themselves.

70. Mr. Khalil then arrived at the Louisiana Detention Facility, where he was processed again. During his initial medical examination in Elizabeth, Mr. Khalil notified agents that he has an ulcer and needs to take his medication for it every day. Despite this, he was not given access to his medication until Tuesday evening. He sleeps in a bunker without a pillow or blanket. He continues to worry about the wellbeing of 8-month pregnant wife and what will happen to them. He's also very concerned about missing the birth of his first child. In fact, Mr. Khalil turned down job offers that would have required him to miss the birth of his child. Throughout his wife's pregnancy, Mr. Khalil has been present for her doctor appointments.

71. Mr. Khalil also recently secured a coveted job position after four months of searching, and was scheduled to start this role in April of this year. In addition to fearing the loss of his expected salary, Mr. Khalil and his wife planned to obtain medical insurance through this role in order to cover health care costs, including for the birth and care of their expected child. Mr. Khalil continues to worry about the loss of income and health care, especially so close to the expected birth of his child.

72. It is very important to Mr. Khalil to be able to continue his protected political speech, advocating and protesting for the rights of Palestinians—both domestically and abroad. Indeed, Mr. Khalil was recently invited to go to Copenhagen to

attend the premiere of a documentary in which he is featured and to speak on the panel after the premiere.

The Government Confirms that Mr. Khalil was Targeted for Deportation Because of His Protected Political Speech, in the First Implementation of their Policy

73. On March 9, President Trump issued a statement on Truth Social applauding ICE for arresting Mr. Khalil, whom he described as a "Radical Foreign Pro-Hamas Student on the campus of Columbia University." The President warned that Mr. Khalil's arrest was "the first of many to come," declaring that his administration would not tolerate "students at Columbia and other universities across the country who have engaged in pro-terrorist, anti-Semitic, anti-American activity," while promising to "find, apprehend, and deport these terrorist sympathizers from our country."[18]

74. The White House reposted President Trump's statement on the social media platform X, accompanied by a mug-style graphic featuring an image of Mr. Khalil. Surrounding the photo were the words "ARRESTED BY ICE ON MARCH 9, 2025" and "LED ACTIVITIES ALIGNED TO HAMAS." The White House caption included the phrase "SHALOM, MAHMOUD" before quoting the President's statement.[19]

75. Secretary of State Marco Rubio stated, "We will be revoking the visas and/or green cards of Hamas supporters in America so they can be deported."[20]

76. The following day, the Department of Homeland Security issued a statement through its social media account, X, confirming Mr. Khalil's arrest by ICE was

[18] https://truthsocial.com/@realDonaldTrump/posts/114139222625284782
[19] https://x.com/WhiteHouse/status/1899151926777749618
[20] https://x.com/marcorubio/status/1898858967532441945

carried out "in support of President Trump's executive orders prohibiting anti-Semitism, and in coordination with the Department of State." The statement also accused Mr. Khalil of having "led activities aligned to Hamas, a designated terrorist organization" and asserted that both "ICE and the Department of State are committed to enforcing President Trump's executive orders and to protecting U.S. national security."[21]

77. In a statement to The Free Press on March 10, a White House official stated that Mr. Khalil was a 'threat to the foreign policy and national security interests of the United States' and that the federal government's "basis" for targeting Mr. Khalil was being used "as a blueprint for investigations against other students."[22]

78. On March 11, in response to an inquiry from the NY Times regarding Mr. Khalil's arrest, a spokesperson for the administration reportedly stated that "United States' foreign policy includes combating antisemitism across the globe and that Mr. Khalil's residency in the nation undermines that policy objective."[23]

79. At a White House Press Briefing on March 11, Press Secretary Karoline Leavitt responded to questions about the arrest, asserting that the Secretary of State has "the right to revoke a green card or a visa for individuals who serve or are adversarial to the foreign policy and national security interest" and accusing Mr. Khalil of "siding with terrorists."[24]

80. In a press conference regarding this case on March 12, 2025, Secretary of

[21] https://x.com/DHSgov/status/1898908955675357314; https://www.columbiaspectator.com/news/2025/03/10/department-of-homeland-security-confirms-arrest-of-palestinian-activist-mahmoud-khalil-sipa-24/

[22] https://www.thefp.com/p/the-ice-detention-of-a-columbia-student

[23] https://archive.ph/rD4sk#selection-1147.0-1159.428

[24] https://www.c-span.org/program/white-house-event/white-house-daily-briefing/657022 (timestamp 10:16)

State Rubio stated, "if you tell us that you are in favor of a group like this [Hamas], and if you tell us . . . I intend to come to your country as a student, and rile up all kinds of anti-Jewish . . . anti-Semitic activities," and "if you end up having a green card . . . we're going to kick you out."[25]

81. On March 13, 2025, when asked to justify the government's actions, Troy Edgar, the Deputy Secretary of DHS, did not dispute that Mr. Khalil had not broken any laws and instead asserted that he was "agitating and supporting Hamas" by "put[ting] himself in the middle of the process of basically pro-Palestinian activity." When asked directly if "any criticism of the Israeli government [is] a deportable offense," if "any criticism of the United States [is] a deportable offense," if "any criticism of the government [is] a deportable offense," and if "protesting [is] a deportable offense," Deputy Secretary Edgar did not dispute any of those statements.[26]

DHS Invokes the INA's Foreign Policy Ground against Mr. Khalil, in violation of the INA and the Constitution

82. Mr. Khalil's counsel did not receive DHS's asserted legal basis for his arrest and detention until the afternoon of Tuesday, March 11, pursuant to an agreement with counsel for the government. His NTA states "the Secretary of State has determined that your presence or activities in the United States would have serious adverse foreign policy consequences for the United States." Citing Section 237(a)(4)(C)(i) of the Immigration and Nationality Act (the Foreign Policy Ground), the NTA further states "the Secretary of State has reasonable ground to believe that your presence or activities in the

[25] http://state.gov/secretary-of-state-marco-rubio-remarks-to-press/
[26] NPR, *Morning Edition* (March 13, 2025), *available at* https://www.npr.org/2025/03/13/nx-s1-5326015/mahmoud-khalil-deportation-arrests-trump.

United States would have potentially serious adverse foreign policy consequences for the United States."

83. The Rubio Determination was exclusively motivated by Mr. Khalil's lawful, constitutionally-protected past, current, or expected beliefs, statements, or associations. Public statements by government officials, up to and including the President and Secretary of State, establish that Respondents are punishing, detaining, and attempting to silence Mr. Khalil because of his constitutionally-protected past, current, or expected beliefs, statements, or associations.

84. The Foreign Policy Bar expressly prohibits the Secretary of State from issuing a policy to exclude or condition entry based on a noncitizen's "past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States," unless the Secretary personally certifies to Congress that admitting the individual would compromise a compelling U.S. foreign policy interest. *See id.* (citing INA § 212(a)(3)(C)(iii)). Upon information and belief, Secretary Marco Rubio has not provided any certifications regarding a determination under the Foreign Policy Ground concerning Mr. Khalil to the chairs of the House Foreign Affairs, Senate Foreign Relations, and House and Senate Judiciary Committees, as required by 8 U.S.C. § 1182(a)(3)(C)(iv).

85. Nor could he. Legislative history reveals that Congress intended to limit the Executive's authority to exclude noncitizens based on their speech or beliefs. When the Moynihan Amendment was passed in 1987, the Senate Committee warned that "[f]or many years, the United States has embarrassed itself by excluding prominent foreigners

from visiting the United States solely because of their political beliefs." The amendment was intended "to take away the executive branch's authority to deny visas to foreigners solely because of the foreigner's political beliefs or because of his anticipated speech in the United States," while affirming "the principles of the First Amendment." (S. Rep. No. 100–75 at 11, 100th Cong., 1st Sess. (1987), reprinted in 133 Cong. Rec. S2326 (1987)).

86. Congress further evinced its intent to restrict the Executive's ability to exclude foreign speakers by asserting that such exclusions should not be based solely on "the possible content of an alien's speech in this country," that the Secretary's authority to determine that entry would compromise foreign policy interests should be used "sparingly and not merely because there is a likelihood that an alien will make critical remarks about the United States or its policies," and that the "compelling foreign policy interest" standard should be applied strictly. (H.R. Conf. Rep. No. 101-955, 101st Cong., 2nd Sess. (1990), reprinted in 1990 U.S.C.C.A.N. 6784, 6794).

87. In the decades since the Foreign Policy Ground was enacted, it appears to have been rarely invoked and reserved for cases involving high-ranking government officials or an alleged terrorist removable on other grounds and subject to high-profile prosecutions in their country of origin. It does not appear to have ever been applied to any person for engaging in First Amendment protected speech.

CLAIMS FOR RELIEF

FIRST CLAIM
Violation of the First Amendment to the United States Constitution

88. Petitioner repeats and re-alleges the allegations contained in the preceding

paragraphs of this Complaint-Petition as if fully set forth herein. The First Amendment to the United States Constitution provides in part that "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances." U.S. Const. Amend. I. The First Amendment protects past, present, and future speech, including speech by noncitizens.

89. The Rubio Determination and Policy Mr. Khalil's targeting, arrest, transfer, and ongoing detention violate the First Amendment because they:

- retaliate against and punish Mr. Khalil for his past protected speech;
- prevent him from speaking now (through detention);
- attempt to chill (through past punishment and ongoing threat) or prevent (through eventual removal) his future speech in the United States;
- deprive audiences of his present and future speech on matters of public concern; and
- chill other individuals from expressing views sympathetic to Palestinians.

90. These speech-related consequences are not side effects of an action with some other purpose; they are, instead, the point of the Determination and the government's subsequent actions against Mr. Khalil and are, in government officials' own telling, the result of their disagreement with his protected speech and the viewpoint it expresses.

SECOND CLAIM
Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

91. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

92. The Constitution establishes due process rights for "all 'persons'

within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

93. The government's detention of Mr. Khalil is wholly unjustified. *See Black*, F.4th at 157 (collecting cases stating that "[w]here an individual's liberty is at stake, the Supreme Court has consistently required the government to justify continued detention by clear and convincing evidence."). The government has not demonstrated that Mr. Khalil—a husband to a U.S. citizen, soon-to-be father to a U.S. citizen, and lawful permanent resident with no criminal history—needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Mr. Khalil cannot be safely released back to his family.

94. Moreover, Mr. Khalil's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Zadvydas*, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). The sole basis of his detention—the Foreign Policy Ground and the Rubio Determination—are unlawful for the reasons discussed *supra*. Here, there is every indication that his "detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring).

95. The Policy and the Rubio Determination also violate Mr. Khalil's right to due process. The government's policy of Foreign Policy Ground making such

determinations concerning people like Mr. Khalil—lawful permanent residents, living peacefully in the country who engage in speech advocating for Palestinian rights—is unconstitutionally vague.

THIRD CLAIM

Violation of the Administrative Procedure Act and the *Accardi* Doctrine

96. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein. The government has adopted a policy of targeting noncitizens for removal based on First Amendment protected speech advocating for Palestinian rights. This policy is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C.A. § 706 (2)(A), (B), (C), and violates the *Accardi* doctrine and federal agencies' own rules, *see Accardi v. Shaughnessy*, 347 U.S. 260 (1954). In addition, the Secretary of State's determination that Mr. Khalil's "presence or activities would potentially have serious adverse foreign policy consequences for the United States" and "would compromise a compelling United States foreign policy interest" is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C.A. § 706 (2)(A), (B), (C).

FOURTH CLAIM

Release on Bail Pending Adjudication

97. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

98. This Court has the "inherent authority" to grant bail to habeas petitioners

like Mr. Khalil. *See Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001) (holding that federal courts have inherent authority to set bail pending the adjudication of a habeas petition when the petition has raised substantial claims and extraordinary circumstances "make the grant of bail necessary to make the habeas remedy effective"). In considering a petitioner's fitness for bail, courts assess (1) "whether the petition raises substantial claims" and (2) "whether extraordinary circumstances exist that make the grant of bail necessary to make the remedy effective." *Elkimya v. Dep't of Homeland Sec.*, 484 F.3d 151, 154 (2d Cir. 2007) (cleaned up).

99. This petition raises numerous substantial constitutional and statutory claims challenging Mr. Khalil's retaliatory detention. As for the second factor, extraordinary circumstances exist here that make Mr. Khalil's release necessary to make the remedy effective. As long as Mr. Khalil remains in ICE custody, he will be prevented from speaking freely and openly—instead, his speech is severely curtailed and controlled by DHS. And it is effectively impossible for him to speak to the broader public at all. His detention is also preventing him from adequately litigating his removal proceedings, which the government has chosen to justify only in the press. Moreover, Mr. Khalil's wife is eight months pregnant with their first child. Not only is she unable to visit him where ICE has chosen to detain him, in Louisiana, but his continued detention prevents him from caring for her at a critical time and will cause him to miss the birth of his first child. *See, e.g.*, *S.N.C. v. Sessions*, No. 18-CV-7680, 2018 WL 6175902, at *6 (S.D.N.Y. Nov. 26, 2018) (ordering immediate release of petitioner pending consideration of her claim that her abrupt deportation would violate her due process right to an opportunity to be heard on her application and in order to care for her children).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Vacate and set aside Respondents' unlawful Policy of targeting noncitizens for removal based on First Amendment protected speech advocating for Palestinian rights;

3) Vacate and set aside the Rubio Determination;

4) Enjoin Respondents from transferring the Petitioner from the jurisdiction of this District pending these proceedings;

5) Order the immediate release of Petitioner pending these proceedings;

6) Order the release of Petitioner;

7) Declare that Respondents' actions to arrest and detain Petitioner violate the First Amendment and the Due Process Clause of the Fifth Amendment;

8) Award reasonable attorneys' fees and costs for this action; and

9) Grant such further relief as the Court deems just and proper.

Dated: March 13, 2025
New York, New York

/s/ *Amy Belsher*
Amy Belsher
Robert Hodgson
Veronica Salama
Molly Biklen
New York Civil Liberties Union Foundation
125 Broad Street, 19th Floor

New York, N.Y. 10004
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**Application for admission* pro hac vice *forthcoming*

CLEAR PROJECT
MAIN STREET LEGAL SERVICES, INC.

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CENTER FOR CONSTITUTIONAL RIGHTS

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01935

DECLARATION OF VERONICA R. SALAMA

I, Veronica R. Salama, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. My name is Veronica R. Salama. I am a licensed attorney in good standing in the state of New York. I am an attorney of record in the above-captioned case.
2. I represent the petitioner, Mahmoud Khalil, in this action.
3. Mr. Khalil is currently detained by ICE at the LaSalle Detention Center in Jena, Louisiana, and I am unable to travel to him.
4. On March 13, 2025, I met with Mr. Khalil in a virtual attorney-client meeting. We reviewed the substance of the amended petition, and he confirmed the accuracy of the facts therein as they pertain to him.
5. I hereby verify that the factual statements in the amended petition in this action (ECF No. 38) as they pertain to Mr. Khalil are true and correct to the best of my knowledge.

Executed on March 14, 2025
New York, New York

Veronica R. Salama
Staff Attorney
New York Civil Liberties Union Foundation

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-1935 (JMF)

DECLARATION OF NOOR RAMEZ ABDALLA

I, Noor Ramez Abdalla, under penalty of perjury, declare as follows:

1. I am a United States citizen, and Mahmoud Khalil's wife.

2. I was born in Flint, Michigan, and I was raised in Michigan until the sixth grade when my family and I moved to the United Arab Emirates because my father received an offer of employment there. After I graduated high school, my family and I moved back to Michigan. I completed my undergraduate degree at University of Michigan, Flint, where I earned a 4.0 grade point average and was my graduating class's commencement speaker. I continued on to complete dental school at Detroit Mercy Dental, graduating in May 2022 in the top ten percent of my class.

I started my career as a dentist the month after I graduated, and I have been working as a dentist in the tri-state area since December 2023.

3. My husband, Mahmoud, is a Palestinian who grew up a refugee in Syria. He has devoted much of his life and career to helping and serving others. In fact, it was his work on education in Syrian refugee communities in Lebanon that brought us together. I met Mahmoud in the summer of 2016, when I was volunteering with a nongovernmental organization that runs educational programs for Syrian refugee communities in Lebanon. Mahmoud was employed with that organization at the time and managed the volunteer program. We fell in love. We continued a long-distance relationship after I returned to the United States and managed to visit with one another one to two times per year between 2016 and 2022.

4. In December 2022, Mahmoud moved to the United States to begin a graduate program at Columbia University's School of International and Public Affairs the following month. We were finally able to reunite and be together after years of a long-distance relationship, and Mahmoud was working towards furthering his career in human rights.

5. In November 16, 2023 we married, and in 2024 Mahmoud became a lawful permanent resident. We are expecting our first child together at the end of next month. When we found out we were pregnant, we were both so thrilled to welcome our first child into the world.

6. When Israel began its genocide in Gaza in October 2023, Mahmoud felt compelled to speak out, based on his deep commitment and devotion to his Palestinian people and their rights and advocating for a swift end to their ongoing genocide. It is through this commitment to Palestinian rights that he came to be involved in the protests that erupted across college campuses in April 2024, and in Columbia University's encampments.

7. Mahmoud is a natural bridge builder, and so he quickly rose to prominence as a lead negotiator on behalf of the students mounting the encampments and protesting the genocide in Gaza. As part of those duties, he spent weeks on end liaising between the administration and the students, in pursuit of a just resolution. Mahmoud was so committed to this goal that he barely slept for weeks, and I recall having to drag him home to sleep.

8. His leadership in the protest movement was no surprise to me, because this is who he is: committed to his community, committed to serving others, and committed to justice. Mahmoud extended this care to his speech and organizing for Palestinians in Gaza and the West Bank, just as he did the people in his life—myself included.

9. As a result of his involvement as a public-facing figure in the Columbia University encampments, Mahmoud fell victim to an aggressive and devastating doxing campaign over the course of the months that followed, one that continues to this day. He was receiving heinous messages every day and the subject of all kinds of public statements on social media and in news broadcasting, defaming him and maligning his speech and activities for Palestinian rights.

10. Part of the doxing campaign included many public calls for the government to deport him. These targeted calls for his deportation became so frequent and aggressive that I recall Mahmoud asking me if I knew what to do if U.S. Immigration and Customs Enforcement (ICE) came to our home just last week. On March 7, 2025, the day before Department of Homeland Security (DHS) agents arrested Mahmoud, he even wrote an email to Columbia University Interim President Katrina Armstrong informing her of the targeted calls for his deportation, telling her he was so scared of adverse action by ICE that he was unable to sleep, and pleading for the university's support. I don't think anyone ever answered him, and we certainly did not receive any support.

11. On March 8, 2025, at approximately 8:25 PM, Mahmoud and I were returning from *iftar* (a meal breaking our daily fast, observed during the holy month of Ramadan) to our apartment in Columbia University housing. Around two agents in plain clothing approached us, following us from outside our building into the lobby. The agents asked if my husband was Mahmoud Khalil. He answered that he was, and they proceeded to state that they were going to detain him. A few other agents appeared with the original two agents at this point, apparently having entered through another entrance. One agent told me that I needed to leave and go up to my apartment, or else I would be arrested, too.

12. Mahmoud then asked if I could go up and get his green card, and the agents said that I could and that they would wait for me downstairs. I quickly made my way up to our apartment to get Mahmoud's green card, believing that there must be some confusion about his immigration status. I observed one agent upstairs in our hallway as I was entering the apartment. When I came back downstairs and provided Mahmoud's green card to the agents, they seemed confused, and we heard one agent who was speaking with someone else over the phone inform them that Mahmoud was a green card holder.

13. Despite seeing the green card, they insisted that they would be bringing him in anyway. The agents handcuffed him and forced him out of our apartment building. I called after him, asking how I would be able to reach him, and he directed me to call his attorney, Amy Greer, which I immediately did, keeping her on the line with me and asking for guidance on what to do.

14. When they took my husband to the street, I followed them, begging for their names, contact information, or any way to get in touch with my husband. I was still on the phone with Amy and explained his lawyer was requesting their names. The officers refused to provide me with any of that information, and instead told me he was being taken to "26 Federal Plaza." I

continued to approach the various cars of agents stationed outside, asking for the name of the agency they were from and trying to get someone to speak with Mahmoud's lawyer. The agents walked quickly away from me, some of them entered the cars, and drove off. I ultimately watched my husband driven off by the agents, having no idea why he was being arrested or how I could reach him.

15. I was unable to sleep that night, first working with Amy to secure immigration counsel for Mahmoud and then trying to find a way to make contact with him. The lawyers relayed to me that he seemed to be in Manhattan throughout the night, according to an ICE locator. By the early morning, they had filed a lawsuit in federal court, with my consent.

16. Within a few hours and still in the early morning on Sunday, the locator showed Mahmoud as being held at an immigration detention facility in Elizabeth, New Jersey. I immediately went there, desperate to see my husband. I attempted to see him twice and was told by employees at the facility that he was not there, and that I would not be able to see him. I waited outside of the facility for approximately two hours and was never able to see or be in contact with Mahmoud.

17. Just hours later, his attorney told me that Mahmoud might be on his way to a detention center in Louisiana. I was desperate for information that no one seemed able to give me. I felt like Mahmoud had been kidnapped from our home, and no one could tell me where he was or what was happening to him. His transfer to Louisiana seemed more and more likely throughout the day, as we learned new information from various sources, but still no one had heard from him. His attorneys could not reach him, and neither could I.

18. It wasn't until the following morning, on March 10, 2025, that I finally received a phone call from Mahmoud, confirming that he was at an ICE detention facility in Jena, Louisiana.

19. I cannot overstate how distressing this entire experience has been. The past week has been the worst of my life, and I find myself without my single greatest source of support, in my time of greatest need.

20. I am currently in my thirty-third week of pregnancy, and I am due to give birth to Mahmoud and I's first child on April 28th, 2025. We are expecting a son. The thought that Mahmoud may miss the birth of our son is devastating.

21. I am not exaggerating when I say that I would not have been able to get through my pregnancy without Mahmoud. At this stage of my pregnancy, I have biweekly appointments with my doctor scheduled. In just three weeks, those appointments will increase in frequency, becoming weekly appointments. Prior to his detention, Mahmoud attended almost every doctor's appointment with me. He cooks every meal for us, he cleans the house, he does our laundry and takes care of every need that we have as a household.

22. Mahmoud has been invaluable to me in helping me cope with the physical and mental impact of my pregnancy. Early on in my pregnancy, my doctor found indication that I might require a regimen to preempt preeclampsia, a very serious condition that can cause major complications for a pregnant person and their baby. I was prescribed two baby aspirin per day, and I am still supposed to be taking that medication. I forget to take medication, and Mahmoud reminded me to take the medication every night, getting it for me before bed. Since the agents took him away, I haven't been able to sleep well or focus and am afraid that I have forgotten to take that medication.

23. Just last month, on February 2, 2025, I had to be admitted to the hospital because I had not felt our baby in my stomach for a full day. I spent approximately four hours at the hospital, and Mahmoud supported me through the distress of being unable to feel our baby's movement in

my stomach and the experience of being hospitalized. Luckily, the doctors determined our baby to be in good health, and I was discharged home.

24. I also generally struggle with feelings of anxiety, and pregnancy had posed an extra toll on my emotional state. I have frequently felt anxious about the daily experience of pregnancy, ensuring my baby is in good health, and the prospect of bringing life into this world. Mahmoud offers me every bit of reprieve I could hope for. He massages my feet and back every day, he makes sure that I eat and sleep well, and he offers me so much emotional support.

25. Since his arrest, I have neither been able to sleep nor eat. I can feel my baby, and I hope that he is okay, but I know that this stress and all that comes with it is not good for him.

26. My family is in Michigan, but Mahmoud and I decided to raise our baby here in New York. He received a wonderful job offer in human rights work here and was due to start in April 2025. We were counting on his income to support our family, as I am scheduled to stop working in March and will only receive approximately half of my usual pay throughout my period of maternity leave.

27. I now face the prospect of delivering my baby without Mahmoud, and far from my family's home base in Michigan. As a result, I am left with only one source of income, my reduced maternity leave income—which is not enough for me and our baby to live off of. I am also without my husband, who is my sole and primary source of support here in New York.

28. I also worry about Mahmoud braving this period of detention. I desperately want to see him but traveling by plane is not advised at this late stage of pregnancy. We are in the month of Ramadan, and typically throughout this month Mahmoud and I would fast and attend iftars with members of our community and prayers after sundown and on Fridays organized by Columbia University's Muslim Student Association. Instead, Mahmoud is being detained 1200 miles away

in another state. He has told me that he is unable to eat much because of the stress of detention, even at the end of his day of fast. Mahmoud also takes medicine every day for a stomach ulcer he lives with (and was diagnosed with following an endoscopy more than three years ago), and I worry about that condition worsening without proper treatment and sustenance during his detention. I know they did not provide his medication to him until Tuesday evening, despite his requesting it when he first arrived.

29. Life has been extraordinarily difficult throughout the past week, and it will not improve short of Mahmoud's release. My family is receiving contact and visits from reporters, and Mahmoud's family in Germany and Syria are experiencing harassment. To make matters worse, Mahmoud was supposed to travel to visit his parents in Germany later this month, particularly to pay a visit to his disabled and elderly father who lives with Alzheimer's Disease. Instead, we are all living with this new horrific reality. People have been attacking us online, and saying the most vitriolic things about Mahmoud and I.

30. This experience has flipped our lives upside down. Mahmoud and I planned to have our baby boy next month and move into a new home. Now, I can only hope that he will be with me when I give birth to our first child. I implore that the Court set his bail and permit him to return home to resume living with me and our soon-to-be-born child.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 14th day of March, 2025 in New York, New York.

NOOR RAMEZ ABDALLA

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01935

DECLARATION OF SAMAH SISAY

I, Samah Sisay, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. My name is Samah Sisay. I am a licensed attorney in good standing in the state of New York. I am an attorney of record in the above-captioned case.
2. I represent the petitioner, Mahmoud Khalil, in this action.
3. I submit the following redacted documents in support of Mr. Khalil's motion for release under *Mapp v. Reno:*

Exhibit B, MPA Confirmation for Mahmoud Khalil
Exhibit C, Identity Documents for Mahmoud Khail
Exhibit D, Notice to Appear for Mahmoud Khalil
Exhibit E, Certificate of Marriage for Mahmoud Khalil & Noor Abdalla
Exhibit F, Medical Letters for Noor Abdalla
Exhibit G, Letters of Support for Mahmoud Khalil
Exhibit H, *Castillo-Maradiaga v. Decker*, No. 21-CV-842 (KPF) (S.D.N.Y. Mar. 4, 2021) (ECF 8-1)

Executed on March 15, 2025 /s/ Samah Sisay

New York, New York

Samah Sisay
Staff Attorney
Center for Constitutional Rights

EXHIBIT B

COLUMBIA | SIPA
School of International and Public Affairs

March 13, 2025

To Whom It May Concern:

This letter confirms that **Mahmoud Khalil ([redacted])** is a student in the Master of Public Administration, Development Practice (MPA-DP) program at Columbia University's School of International and Public Affairs (SIPA).

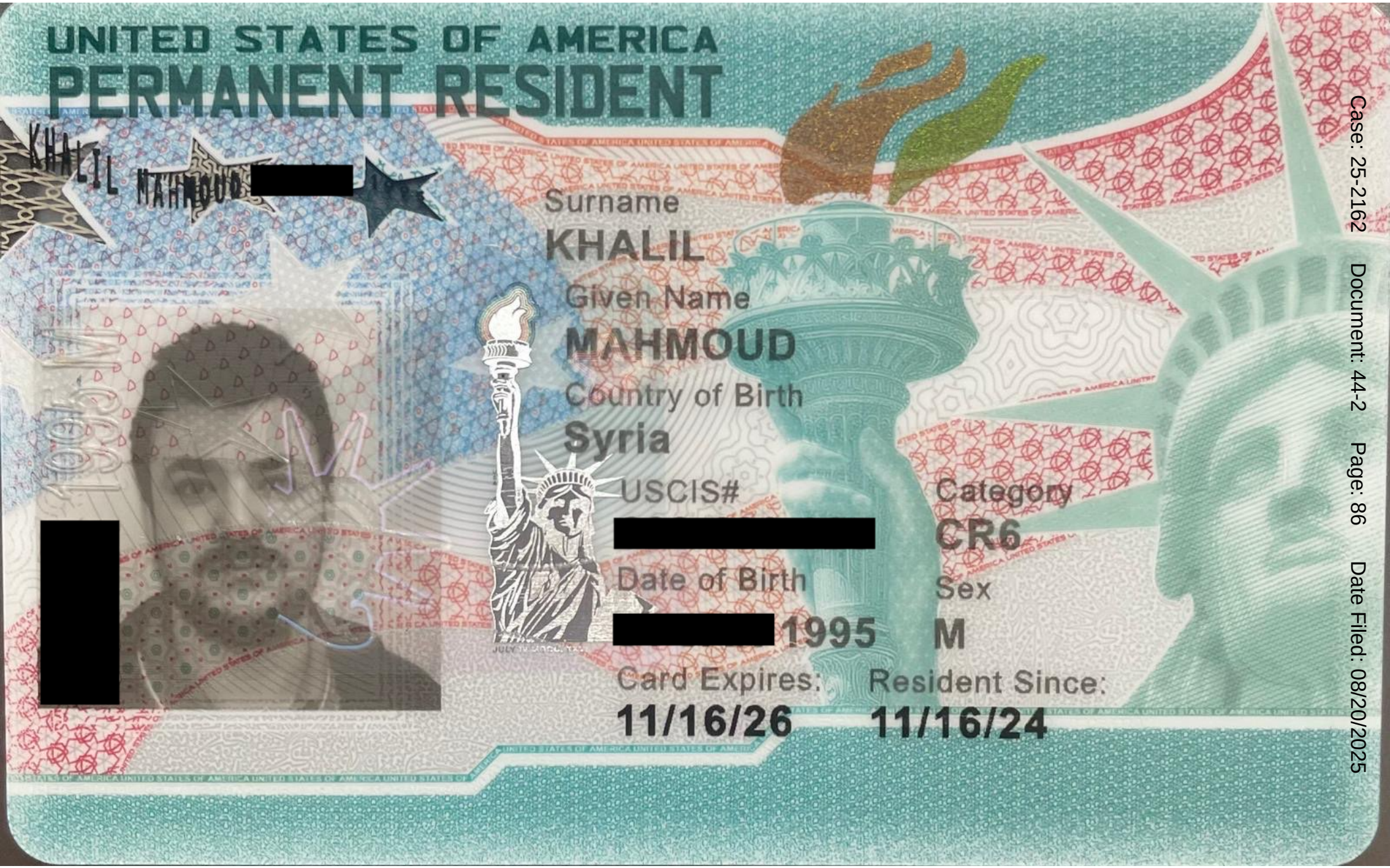
Mahmoud began studies at SIPA in the Spring 2023 semester, has completed all requirements for his degree program, and is expected to confer his degree in May of 2025.

Thank you for your attention to this matter. Should you need further assistance, I can be reached at [redacted] or [redacted].

Warm regards,

[redacted]
SIPA Office of Student Affairs

EXHIBIT C



Case: 25-2162 Document: 44-2 Page: 86 Date Filed: 08/20/2025

EXHIBIT D

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [redacted]1995
Event No: [redacted]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [redacted] FINS: [redacted] File No: [redacted]

In the Matter of:

Respondent: MAHMOUD KHALIL currently residing at:

[redacted]

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ You are an arriving alien.

☐ You are an alien present in the United States who has not been admitted or paroled.

☒ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;

2. You are a native of SYRIA and a citizen of ALGERIA;

3. You were admitted to the United States at unknown place on or about unknown date as a unknown manner;ORYour status was adjusted to that of a lawful permanent resident on November 2024 under section 212 (a)(3)(C) of the Act;

4. The Secretary of State has determined that your presence or activities in the United States would have serious adverse foreign policy consequences for the United States.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(4)(C)(i) of the Immigration and Nationality Act, as amended, in that the Secretary of State has reasonable ground to believe that your presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

830 PINEHILL RD JENA LA 71342. LASALLE DETENTION FACILITY
(Complete Address of Immigration Court, including Room Number, if any)

on March 27, 2025 *(Date)* at 8:30 AM *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

TIMOTHY MORAN - Supervisory Special Agent TIMOTHY M MORAN JR
(Signature and Title of Issuing Officer)

Date: March 9, 2025

26 Federal Plaza, New York, NY
(City and State)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at http://www.ice.gov/contact/ero, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before: _____

_____ *(Signature and Title of Immigration Officer)*

_____ *(Signature of Respondent)*

Date: _____

Certificate of Service

This Notice To Appear was served on the respondent by me on March 9, 2025, in the following manner and in compliance with section 239(a)(1) of the Act.

☒ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☐ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(X) Refused to sign (G)

(Signature of Respondent if Personally Served)

TIMOTHY M MORAN JR Digitally signed by TIMOTHY M MORAN JR Date: 2025.03.09 09:41:28 -05'00'

TIMOTHY MORAN - Supervisory Special Agent

(Signature and Title of officer)

DHS Form I-862 (6/22)

Privacy Act Statement

Authority:
The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:
You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:
For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at https://www.dhs.gov/system-records-notices-sorns. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at https://www.justice.gov/opcl/doj-systems-records. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:
Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

EXHIBIT E

X-2023-2

THE CITY OF NEW YORK
OFFICE OF THE CITY CLERK
MARRIAGE LICENSE BUREAU

License Number
X-2023-9671

Certificate of Marriage Registration

This Is To Certify That MAHMOUD KHALIL

residing at [redacted]

born on [redacted] at Sasa Syria

and NOOR R ABDALLA

residing at [redacted]

born on [redacted] at Saginaw Michigan United States

Were Married

on 11/16/2023
By SHIRLEY SAUNDERS

at The Office of the City Clerk
851 Grand Concourse
BRONX, NY 10451
United States

as shown by the duly registered license and certificate of marriage of said persons on file in this office.

CERTIFIED THIS DATE AT THE CITY CLERK'S OFFICE

Bronx N.Y. November 16, 23 20

PLEASE NOTE: Facsimile Signature and seal are printed pursuant to Section 11-A, Domestic Relations Law of New York.

Michael McSweeney
City Clerk of the City of New York

CET-F

X143094

Case: 25-2162 Document: 44-2 Page: 92 Date Filed: 08/20/2025

EXHIBIT F

Northwell Health
Physician Partners

[redacted]

Name: NOOR ABDALLA
DOB: [redacted]
Encounter Date: 03/07/2025

March 14, 2025

Dear Ms. Abdalla,

This letter confirms that you are a patient under my care for the management of your pregnancy and postpartum course. Your first prenatal appointment was on 9/27/2024 and your due date is 4/28/2025. Your pregnancy course is significant for increased risk of 1/106 for pre-eclampsia before 37 weeks. You have had monthly prenatal visits with me from September through February as well as ultrasound monitoring. As of the third trimester your visits are now scheduled every 2 weeks and will increase to weekly after 36 weeks gestation.

Sincerely,

[redacted]

Electronically signed by : [redacted] MD; Mar 14 2025 12:33PM Eastern Standard Time (Author)

[redacted]

[redacted]

[redacted]

March 13, 2025

To Whom It May Concern:

I am Dr. [redacted]. My opinions and conclusions are based on my professional experience as a Board-Certified Family Medicine Physician with expertise in Obstetrics. I am not diagnosing or providing treatment for Ms. Noor Abdalla, but rather providing my professional medical assessment – based on my training and experience – of her condition and the risk posed by the incarceration of her husband. This letter is for legal purpose related to Mr. Khalil's incarceration, and I verify, under penalty of perjury, that it is based on my personal knowledge, and in accordance with CPLR R. § 2106 and 28 U.S.C. 1746, that the following is true and correct.

I earned a Bachelor of Arts from Pomona College in Claremont, CA and a Doctor of Medicine from the Icahn School of Medicine at Mount Sinai in New York, NY. I completed Family Medicine Residency at the Swedish Cherry Hill Family Medicine Residency in Seattle, WA. I am currently a core faculty physician at a residency program in New York State, where I oversee the Obstetrics curriculum, provide clinical care, as well as work on labor and delivery.

As a physician, I am very concerned about the health and safety of Ms. Abdalla, who is currently 33 weeks pregnant and experiencing the acute stress of witnessing the arrest and ongoing incarceration of her husband.

Psychological stress during pregnancy is known to increase the risk of adverse maternal and birth outcomes. These poor outcomes, such as preterm birth, low birth weight, and preeclampsia (hypertensive disorders of pregnancy), can be life-threatening for the mother and/or infant or have lasting repercussions on the child's health and cognition. A study demonstrated this association between maternal stress and poor outcomes by comparing neonatal outcomes in a town before and after a federal immigration raid. Sadly, low birth weight rates increased even among US-born pregnant women of the same ethnicity as those affected by deportation, showing how severe stressors impact pregnancy outcomes.[i] Pregnant women who experience these stressors can develop a hormonal imbalance, which negatively impacts the child in utero. I am alarmed that Ms. Abdalla, who was already determined to be at an increased risk for preeclampsia and prescribed medication for this earlier in her pregnancy, now faces an even greater likelihood of a poor birth outcome due to the stress of the incarceration of her husband.

Moreover, if a woman does have a poor birth outcome, she requires even more support during her recovery and while caring for a newborn who may have high medical needs. Having her spouse and the father of the child present for physical, psychological, financial, and logistical support is crucial. Without that support, she is at great risk for perinatal mood disorders such as depression.

Mitigating severe stress is urgent and important for the health of the pregnant woman and her child. Paternal involvement in pregnancy and labor has been shown to do just that - significantly improve maternal well-being and reduce rates of preterm birth, low birth weight, and even infant mortality.

In summary, given the high risk of poor outcomes due to maternal psychological stress and the benefits of paternal presence, I strongly recommend that Mr. Khalil be released to support Ms. Abdalla's health and that of their unborn child at this critical time.

Thank you for your consideration.

Please do not hesitate to contact me if I can provide additional evaluation or answer questions.

Sincerely,

[redacted]

[redacted]

[i] Novak NL, Geronimus AT, Martinez-Cardoso AM. Change in birth outcomes among infants born to Latina mothers after a major immigration raid. Int J Epidemiol. 2017 Jun 1;46(3):839-849. doi: 10.1093/ije/dyw346. PMID: 28115577; PMCID: PMC5837605.

EXHIBIT G

[redacted]

March 14, 2025

Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Centre Street
New York, NY

RE: Letter in Support of Mahmoud Khalil's Bail Hearing

PURSUANT TO 28 USC 1746, I HEREBY DECLARE AS FOLLOWS:

I am writing this letter in support of Mahmoud Khalil, a dear friend, respected colleague, and an outstanding student whose character and integrity I can personally attest to. My name is [redacted], and I am currently pursuing an Executive Master of Public Administration at Columbia University. I have lived in New York City since 2013, and over the past decade, I have built strong ties to this community.

Mahmoud, like me, loves New York City—especially my neighborhood, Astoria, where we often get falafel and shawarma sandwiches at his favorite restaurant, Zyara. But his deep connection to his community is especially evident in his love for Harlem. Since he was always visiting Astoria, I once tried to convince him to move closer to my neighborhood. He smiled and told me he loved Harlem too much and wanted to stay close to his community and friends. Sometimes he would joke that Astoria was too far away! I remember him once saying, *"Everyone I know is here."* That moment encapsulates who Mahmoud is—someone deeply rooted in his surroundings, dedicated to the relationships he has built, and committed to staying where he belongs.

Mahmoud is not just a friend; he is an essential part of my life and our wider community. Before he was detained, he and I had been planning a surprise baby shower for his wife, Noor. Just a week or so before, we had been chatting about the cost of strollers and tossing around baby name ideas—something that speaks to the kind of thoughtful and engaged husband he is. Mahmoud cannot be away from Noor, and he often talks about how much she means to him. With Ramadan coming to an end at the end of March, we had also planned to celebrate Eid together as we anticipate the arrival of the newest member of the Khalil family.

Mahmoud has spent holidays with my family and me. He came over to my house for Thanksgiving in 2023, and we also had a Friendsgiving at his place that year. My husband and Mahmoud play FIFA together, and when Mahmoud loses, he always blames it on the controller, insisting that one is much better than the other. On some Thursdays after my class, we would hang out—sometimes splitting a plate of nachos at our neighborhood hangout by SIPA, Arts and Crafts. These aren't just casual interactions—Mahmoud is part of the fabric of my everyday life, and he is deeply intertwined with our community. He was even planning to attend a music showcase at Columbia where my husband was set to perform—just another example of how involved he is in the lives of those around him.

One thing that has always stood out about Mahmoud is his passion for civic engagement. We have had long conversations about politics, including discussions about the upcoming New York City mayoral

election and who we thought would win. Our conversation naturally turned to voting and civic engagement, and we talked about how he would be able to vote once he became a U.S. citizen. I showed him pictures of the American flag decorations I bought for my husband's citizenship ceremony and the pictures we took in front of USCIS. I told Mahmoud I was excited to use the decorations for his own citizenship celebration one day.

Beyond our friendship, Mahmoud and I have shared major life milestones. We started our job search together, had our interviews on the same day, and received offers within a week of each other. I remember telling him how happy I was that he would be staying in the state indefinitely, and he laughed and said, "*Where else would I go?*" His words capture what I have always known—Mahmoud has built a life here, and there is nowhere else he would rather be.

Mahmoud is also actively engaged in fostering meaningful dialogue on international issues. He helped me organize a community event at the School of International and Public Affairs (SIPA), a joint conversation featuring Rashid Khalidi, a renowned Palestinian historian, and Daniel Levy, an Israeli peace negotiator. His role in bringing together respected voices from different perspectives demonstrates his deep commitment to diplomacy, intellectual rigor, and constructive engagement.

We had planned to walk in our graduation ceremony together in May (fall grads walk with spring grads in a May ceremony), and I had the idea of having a big dinner where our parents—visiting from out of town—could meet each other. I can't imagine attending graduation without Mahmoud.

Mahmoud is not a flight risk. His life, his wife, his friendships, his career, and his aspirations are all here. He has never given any indication that he would abandon them. There is no question in my mind that Mahmoud would comply with any court orders or restrictions. He is someone who deeply values responsibility and integrity, and I have no doubt that he will continue to engage with this process with the utmost respect for the law.

His absence is not only felt by his friends and family, but by the entire academic and professional community that he is a part of. Mahmoud's contributions to our shared spaces—both intellectual and social—cannot be overstated, and his detention is a loss to all of us.

For these reasons, I respectfully urge the Court to grant Mahmoud Khalil bail. He is an invaluable part of our community, and his absence is felt deeply by those who know and care about him.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON MARCH 14, 2025

[redacted]

Thank you for your time and consideration. I sincerely appreciate the Court's attention to this matter. If the Court requires any further information, I can be reached at the contact information above.

Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Centre Street, New York, NY

Dear Judge Furman,

My name is [redacted], and I am writing in support of my dear friend Mahmoud Khalil. I am a U.S. citizen, a human rights advocate, and a student at Columbia University's Graduate School of Arts and Sciences.

It is difficult to compose a letter that fully captures Mahmoud's character—the qualities that make him an exceptional friend, brother, spouse, and soon-to-be parent. I first met Mahmoud at the crowded home of a mutual friend. He had the demeanor of someone who was not intimidated by new social situations, and he spoke only when he had something meaningful to say. Though that characteristic has remained the same, I got to know Mahmoud better in the upcoming months.

Mahmoud is sociable, caring, and gentle. I have seen how firmly he holds his wife Noor's hand, how attentively he listens to her concerns, and how deeply he cares for her well-being. I am someone who tends to be anxious, and as you may know from recent news, Columbia University is not a calm place. Yet, I could always rely on Mahmoud to ground me. No matter how difficult a situation seemed, he could always see a way forward.

Mahmoud is always seeking the best course of action and expressing his opinions politely yet firmly. Younger students look up to him with admiration, and he has guided them with patience and kindness. He has a rare ability to build rapport with people who are drastically different—politically, personally, or otherwise. His clarity, focus, and strategic thinking made his opinions widely respected.

Mahmoud has always carried an immense sense of responsibility toward his friends and his people. He loves bringing people together, regardless of personal differences. He often hosted breakfasts at his home and dinners that stretched late into the night—always fostering a sense of community.

Mahmoud is quiet about his passions and hopes, but that does not mean he lacks them. I have seen his enthusiasm as he debated baby names, his careful balancing of school and family, and his determination to provide for his growing family despite financial difficulties. He never burdened others with his concerns—he simply focused on what he could do to improve his circumstances.

Just before his arrest, things were looking up for him. He had recently secured an amazing job with a prestigious organization, and had even signed an offer letter. I remember him nervously (yet quietly) preparing for his interview, asking me to pray for his success. He was on the verge of building the future he had worked so hard for.

I know that Mahmoud's principal concern right now is the well-being of his wife. I had been joking about babysitting their child after Noor gave birth. I never imagined that I would actually be doing so in Mahmoud's absence. I did not anticipate having to support a woman through the ordeal of childbirth without her husband by her side. I do not want to hold Mahmoud's child before he does. I do not want to know more about his baby boy before he has the chance to discover the delicate work of parenthood himself.

I urge this court to release Mahmoud and prevent the unconstitutional seizure of his rights.

I can be reached at [redacted] or at [redacted]. My current home address is [redacted].

Sincerely,

[redacted]

Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Centre Street, New York, NY

March 13, 2025

Dear Judge Furman,

My name is [redacted]. I am a part-time adjunct professor at Columbia University's School of International and Public Affairs (SIPA).

I am compelled to write this letter in support of Mahmoud Khalil.

I have known Mahmoud for 18 months in my capacity as adjunct professor at SIPA, both as a student and as my teacher's assistant. Mahmoud was my student in the fall of 2023 in my class that focuses on organizational strategy and design, called [redacted] a core management class taught to all graduates of the Master of Development Practice degree program.

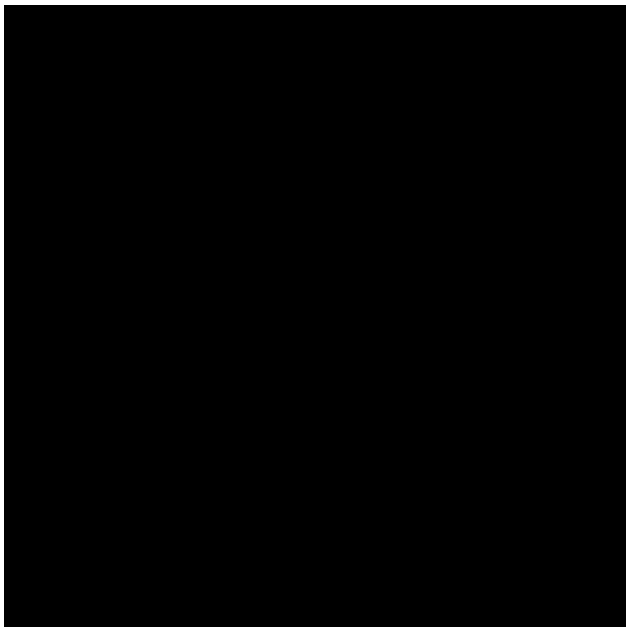
Mahmoud was, without a doubt, one of the best students I've ever had. He excelled in class, thoughtfully contributed to class discussion, and received an A on his final, semester-long assignment, an incisive critique of and set of recommendations for the strategy of a US501(c)3 organization, [redacted], whom he had worked for for five years supporting the development of Syrian youth through educational programming. We shared his final assignment with subsequent classes as a model and case study for what an exceptional analysis should look like.

My co-teacher, [redacted], and I were so impressed with Mahmoud's poise, intellect, and thoughtful leadership that we personally invited him to be our teacher's assistant the subsequent fall (2024). He was a stand-out teacher's assistant: professional, responsive, thorough, good humored, and a strong support to our ~50 graduate students from dozens of countries to help them understand the material during a rather eventful semester.

In one of our last classes in the fall of 2024, my co-teacher at SIPA and I invited him to give a guest lecture during our class on leadership to speak about his experience with the student movement on campus and leading during times of crisis. He talked about his successes and struggles in his campus activism, candidly acknowledged some mistakes made and lessons learned, and was proud to share an email the Columbia

administration had sent to the entire campus community that the conversations that Mahmoud was engaging in on behalf of the student groups “constructive dialogue.”

Mahmoud has been a tremendous benefit to my classroom. Upon the completion of his studies in December, I had been looking forward to seeing Mahmoud’s development as a leader, and hearing much more of his unique and nuanced voice in these extraordinarily complicated and contentious times.



Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Centre Street, New York, NY

Dear Judge Furman,

I am writing in support of Mahmoud Khalil. My name is [redacted] and I am an American Jewish woman who believes in the importance of Israel as a Jewish homeland. I have known Mahmoud Khalil for over two years, since January 2023 as his professor, colleague, and friend. I have always known Mahmoud as someone working to be part of the solution towards a peaceful resolution to the conflict in Palestine and Israel. He is committed to peaceful development which is also what our graduate program – the Master of Public Administration in Development Practice (MPA-DP)– trains students on.

I have known Mahmoud in my capacity as his Professor at Columbia University for two semesters [redacted], and then as his supervisor in his role as a Teaching Assistant for the course [redacted]. In between semesters I also interacted with Mahmoud, due to his role as a Program Assistant for the MPA-DP program which I am affiliated with as a Professor and alumna.

I have worked with Mahmoud and directly seen and graded his work. This work has demonstrated a deep and persistent commitment to humanitarian principals and doing work that contributes to peace and stability. Both semesters when he was my student, he focused his semester long project assignments on a non-profit organization ([redacted], where he also previously worked) providing education services to refugees. I had many conversations with him about how to deepen educational impact and ensure that refugees would have real economic opportunities to escape cycles of violence and poverty.

When it came time to choose a Teaching Assistant for the Fall 2024 iteration of the course, I sought out Mahmoud to apply to the position. His deep expertise with organizational management with international development organizations, his high standards for quality work, as well as his integrity were all reasons I thought he would make a great TA. He effectively served the class and students throughout the semester even as he navigated both global and campus events that were directly impacting him and his family.

I can state with full confidence that Mahmoud has never expressed support for Hamas, nor has he ever endorsed any form of extremism. Over the course of our extensive interactions, I have had numerous conversations with him about human rights, justice, and the student protests and I can personally attest to his commitment to nonviolence.

In terms of the campus protests, Mahmoud was my student as these events unfolded and was in the process of being hired as our Teaching Assistant as the encampment was being established. I directly spoke to him about the encampment and Mahmoud

emphasised the protesters commitment to peace and non-violence. Mahmoud explained how the student movement was ensuring that Jewish voices were part of conversations and space. He was committed to dialogue and partnership with Jewish voices throughout his time on campus, one example of this was sharing a Jewish Sukkot event with me that he was attending put on by Jewish and Palestinian students on October 16th, 2024.

As our TA in Fall 2024 for a course for which Leadership was a key theme, he clearly spoke about the challenges of being seen as a leader of leaderless student movement. Many things have been incorrectly attributed to him in the media.

Mahmoud has always worked to be part of the solution towards a peaceful resolution to the conflict in Palestine and Israel. He is committed to peaceful development which is also what our graduate program – the Master of Public Administration in Development Practice – trains students on. Choosing to do this program, which trains students for public sector and public interest work also demonstrates his commitment to these issues. Everything he has ever worked on professionally and academically demonstrates his commitment to humanitarian principals including justice, peace, and development.

[redacted], March 14th, 2025

[redacted]

[redacted]

Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square, New York, NY 10007

RE: Unwavering, Unconditional Letter of Support for Mahmoud Khalil

To the Honorable Judge Furman,

I write this unconditional, unqualified letter of support for Mahmoud Khalil in the strongest of terms. My name is [redacted] and I am an alum of Columbia Law School '24 and Harvard College '18. I am currently admitted to practice law in the great State of California and am a Deputy Public Defender in Los Angeles County. I have had the distinct pleasure and honor of knowing Mahmoud Khalil since 2023, and I am confident in saying that he is one of the most genuinely caring, responsible, and upstanding individuals I have ever met. I have been able to observe his character and actions both in personal and professional contexts.

From the very first moment I met Mahmoud Khalil, I could see his strong commitment to justice and doing the right thing. Whether in his personal life, professional endeavors, or within the community, he consistently demonstrates unwavering integrity and kindness. He is always willing to lend a helping hand and put others first. But do not just take it from me. Mahmoud is universally regarded across the Columbia campus community as a trustworthy and caring individual. I still remember how in a moment of disagreement between several individuals, Mahmoud invited everyone to his home to break bread. He generously opened his home, his kitchen, and his heart and lent his strong mediation skills to foster trust and repair bonds. He is a great cook on top of everything!

Mahmoud is a bridge builder. He dreams of one day working as a diplomat for the United Nations. He dreams of a peaceful world where every person, regardless of who they are, can live with full citizenship and grow up with dignity, health, and love. What a gift he is to the world!

What a blessing it is to be in relationship with him! I am honored to be his colleague, and most importantly, his friend. While I am now over 3000 miles away on the opposite coast, I will never forget Mahmoud's smile. While he is serious in work contexts, his warmth and laughter reminds me that I will always have a safe refuge in him.

I urge you to release Mahmoud from his unjust incarceration. What is at stake is not just the liberty of a soon-to-be father, beloved community member, and cherished friend. It is the very integrity of the U.S. Constitution itself and the promise it holds.

DATED: March 13, 2025

Respectfully submitted,

[redacted]

**Admitted to the State Bar of California*

[redacted]

March 13, 2025

Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Centre Street, New York, NY

Dear Judge Furman:

It is my privilege to write to you to attest to the sterling character of Mahmoud Khalil.

My name is [redacted]. I am a U.S. citizen, 39 years old, and residing in Washington, D.C. where I am on a domestic tour with the [redacted]—I am a commissioned member of [redacted]. I was previously posted to the U.S. embassy in Gaborone, Botswana as Deputy Public Affairs Officer and to the Embassy Branch Office in Tel Aviv as a vice consul adjudicating non-immigrant visa applications. I chose government service because of a belief in the founding ideals of the United States and their power to inspire.

In the summer of 2016, I met Mahmoud Khalil in Beirut, Lebanon when he organized and led a three-week volunteer trip to the Beqaa Valley as part of his work with [redacted] a U.S.-registered nonprofit providing education to Syrian children. I chose to volunteer with [redacted] because of its association with the Institution of International Education, my former employer and U.S. State Department partner.

Mahmoud capably led a religiously diverse international cohort of volunteers including Americans (among whom was his future wife Noor), Europeans, Syrians, and Lebanese to support victims of the Syrian war, including those harmed by Assad regime and groups aligned with the Islamic State of Iraq and Syria (ISIS). He was affable and unfailingly kind, which served him as he deftly navigated sectarian identities among not only the refugee community we worked with, but among our own volunteers. While each of the [redacted] organizers led with professionalism and integrity, driven by a commitment to peace and countering the harm done by war, Mahmoud stood out especially for his charm and sense of humor. In tasks big and small—working with refugee children whose parents had been killed or were missing due to violence by the Assad regime or ISIS, matching skills to tasks at the school, seeing to volunteer housing arrangements—he was always, simply put, genuinely *nice*; an unruffled problem solver. I believe that Mahmoud has a deep respect for children and human rights because of his dedication to helping refugees.

After three weeks of spending everyday together, our group became tightly knit, and Mahmoud is one of several people I have maintained a friendship with over the years from that time. We are scattered around the world, but meet in various countries, sending photos to the group when any combination of us meets up.

During a difficult stretch of my tour at the U.S. embassy in Botswana following the loss of my stepfather, my conversations with Mahmoud were a comfort. He drew on one such chat to thoughtfully send a book of poetry. Just one of many examples of his profound kindness and sense of compassion.

I was thrilled when I heard he would be coming to New York to further his studies, which allowed me to finally catch up with him in person in late 2023, when he was interning for United Nations Relief and Works Agency (UNRWA) while I was up to staff the UN General Assembly. He was as upbeat and positive as ever. Having him a train ride away instead of oceans, has meant getting to see him more easily, most recently in January of this year, when I also got to catch up with his wife, Noor, for the first time since they had gotten married. Despite the difficult context of the escalation in violence precipitated by the events of October 7, 2023, Mahmoud's passion for serving others, advocating for peace, compassion for children who have lost their parents, refugees, and his positivity remained intact.

My ongoing employment with the U.S. government and posting in Israel never impeded our friendship or diminished the warmth between us. Knowing Mahmoud's commitment to peace, I never doubted for a second his concern for my safety when I was repeatedly taking shelter during the Hamas attacks on Tel Aviv in May 2021.

In our conversations about his principled opposition to the actions of the Israeli government in Gaza, not once did he express anything remotely like antisemitism. Mahmoud never said anything to make me believe that he supports Hamas or any other terrorist organization, and I have no doubt he wants to see the hostages taken on October 7th released to their families. I have never heard Mahmoud advocate for violence against anyone.

I eagerly look forward to getting to meet my dear friend's firstborn when time and geography allow. That child will be lucky to be raised by two fundamentally decent, kind, and deeply moral people who I am proud to have called friends for almost a decade.

I, [redacted], under penalty of perjury, do hereby affirm that the foregoing information is true and correct to the best of my knowledge.

Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Centre Street, New York, NY

Dear Judge Furman,

My name is [redacted] and I am writing this letter in support of Mahmoud Khalil. I am currently a junior at Columbia University. I grew up in Forest Hills, Queens, raised by my Jewish mother and my American father. From a young age, I was taught the importance of higher education in shaping a well-rounded individual. My father, [redacted], exemplified this belief—he graduated from Harvard in 1993, becoming the first in our family to attend an Ivy League institution.

Judaism has always been central to my identity. I attended Jewish preschool, went to Hebrew school multiple times a week until my Bar Mitzvah in 2017, celebrated Shabbat every Friday, and was raised with strong Jewish values. I emphasize this not to exaggerate or embellish, but to paint a clear picture of who I am. My Jewish identity is deeply meaningful to me, and in these past 16 months—an incredibly difficult time for the Jewish people—having a strong support system of kind, understanding, and respectful individuals has been more important than ever. Mahmoud is exactly that.

From the moment I met Mahmoud 16 months ago, he has been nothing short of a selfless friend and an inspiring mentor. I clearly remember one of our first encounters at a peaceful rally on October 12, 2023. Despite how such events are often misrepresented in the media, this rally was a calm and peaceful demonstration in support of Palestinian rights. Mahmoud took on a protective security role that day, ensuring students were safe from any physical or verbal threats. When people hurled insults and profanities at me and my classmates, Mahmoud was the first to step in and de-escalate the situation. He never raised his voice, never used harsh language, never resorted to aggression—he spoke calmly and respectfully, shielding students, including me, a Jewish student, from harm. He put himself between me and an aggressor, prioritizing my safety over his own. That is not the behavior of an antisemite—that is the behavior of an ally and a friend.

In the weeks that followed, I spent many late nights with Mahmoud at friends' apartments, getting to know him and hearing his incredible story—one that led him to work at the U.N. During this time, he also began attending Shabbat dinners I hosted with my friends. He would often bring a dish or a bottle of kosher wine to contribute, embracing the tradition with genuine curiosity and respect. He actively listened to the prayers, enthusiastically engaged with Jewish culture, and always approached our traditions with kindness.

At a later protest in November, I witnessed firsthand Mahmoud's unwavering commitment to protecting Jewish students. When an unaffiliated individual began shouting antisemitic slogans, Mahmoud was the first to intervene, immediately de-escalating the situation and ensuring the safety of those present. This came as no surprise—I already knew that Mahmoud was someone I could trust to stand up for me and my community.

Over the months, our friendship deepened. We shared meals, laughs, and countless memories. Mahmoud was not just a source of strength and support in my life but in the lives of so many others. He was always there—a shoulder to cry on, a friend to lean on, and a wise and compassionate presence in our community.

Mahmoud has done nothing that I have not done. He has committed no crime, nor has he ever advocated for anything that I have not also stood for. For that reason, I urge you to support his release.

Sincerely,

[redacted]

[redacted]

Friday, March 14th

With greatest respect,

[redacted]

[redacted]

Honorable Jesse M. Furman

United States District Judge

Southern District of New York

Thurgood Marshall Courthouse

40 Centre Street New York

Dear Judge Furman,

My name is [redacted], I am a Jewish student at Columbia University writing in support of my friend, Mahmoud Khalil. I am writing this letter because I know that if I ever needed him to do it for me, he would, and so much more, because that's the kind of person Mahmoud is. We know each other through sharing space more times than I can count, at protests and at community events and at concerts and Shabbats. He is someone who I trust implicitly. He is someone who always puts himself between those around him and danger, and he does it without thinking and without flinching. He does it even with people who he doesn't know well. We're not best friends but I know that if I was in danger, Mahmoud would do everything in his power to protect and help me—as lead negotiator during the encampment this is exactly what he did, protecting me and so many other student protestors who were being punished for speaking up against genocide. This letter is the least I can do for someone who has always selflessly and courageously put others before himself. I can't believe that it's precisely because of these incredible qualities he is being punished in this way. Mahmoud has protected Jewish students at Columbia like myself more than the university ever has. He has even protected us from the university itself. To punish him under the pretence that this kind, brave, gentle person somehow endangered us is the most egregious lie I've ever heard. His strength is only matched by his calmness even in the most stressful circumstances. I've never heard him raise his voice except at protests. I can't describe the sense of immediate comfort that one felt in his presence, and every minute I think of him detained, it hurts.

Please help Mahmoud.

EXECUTED ON Friday March 14th

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Centre Street, New York, NY

To the Honorable Judge Furman,

My name is [redacted], and for the past two years I have known and worked with Mahmoud Khalil on a number of occasions since meeting him as a graduate student at Columbia University. For over a year, Mahmoud and I served on the leadership board of the Columbia SIPA Palestine Working Group, a student-led organization promoting policy-related dialogue about Palestine. During this time, *he clearly and unequivocally, on multiple occasions, refused to endorse extremism in any form*. In the many, many hours spent discussing politics and Palestinian human rights issues, he never once suggested any sympathies for Hamas. I firmly stand behind this statement, to which I affix all credibility as a political science educator, a former United States Army officer, and combat veteran.

Since October 7, 2023, I have watched Mahmoud and other Arab colleagues at Columbia be subjected to the same refrain countless times: "do you condemn Hamas?". Myself and other classmates, however, were asked this to a far lesser degree. There was, and continues to be, an outsized onerous on Arab and Muslim students to repeatedly verbalize their condemnation of Hamas, as if their identity and dedication to basic human rights can only exist within the framework of violent extremism. Despite this unfair treatment, at every turn Mahmoud always answered by condemning extremism in all its forms. In the many times I have observed Mahmoud in incredibly contentious situations, he unwaveringly exuded calm, kindness, and an earnest desire for civil dialogue. In fact, many of us began lovingly calling him "Abu Khalil," or "father Khalil", reflective of his discerning, introspective leadership.

His erstwhile commitment to cross-party dialogue is so widely regarded among the student body, he was chosen from among his peers to represent Columbia's Gaza solidarity encampment (a peaceful, interfaith protest camp) as our lead negotiator. In this capacity, I

personally witnessed him serve as the epitome of leveled, good-faith dialogue for weeks. These are not the qualifiers of someone posing a threat to our national security. I would have been incredibly lucky to have someone as discerning as Mahmoud in my platoon during Operation Inherent Resolve, and I urge you to agree that that the United States will only be a more dangerous place if we forcibly remove young political voices committed to peace.

I certify that the foregoing is true and correct. Executed on (3/14/2025).

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01935

DECLARATION OF VERONICA R. SALAMA

I, Veronica R. Salama, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. My name is Veronica R. Salama. I am a licensed attorney in good standing in the state of New York. I am an attorney of record in the above-captioned case.
2. I represent the petitioner, Mahmoud Khalil, in this action.
3. I submit the following documents in support of Mr. Khalil's motion for preliminary injunctive relief in this action:
    a. Attached hereto as **Exhibit A** is a true and correct copy of the Politico article by Amanda Friedman, titled "Rubio Defends Detainment of Columbia Activist, Says More Arrests Will Come," published on March 16, 2025. I downloaded and saved this article in PDF format; it is also available at https://perma.cc/U3DR-KCPL.
    b. Attached hereto as **Exhibit B** is a true and correct copy of the NYTimes article by Luis Ferré-Sadurní and Hamed Aleaziz, titled "How a Columbia Student Fled to Canada After ICE Came Looking for Her," published on March 15, 2025. I downloaded and saved this article in PDF format; it is also available at https://perma.cc/3YH3-5U5K.

c. Attached hereto as **Exhibit C** is a true and correct copy of the full transcript of an interview with Troy Edgar, the Deputy Secretary of the Department of Homeland Security, on NPR's *Morning Edition* on March 13, 2025. I downloaded and saved this transcript in PDF format; it is also available at https://perma.cc/N6QY-4PWF.

d. Attached hereto as **Exhibit D** is a true and correct copy of the Associated Press article by Jake Offenhartz, titled "Immigration Agents Arrest Palestinian Activist Who Helped Lead Columbia University Protests," published on March 9, 2025. I downloaded and saved this article in PDF format; it is also available at https://perma.cc/HPH9-T2SV.

Executed on March 17, 2025
New York, New York

Veronica R. Salama
Staff Attorney
New York Civil Liberties Union Foundation

EXHIBIT A

POLITICO

Rubio defends detainment of Columbia activist, says more arrests will come

"I don't know where we have gotten it in our head that a visa is some sort of birthright," Rubio said.

Police guard the entrance to Columbia University as protesters rally in support of detained activist Mahmoud Khalil on March 14, 2025, in New York. | Jason DeCrow/AP

By **AMANDA FRIEDMAN**
03/16/2025 04:18 PM EDT

Secretary of State Marco Rubio defended the decision to detain a green card holder over his involvement in last year's pro-Palestinian protests at Columbia University on Sunday, saying that "pro-Hamas" protesters who hold student visas will be forced to leave the U.S.

"If you tell us when you apply for a visa, 'I'm coming to the U.S. to participate in pro-Hamas events,' that runs counter to the foreign policy interest of the United States … If you had told us you were going to do that, we never would have given you the visa," Rubio said on CBS' "Face the Nation."

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Mahmoud Khalil, a Palestinian originally from Syria, was arrested by immigration officials on March 8 for his involvement as a key negotiator during Columbia's protests over the Israel-Hamas war last year. While he entered the country on a student visa, he had eventually obtained legal permanent U.S. residency, commonly referred to as a green card.

President Donald Trump touted Khalil's detainment on social media last week as part of his effort to combat antisemitism on college campuses, saying the arrest was "the first of many to come." However, a federal judge blocked Khalil's deportation last week.

The legal battle has since spurred a debate about the First Amendment rights of foreign nationals and immigrants. Over 100 House Democrats signed a letter to the Department of Homeland Security on Friday, condemning the arrest as a violation of free speech rights and demanding the Trump administration provide evidence to justify Khalil's detainment.

But legal issues and criticism haven't deterred the Trump administration. Immigration officials arrested a second protester of Palestinian descent from Columbia on Friday for allegedly overstaying a student visa that was terminated in 2022.

"Every day we are approving visa revocations," Rubio said.

When asked by CBS moderator Margaret Brennan if there was any evidence of Khalil's link to terrorism or if the arrest was based merely on ideology, Rubio couldn't point to a specific example that backed the administration's claims that Khalil has shown material support for a terrorist organization.

"You should watch the news. These guys take over buildings. They vandalize colleges," Rubio said. "We don't need these people in our country. We never should have allowed him in … He is going to leave."

Also asked if it is only pro-Palestinian protesters who will have their visas revoked, Rubio said others' whose actions threaten the country's foreign policy interests will be subject to deportation.

"We don't want terrorists in America," Rubio said. "I don't know where we have gotten it in our head that a visa is some sort of birthright. It's not… If you violate the terms of your visitation, you're going to leave."

FILED UNDER: EMPLOYMENT & IMMIGRATION, IMMIGRATION, MARCO RUBIO,

EXHIBIT B

Case 2:25-cv-02162-EEF-DMD Document 44-2 Filed 04/17/25 Page 1 of 10 PageID: 472

How a Columbia Student Fled to Canada After ICE Came Looking for Her

Ranjani Srinivasan's student visa was revoked by U.S. immigration authorities. That was just the start of her odyssey.

Listen to this article · 11:35 min Learn more

By Luis Ferré-Sadurní and Hamed Aleaziz

March 15, 2025

The first knock at the door came eight days ago, on a Friday morning.

Three federal immigration agents showed up at a Columbia University apartment searching for Ranjani Srinivasan, who had recently learned her student visa had been revoked. Ms. Srinivasan, an international student from India, did not open the door.

She was not home when the agents showed up again the next night, just hours before a former Columbia student living in campus housing, Mahmoud Khalil, was detained, roiling the university. Ms. Srinivasan packed a few belongings, left her cat behind with a friend and jumped on a flight to Canada at LaGuardia Airport.

When the agents returned a third time, this past Thursday night, and entered her apartment with a judicial warrant, she was gone.

"The atmosphere seemed so volatile and dangerous," Ms. Srinivasan, 37, said on Friday in an interview with The New York Times, her first public remarks since leaving. "So I just made a quick decision."

Ms. Srinivasan, a Fulbright recipient who was pursuing a doctoral degree in urban planning, was caught in the dragnet of President Trump's crackdown on pro-Palestinian demonstrators through the use of federal immigration powers. She is one of a handful of noncitizens that the Immigration and Customs Enforcement agency has targeted at Columbia in recent days.

In the week since that first knock at the door, Ms. Srinivasan says she has struggled to understand why the State Department abruptly revoked her student visa without explanation, leading Columbia to withdraw her enrollment from the university because her legal status had been terminated.

Ranjani Srinivasan was pursuing a Ph.D. in urban planning at Columbia. Ranjani Srinivasan

On Friday, while considering her future in Canada, she received some answers.

The Department of Homeland Security issued a statement that characterized Ms. Srinivasan as a terrorist sympathizer and accused her of advocating violence and being "involved in activities supporting Hamas, a terrorist organization." The department did not provide any evidence for its allegations.

Kristi Noem, the homeland security secretary, posted surveillance footage on social media that showed Ms. Srinivasan lugging a suitcase at LaGuardia as she fled to Canada. Secretary Noem celebrated Ms. Srinivasan's departure as a "self-deportation."

"It is a privilege to be granted a visa to live & study in the United States of America," Secretary Noem wrote on X. "When you advocate for violence and terrorism that privilege should be revoked and you should not be in this country."

Ms. Srinivasan's lawyers have vehemently denied those allegations and have accused the Trump administration of revoking her visa for engaging in "protected political speech," saying she was denied "any meaningful form of due process" to challenge the visa revocation.

"Secretary Noem's tweet is not only factually wrong but fundamentally un-American," Naz Ahmad, one of Ms. Srinivasan's lawyers, said in a statement, adding: "For at least a week, D.H.S. has made clear its intent to punish her for her speech, and they have failed in their efforts."

In response to questions, officials with the Homeland Security Department said that when Ms. Srinivasan renewed her visa last year, she failed to disclose two court summonses related to protests on Columbia's campus. The department did not say how the summonses made her a terrorist sympathizer.

"I'm fearful that even the most low-level political speech or just doing what we all do — like shout into the abyss that is social media — can turn into this dystopian nightmare where somebody is calling you a terrorist sympathizer and making you, literally, fear for your life and your safety," Ms. Srinivasan said in the interview on Friday.

Ms. Srinivasan's current situation can be traced back to last year, when she was arrested at an entrance to Columbia's campus the same day that pro-Palestinian protesters occupied Hamilton Hall, a university building. She said she had not been a part of the break-in but was returning to her apartment that evening after a picnic with friends, wading through a churning crowd of protesters and barricades on West 116th Street, when the police pushed her and arrested her.

She was briefly detained and received two summonses, one for obstructing vehicular or pedestrian traffic and another for refusing to disperse. Her case was quickly dismissed and did not result in a criminal record, according to her lawyers and court documents. Ms. Srinivasan said that she never faced disciplinary action from the university and was in good academic standing.

"She was taken in with roughly 100 other people after being blocked from returning to her apartment and getting stuck in the street," said Nathan Yaffe, one of her lawyers. "The court recognized this when it dismissed her case as having no merit. Ranjani was just trying to walk home."

Ms. Srinivasan said she did not disclose the summonses in the visa renewal form later in the year because her case had been dismissed in May and she did not have a conviction.

"Because I had not and the charges were dismissed, I sort of marked it as 'no,'" she said. "But maybe that was my mistake. I would have been happy to disclose that, but just the way they had questioned us was sort of assuming that you had a conviction."

The State Department has broad discretion to revoke student visas, which it typically does if someone overstays or the government discovers fraud; convictions and arrests can also lead to revocations. Immigration lawyers said it was highly unusual for ICE to descend on college campuses searching for students with recently revoked visas as the agency has the past few days at Columbia, rattling many students.

“It is more rare for the government to act the way it has, such as in the cases in Columbia University, where they’re going on campus and conducting an operation to apprehend somebody,” said Greg Chen, a lawyer at the American Immigration Lawyers Association.

The Trump administration’s targeting of students with visas at a university enveloped in a cultural firestorm opened a new front in the president’s attempts to ramp up deportations and tamp down pro-Palestinian views. The president canceled $400 million in grants to the university after accusing it of failing to protect Jewish students. The arrests and attempted detentions of the Columbia students has led to an uproar among Democrats and civil rights groups.

Jason Houser, a senior ICE official during the Biden administration, said that “criminalizing free speech through radicalized immigration enforcement is a direct attack on our democracy.”

Last week, ICE arrested Mr. Khalil, a green card holder who had become a leading face of the pro-Palestinian protests at Columbia. Mr. Trump hailed the arrest as “the first of many to come.” On Friday, the Department of Homeland Security announced that it had arrested Leqaa Kordia, who had been involved in the protests at Columbia. Federal officials said she had overstayed her visa and had previously been arrested at a Columbia protest in April.

Unlike Mr. Khalil, Ms. Srinivasan said she was not an activist or a member of any group that organized demonstrations on campus.

Ms. Srinivasan said she was an architect who came to the United States from India as part of the Fulbright program in 2016 and that she enrolled at Columbia in 2020. She said she was in the fifth year of an urban planning doctoral program at the Graduate School of Architecture, Planning and Preservation, and was supposed to graduate in May.

She said that her activity on social media had been mostly limited to liking or sharing posts that highlighted “human rights violations” in the war in Gaza. And she said that she had signed several open letters related to the war, including one

by architecture scholars that called for “Palestinian liberation.”

“I’m just surprised that I’m a person of interest,” she said. “I’m kind of a rando, like, absolute rando,” she said, using slang for random.

It was March 5 when she received an email from the U.S. Consulate in Chennai, India, indicating that her visa had been revoked. The notice did not provide a reason, saying only that “information has come to light” that may make her ineligible for a visa.

Confused, she emailed Columbia’s office for international students the following day seeking guidance. An official informed her that the revocation would take effect only if she left the country and that she could remain in the United States to pursue her studies for the time being, according to emails reviewed by The Times.

The next morning, on March 7, Ms. Srinivasan was on a call with an official from the international student office when the federal agents first knocked on the door of her apartment, which is off campus but operated by Columbia. The official told Ms. Srinivasan to call campus security, while her roommate engaged with the agents from behind the closed apartment door.

In an interview, her roommate said that the agents had initially identified themselves as “police,” declined to provide their badge numbers, saying they feared they would be doxxed, and stood to the side of the door so that they were not visible through the peep hole. The roommate, a fellow Columbia student who spoke on the condition of anonymity out of fear for her safety, said that the building’s doorman, who is an immigrant, later told her that he had let the three agents into the building because he was frightened.

Ms. Srinivasan abandoned the apartment that night, so she was not there when officials returned the following evening. Her roommate once again refused to open the door to let them in and recorded audio of the interaction, which she shared with The Times.

"We were here yesterday," one of the officials says, believing he was talking to Ms. Srinivasan because the roommate had not identified herself. "We're here today. We're here tonight. Tomorrow. You're probably scared. If you are, I get it. The reality is, your visa was revoked. You are now amenable to removal proceedings."

The official stressed that he and his colleagues were not trying to break the law, that she would have the right to go before an immigration judge and left a phone number for the Homeland Security Department that she could call if she had "a change of heart."

"That's the easiest and fastest way to do this, as opposed to you being in your apartment and us knocking on your door every day, which is just silly," he said. "You're a very smart person. It's just not — it's not worth it."

The next day, Ms. Srinivasan received an email from Columbia saying that homeland security had alerted the university that her visa had been revoked and her legal status in the country had been terminated. Because she had to immediately leave the United States, the email said, her enrollment at Columbia had been withdrawn and she had to vacate student housing.

The email, signed by the university's international student office, said that, in compliance with its legal obligations, Columbia was asking her to meet with the homeland security agents. The university declined to comment on Ms. Srinivasan's case.

On Thursday night, three federal agents returned to Ms. Srinivasan's apartment with a search warrant signed by a judge and went inside to search for her, according to her roommate and lawyers.

By then, Ms. Srinivasan was already in Canada.

Edward Wong contributed reporting. Alain Delaquérière contributed research.

A correction was made on March 15, 2025*: An earlier version of this article, relying on information provided by a spokesperson, misstated the surname of one of Ranjani Srinivasan's lawyers. She is Naz Ahmad, not Ahmed.*

When we learn of a mistake, we acknowledge it with a correction. If you spot an error, please let us know at nytnews@nytimes.com. Learn more

Luis Ferré-Sadurní is a Times reporter covering immigration, focused on the influx of migrants arriving in the New York region. More about Luis Ferré-Sadurní

Hamed Aleaziz covers the Department of Homeland Security and immigration policy. More about Hamed Aleaziz

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A version of this article appears in print on , Section A, Page 13 of the New York edition with the headline: A Fleeing Student's 'Dystopian Nightmare'

EXHIBIT C

< DHS official defends Mahmoud Khalil arrest, but offers few details on why it happened

MARCH 13, 20254:18 AM ET

5-Minute Listen PLAYLIST TRANSCRIPT

MICHEL MARTIN, HOST:

President Trump has ramped up efforts to deliver on a campaign promise to carry out the largest ever deportation of migrants without legal status in U.S. history. Parallel to that effort is a crackdown on what the administration terms antisemitism on college campuses. Last weekend, a former student protest leader was arrested in New York City. Mahmoud Khalil, who has lawful permanent residency, a so-called green card, is being held in the Louisiana detention center. U.S. Immigration and Customs Enforcement, or ICE, says his green card was revoked. A judge ordered that he may not be deported, though, while the court weighs a legal challenge brought by his lawyers. Troy Edgar was just sworn in as Deputy Secretary of the Department of Homeland Security, and he is with us now to talk more about this. Good morning. Congratulations on your confirmation and also your return to the department. You served in the First Trump administration, as well.

TROY EDGAR: Yeah. Good morning, Michel. Very nice to be here.

MARTIN: Thanks so much...

EDGAR: Thank you.

MARTIN: ...For joining us. So Mahmoud Khalil says he acted as a spokesperson for pro-Palestinian demonstrators and as a mediator with Columbia University where he was a graduate student. As you know, Mr. Edgar, any conduct that can be legally sanctioned must be described. So what is the specific conduct the government alleges that Mr. Khalil engaged in that merits removal from the United States?

EDGAR: Yeah. Well, I think what you saw there is you've got somebody that has come into the country on a visa. And as he's going through the process of that visa process, he's come in to

basically be a student that is not going to be supporting terrorism. So, you know, the issue is, you know, he was let in the country on this visa. He has been promoting this antisemitism activity at the university. And, you know, at this point, the State Department has revoked his visa for supporting that terrorist-type organization, and we're the enforcing agency, so we've come in to basically arrest him.

MARTIN: OK. So a White House official told the free press that there's no allegation that he broke any laws. So again, I have to ask, what specifically constitute terrorist activity that he was supporting? What exactly do you say he did?

EDGAR: Well, like I said, you know, when you apply for a visa, you go through the process to be able to say that, you know, you're here on a student visa. It doesn't afford you all the rights of coming in and basically going through this process, agitating and supporting Hamas. So at this point, you know, the Secretary of State and the State Department maintains the right to revoke the visa and that's what they've done.

MARTIN: So what - how did he support Hamas? Exactly what did he do?

EDGAR: Well, I think you can see it on TV, right? It's - this is somebody that, you know, we've invited and allowed the student to come into the country, and he put himself in the middle of the process of basically pro-Palestinian activity. And at this point, like I said, the Secretary of State can review his visa process at any point and revoke it...

MARTIN: Forgive me - he's a...

EDGAR: ...And that's what we've done.

MARTIN: ...Permanent resident. He's not a visa holder. He's a legal permanent resident. He has the green card, at least he did until it's alleged that it was revoked. So, look, if the allegation is that Mr. Khalil organized protests and made speeches, after which other people engaged in prohibited activity or say, violent activity, well, Mr. Trump gave a political speech on January 6, 2021, after which some individuals engaged in violent and illegal acts. How is this any different?

EDGAR: Yeah. Well, like I said, I mean, President Trump's a citizen and president of the United States. This is a person that came in under a visa. And again, the Secretary of State,

at any point, can take a look and evaluate that visa and decide if they want to revoke it and...

MARTIN: He's a legal permanent resident. I have to keep insisting on that. He is a legal permanent resident. So what is the standard? Is any criticism of the Israeli government a deportable offense?

EDGAR: Like I said, I think that at this point, when he was - entered into the country on a student visa, at any point, we can go through and evaluate what his status is and the Secretary of State is basically...

MARTIN: Is any criticism of the United States government a deportable offense?

EDGAR: Like I said, you know, if you go through the process and you're a student and you're here on a visa and you go through at any point, you...

MARTIN: Is any criticism of the government a deportable offense?

EDGAR: Like I said, you know, as a student, he comes to the United States on a student visa, applies - let me put it this way, Michel - imagine if he came in and filled out the form and said I want a student visa. They ask him, what are you going to do here? I he said I'm going...

MARTIN: He was a student.

EDGAR: ...To go and protest. And...

MARTIN: So is protest...

EDGAR: ...Join an antisemitic activity...

MARTIN: ...A deportable event?

EDGAR: ...We would never have let him in the country.

MARTIN: Is protesting a deportable offense?

EDGAR: Like I said, you're focused on protesting. I'm focused on it's a visa process. He went through a legal process, came into the country...

MARTIN: Are you saying that he lied on his application? He's a lawful...

EDGAR: Well, I think...

MARTIN: ...Permanent resident, married to an American citizen.

EDGAR: Well, I think if he would have declared he's a terrorist, we would have never let him in.

MARTIN: And what did he engage in that constitutes terrorist activity?

EDGAR: I mean, Michel, have you watched it on TV? It's pretty clear.

MARTIN: No, it isn't. Well, explain it to those of us who have not or perhaps others have not. What exactly did he do?

EDGAR: Well, I think it's clear or we wouldn't be talking about it. I mean, the reality is that if you watch and see what he's done on the university...

MARTIN: Do you not know?

EDGAR: ...And he came in. If he would have declared that he...

MARTIN: Are you telling us that you're not aware? You don't know what he did that is a deportable offence.

EDGAR: No, I find it interesting that you're not aware.

MARTIN: Oh, I think you could explain it to us. I think others would like to know exactly what the offenses are, what the propaganda was that you allege, what the activity was that you allege. Well, perhaps we can talk again and you can give us more details about this. That's Department of Homeland Security Deputy Secretary Troy Edgar, Mr. Edgar, we really appreciate you coming to join us, and we do hope we'll talk again.

EDGAR: Thank you.

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EXHIBIT D

AP SETS THE STANDARD FOR POLITICAL REPORTING.
SUPPORT INDEPENDENT, FACT-BASED JOURNALISM. DONATE

Immigration agents arrest Palestinian activist who helped lead Columbia University protests

BY JAKE OFFENHARTZ
Updated 11:37 PM EDT, March 9, 2025

UPDATE: A judge has ordered the Trump administration not to deport Palestinian activist pending legal fight over his detention.

NEW YORK (AP) — Federal immigration authorities arrested a Palestinian activist Saturday who played a prominent role in Columbia University's protests against Israel, a significant escalation in the Trump administration's pledge to detain and deport student activists.

Mahmoud Khalil, a graduate student at Columbia until this past December, was inside his university-owned apartment Saturday night when several Immigration and Customs Enforcement agents entered and took him into custody, his attorney, Amy Greer, told The Associated Press.

Greer said she spoke by phone with one of the ICE agents during the arrest, who said they were acting on State Department orders to revoke Khalil's student visa. Informed by the attorney that Khalil was in the United States as a permanent resident with a green card, the agent said they were revoking that instead, according to the lawyer.

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A spokesperson for the Department of Homeland Security, Tricia McLaughlin, confirmed Khalil's arrest in a statement Sunday, describing it as being "in support of President Trump's executive orders prohibiting anti-Semitism."

0:00 / 48

AP AUDIO: ICE arrests Palestinian activist who helped lead Columbia University protests, his lawyer says

AP correspondent Julie Walker reports ICE arrests a Palestinian activist who helped lead Columbia University protests.

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Arrest of Palestinian activist stirs questions about protections for students and green card holders

Leader of student protests at Columbia facing deportation

Who is Mahmoud Khalil, the Columbia student activist arrested by ICE?

Khalil's arrest is the first publicly known deportation effort under Trump's promised crackdown on students who joined protests against the war in Gaza that swept college campuses last spring. The administration has claimed participants forfeited their rights to remain in the country by supporting Hamas.

McLaughlin signaled the arrest was directly connected to Khalil's role in the protests, alleging he "led activities aligned to Hamas, a designated terrorist organization."

As ICE agents arrived at Khalil's Manhattan residence Saturday night, they also threatened to arrest Khalil's wife, an American citizen who is eight months pregnant, Greer said.

Khalil's attorney said they were initially informed that he was being held at an immigration detention facility in Elizabeth, New Jersey. But when his wife tried to visit Sunday, she learned he was not there. Greer said she still did not know Khalil's whereabouts as of Sunday night.

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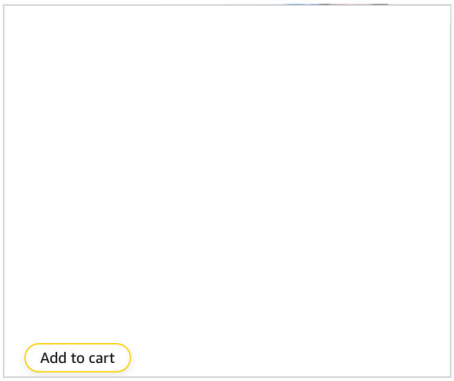

"We have not been able to get any more details about why he is being detained," Greer told the AP. "This is a clear escalation. The administration is following through on its threats."

A Columbia University spokesperson said law enforcement agents must produce a warrant before entering university property, but declined to say if the school had received one ahead of Khalil's arrest. The spokesperson declined to comment on Khalil's detention.

In a message shared on X Sunday evening, Secretary of State Marco Rubio said the administration "will be revoking the visas and/or green cards of Hamas supporters in America so they can be deported."

▶ Follow live updates on President Donald Trump and his administration

The Department of Homeland Security can initiate deportation proceedings against green card holders for a broad range of alleged criminal activity, including supporting a terror group. But the detention of a legal permanent resident who has not been charged with a crime marked an extraordinary move with an uncertain legal foundation, according to immigration experts.

"This has the appearance of a retaliatory action against someone who expressed an opinion the Trump administration didn't like," said Camille Mackler, founder of Immigrant ARC, a coalition of legal service providers in New York.

Khalil, who received his master's degree from Columbia's school of international affairs last semester, served as a negotiator for students as they bargained with university officials over an end to the tent encampment erected on campus last spring.

The role made him one of the most visible activists in support of the movement, prompting calls from pro-Israel activists in recent weeks for the Trump administration to begin deportation proceedings against him.

Khalil was also among those under investigation by a new Columbia University office that has brought disciplinary charges against dozens of students for their pro-Palestinian activism, according to records shared with the AP.

The investigations come as the Trump administration has followed through on its threat to cut hundreds of millions of dollars in funding to Columbia because of what the government describes as the Ivy League school's failure to squelch antisemitism on campus.

The university's allegations against Khalil focused on his involvement in the Columbia University Apartheid Divest group. He faced sanctions for potentially helping to organize an "unauthorized marching event" in which participants glorified Hamas' Oct. 7, 2023, attack and playing a "substantial role" in the circulation of social media posts criticizing Zionism, among other acts of alleged discrimination.

"I have around 13 allegations against me, most of them are social media posts that I had nothing to do with," Khalil told the AP last week.

"They just want to show Congress and right-wing politicians that they're doing something, regardless of the stakes for students," he added. "It's mainly an office to chill pro-Palestine speech."

JAKE OFFENHARTZ
Offenhartz is a general assignment reporter in the New York City bureau of The Associated Press.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAHMOUD KHALIL, Petitioner, v. WILLIAM P. JOYCE, *et al.*, Respondents.	No. 25 Civ. 1935 (JMF) SECOND SUPPLEMENTAL DECLARATION OF ACTING FIELD OFFICE DIRECTOR WILLIAM P. JOYCE

SECOND SUPPLEMENTAL DECLARATION OF WILLIAM P. JOYCE

I, WILLIAM P. JOYCE, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am an Acting Field Office Director ("(A)FOD") in the New York City Field Office of Enforcement and Removal Operations ("ERO New York") at U.S. Immigration and Customs Enforcement ("ICE") within the U.S. Department of Homeland Security ("DHS").

2. I am aware that Mahmoud Khalil ("Khalil") has filed an Amended Petition for a Writ for Habeas Corpus before this Court.

3. As the (A)FOD, I am responsible for, among other things, oversight of the civil immigration arrest and detention of aliens in the New York City area. In my role as the (A)FOD, I have access to records maintained in the ordinary course of business by ICE, including documentary records concerning ERO New York and the alien detainees who fall within its responsibility.

4. I provide this declaration based on my personal knowledge, reasonable inquiry, and information obtained from various records, systems, databases, other DHS employees, and information portals maintained and relied upon by DHS in the regular course of business.

5. Khalil is a native of Syria and citizen of Algeria who entered the United States under a F1 visa on December 20, 2022.

6. On November 16, 2024, Khalil obtained Lawful Permanent Resident ("LPR") status as the spouse of a United States citizen.

7. On March 8, 2025, Special Agents from the ICE Homeland Security Investigations ("HSI") Office of the Special Agent in Charge for the New York Area of Responsibility ("AOR") arrested Khalil at 8:35 p.m. at 195 Claremont Avenue in Manhattan, New York, for the purpose of placing him in removal proceedings. HSI transported him to 26 Federal Plaza at 8:44 p.m. and arrived at 9:20 p.m. While at 26 Federal Plaza, HSI served Khalil with a Notice to Appear ("NTA"), which charged him as removable pursuant to 8 U.S.C. § 1227(a)(4)(C)(i), in that the Secretary of State has reasonable grounds to believe that his presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States ("Exhibit A"). HSI also served Khalil with a Notice of Custody Determination, notifying Khalil that his detention was governed by 8 U.S.C. § 1226(a) (immigration custody during removal proceedings).

8. Due to the lack of available detention space available to ERO New York, aliens arrested by ICE in that AOR are often detained at facilities in other AORs. This is an operational necessity to prevent overcrowding in ICE facilities.

9. Orange County Jail in Goshen, New York did not have available detention space to accommodate Khalil and many ICE detention facilities throughout the Northeastern United States

are near or at capacity and engaged in efforts to relocate detained aliens to regions with available bedspace.

10. Between March 8, 2025, and March 9, 2025, ERO New York transported sixteen detained aliens, including Khalil, from ERO New York's AOR to New Orleans Field Office of Enforcement and Removal Operations ("ERO New Orleans") AOR. Most of these transfers were for ongoing detention, while a small number were being staged for removal. ERO New Orleans has administrative control of eight different detention facilities, meaning that AOR is often able to accommodate transfers when other AORs are not.

11. Newark Field Office of Enforcement and Removal Operations ("ERO Newark") indicated that Elizabeth Detention Facility in Newark, New Jersey was experiencing and continues to experience a bedbug issue that prevented them from accepting detainees as full transfers. ERO New York did not request bed space from Philadelphia Field Office of Enforcement and Removal Operations ("ERO Philadelphia") or Buffalo Field Office of Enforcement and Removal Operations ("ERO Buffalo") based on awareness of general paucity of bedspace in those AORs compared to the known availability of bedspace in ERO New Orleans' AOR, as well as the need for those AORs to accommodate their own ongoing operations.

12. While Khalil was at 26 Federal Plaza, ERO sought and obtained bedspace for Khalil from the ERO New Orleans Field Office. The bedspace request for Khalil was made at 10:49 p.m. on March 8, 2025. The travel packet for Khalil and his escorting officers was finalized at 3:57 a.m. on March 9, 2025, with a flight scheduled for 2:35 p.m. on March 9, 2025.

13. ERO New York was responsible for locating bed space to detain Khalil and made its decisions on where to detain him based solely on operational considerations.

14. ERO New York did not receive any directives or instructions pertaining to Khalil's detention.

15. ICE's facility at 26 Federal Plaza is a Hold Room facility used for detention of individuals awaiting removal, transfer, EOIR hearings, medical treatment, intra-facility movement, or other processing into or out of a facility and it does not have beds or overnight medical staff. ICE ERO policy number 11087.2 dictates that absent exceptional circumstances, no detainee should be housed in a Hold Room facility for longer than 12 hours.

16. In compliance with this policy, upon completion of initial processing, Khalil departed 26 Federal Plaza at 1:40 a.m. and ICE transported Khalil to Elizabeth Detention Facility in Newark, New Jersey, where he was physically present and booked into the detention facility at 2:20 a.m. Eastern Standard Time (3:20 a.m. Eastern Daylight Time) on March 9, 2025. Elizabeth Detention Facility has comprehensive overnight accommodations for detainees such as beds and 24-hour medical staff. As stated above, Khalil could not be housed at Elizabeth Detention Facility long-term due to the bedbug issue, so he remained there only until his flight to New Orleans.

17. At the time Khalil filed a petition for a writ of habeas corpus in the Southern District of New York, he was detained at Elizabeth Detention Facility in Newark, New Jersey.

18. On March 9, 2025, Khalil departed Elizabeth Detention Facility at 11:30 a.m. and was brought to the airport to be transported to the Central Louisiana ICE Processing Facility in Jena, Louisiana.

19. On March 10, 2025, Khalil was booked into the Central Louisiana ICE Processing Facility at 12:33 a.m., Central Time and he has been detained at that detention facility since that time. ICE has no current plans or intentions to transfer Khalil from ERO New Orleans' AOR during the pendency of removal proceedings.

20. Except for this ongoing lawsuit, ERO New York is not involved in Khalil's immigration removal proceedings which are pending before the LaSalle Immigration Court in Jena, Louisiana.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17 day of March 2025.

WILLIAM P JOYCE

Digitally signed by WILLIAM P JOYCE
DN: cn=WILLIAM P JOYCE, o=U.S. Government, ou=People, email=William.P.Joyce@ice.dhs.gov, c=US
Date: 2025-03-17T15:18:35-0400

William P. Joyce
Acting Field Office Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

Exhibit A

Uploaded on: 03/09/2025 at 10:23:47 AM Central Daylight Time from Jena, LA IP: 166.181.62.35
Case 2:25-cv-01963-MEF-MAH Document 44-2 Filed 03/10/25 Page 1 of 3 PageID: 526

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [redacted]
Event No: [redacted]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [redacted] FINS: [redacted] File No: [redacted]

In the Matter of:

Respondent: MAHMOUD KHALIL currently residing at:

[redacted]

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ You are an arriving alien.

☐ You are an alien present in the United States who has not been admitted or paroled.

☒ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;

2. You are a native of SYRIA and a citizen of ALGERIA;

3. You were admitted to the United States at unknown place on or about unknown date as a unknown manner;ORYour status was adjusted to that of a lawful permanent resident on November 2024 under section 212 (a)(3)(C) of the Act;

4. The Secretary of State has determined that your presence or activities in the United States would have serious adverse foreign policy consequences for the United States.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(4)(C)(i) of the Immigration and Nationality Act, as amended, in that the Secretary of State has reasonable ground to believe that your presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

830 PINEHILL RD JENA LA 71342. LASALLE DETENTION FACILITY
(Complete Address of Immigration Court, including Room Number, if any)

on March 27, 2025 *(Date)* at 8:30 AM *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

TIMOTHY MORAN - Supervisory Special Agent TIMOTHY M MORAN JR
(Signature and Title of Issuing Officer)

Date: March 9, 2025

26 Federal Plaza, New York, NY
(City and State)

EOIR – 1 of 3

Uploaded on: 03/09/2025 at 09:23:07 AM Central Daylight Time Page 1 of 3
Case 2:25-cv-01162-JLB-NPM Document 44-2 Page 1 of 3 PageID 527
Case: 25-2162 Document: 7-2 Filed: 08/20/2025

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at http://www.ice.gov/contact/ero, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before: _____

_____ *(Signature of Respondent)*

_____ Date: _____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on March 9, 2025, in the following manner and in compliance with section 239(a)(1) of the Act.

☒ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☐ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(X) Refused to sign (JG)

(Signature of Respondent if Personally Served)

TIMOTHY M MORAN JR Digitally signed by TIMOTHY M MORAN JR Date: 2025.03.09 09:41:28 -05'00'

TIMOTHY MORAN - Supervisory Special Agent

(Signature and Title of officer)

EOIR – 2 of 3

DHS Form I-862 (6/22)

Uploaded on: 03/09/2025 at 09:23:47 AM Central Daylight Time - Page ID: 528

Privacy Act Statement

Authority:
The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:
You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:
For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at https://www.dhs.gov/system-records-notices-sorns. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at https://www.justice.gov/opcl/doj-systems-records. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:
Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

EOIR – 3 of 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAHMOUD KHALIL, Petitioner, -v- WILLIAM P. JOYCE et al., Respondents.	25-CV-1935 (JMF) OPINION AND ORDER

JESSE M. FURMAN, United States District Judge:

At the heart of this case is the important question of whether and under what circumstances the Government may rescind a person's lawful permanent resident status and remove him from the United States. It is raised by way of a petition for the writ of habeas corpus, pursuant to 28 U.S.C. § 2241, that was filed on behalf of Mahmoud Khalil, a graduate student at Columbia University. On March 8, 2025, immigration authorities arrested and detained Khalil, a green card holder and the husband of a United States citizen, based on a determination by the Secretary of State of the United States that his "presence or activities in the United States . . . would have potentially serious adverse foreign policy consequences for the United States." 8 U.S.C. § 1227(a)(4)(C)(i). In his Petition, Khalil alleges that the Secretary of State made this determination to "retaliate against and punish" him for his "participation in protests" on and around Columbia's campus "concerning Israel's military campaign in Gaza." ECF No. 38 ("Petition"), ¶¶ 2-3. He argues that his arrest, detention, and prospective removal violate his First Amendment right to freedom of speech, his Fifth Amendment right to due process of law, as well as the Administrative Procedure Act, 5 U.S.C. § 706(2). Petition ¶¶ 88-

99. He seeks an order directing his release from detention and setting aside the Secretary of State's determination. *See id.* at Prayer for Relief ¶¶ 2-3, 5-6.

These are serious allegations and arguments that, no doubt, warrant careful review by a court of law; the fundamental constitutional principle that all persons in the United States are entitled to due process of law demands no less.[1] But before the Court may review Khalil's allegations and arguments, it must confront a threshold question: whether it is the proper tribunal to even consider Khalil's Petition. Generally, a person challenging his detention through a habeas petition is required to file that petition in the federal district where he is detained at the time of filing and to name as the respondent the custodian detaining him there. The Supreme Court articulated and applied these "longstanding" rules — known as the "district of confinement" and "immediate custodian" rules — in a case that could be described as even more extraordinary than this one: a habeas petition filed on behalf of Jose Padilla, a United States citizen who was designated an "enemy combatant" and detained by the military. *See Rumsfeld v. Padilla*, 542 U.S. 426, 449 (2004). Lower courts, including this Court, have since held that these rules apply to habeas petitions filed by people held in immigration detention, such as Khalil, at least to the extent that they seek release. Relying on the district-of-confinement and immediate-custodian rules, the Government moves to dismiss Khalil's Petition or to transfer it to the Western District of Louisiana, where he was taken by the Government on March 10, 2025, and has since been detained. By contrast, Khalil argues that this Court should hear his Petition; in

[1] In many instances, a person who argues that the Government's efforts to remove him from the United States are unlawful must await entry of a final order of removal and then file in the appropriate court of appeals a petition for review of that order. *See, e.g., Michalski v. Decker*, 279 F. Supp. 3d 487, 492-95 (S.D.N.Y. 2018); *Yearwood v. Barr*, 391 F. Supp. 3d 255, 262-63 (S.D.N.Y. 2019). The Court need not and does not address whether that is the route that Khalil must take to raise the claims that he brings in his petition here.

the alternative, he argues that it should be transferred to the District of New Jersey, where he was detained at the time that his lawyer filed the Petition, not to the Western District of Louisiana.

For the reasons set forth below, the Court agrees with the Government that Khalil's Petition cannot be heard in this District and agrees with Khalil that it should be transferred to the District of New Jersey, not dismissed or transferred to the Western District of Louisiana. These conclusions flow from the undisputed fact that, at 4:40 a.m. on March 9, 2025, when Khalil's lawyer filed the Petition on his behalf, he was detained in New Jersey. A straightforward application of the district-of-confinement and immediate-custodian rules therefore dictates that Khalil's Petition should have been filed in the United States District Court for the District of New Jersey, not in this Court. Khalil makes various arguments in an effort to avoid that conclusion, most notably seizing on a concurring opinion in *Padilla*, in which Justice Anthony M. Kennedy, joined by Justice Sandra Day O'Connor, observed that he "would acknowledge an exception" to the district-of-confinement and immediate-custodian rules "if there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention." 542 U.S. at 454 (Kennedy, J., concurring). But it is not clear that Justice Kennedy's opinion is the law of the land; nor has any court ever found that his exceptions applied. In any event, even if Justice Kennedy's exceptions were the law (or the Court were to adopt them), they would not aid Khalil. That is because he has not alleged facts indicating that his transfer from this District to the District of New Jersey — the only transfer relevant to the jurisdictional analysis — was done for an improper purpose or that the Government was not forthcoming about his whereabouts in a way that meaningfully affected his ability to seek, let alone obtain, judicial review of his detention.

For these reasons, elaborated upon below, the Court concludes that it may not entertain Khalil's Petition. But the Court rejects the Government's requests to dismiss the case or to transfer it to the Western District of Louisiana. As to the former, transfer, rather than dismissal, is the path that courts usually take in these circumstances. That path is all the more appropriate in this case, as dismissal would mean vacatur of this Court's order barring Khalil's removal from the United States until his claims can be addressed, *see* ECF No. 9, and thus might allow the Government to frustrate Khalil's effort to obtain judicial review of his claims by removing him from the country before a court could rule. Moreover, Khalil filed in the wrong district through no fault of his own; his lawyer reasonably relied on the information made available to her by the Government at the time of filing. As to the latter, the Court concludes that a straightforward application of well-established federal law mandates transfer of the case to the District of New Jersey because, under the immediate-custodian and district-of-confinement rules, it is the one and only district in which Khalil could have filed his Petition at the time this action commenced. Congress has prescribed the district to which this case must be transferred, and it is New Jersey. The Court is no less bound by these laws to transfer to the District of New Jersey than it is bound by the immediate-custodian and district-of-confinement rules to decline jurisdiction.

In many ways, this is indeed an exceptional case, and there is a need for careful judicial review. Such judicial review is especially critical when, as here, there are colorable claims that the Executive Branch has violated the law or exercised its otherwise lawful authority in an arbitrary and discriminatory manner. *See Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."). But the Supreme Court has made clear that the "longstanding" immediate-custodian and district-of-confinement rules apply without regard for whether a case is "'exceptional,' 'special,' or 'unusual.'" *Padilla*, 542 U.S. at 449-50. And in an exceptional case, it is all the more important

for a court to apply well-established principles to the facts, lest emotions or passions interfere with reasoned analysis; that is the essence of the rule of law. For the reasons that follow, the Court concludes that well-established principles call for this Court to transfer Khalil's Petition to the United States District Court for the District of New Jersey, and the Court orders that the case be so transferred forthwith. To preserve the status quo and ensure that Khalil gets an opportunity to have his claims heard in due course, the Court's Order barring the Government from removing Khalil, *see* ECF No. 9, shall remain in effect unless and until the transferee court orders otherwise. It will be up to that court to consider Khalil's claims as well as the motions that he has filed to date in connection with his claims, namely a motion to transfer him from his present place of confinement to a detention facility in this District, ECF No. 11; a motion for release on bail, ECF No. 53; and a motion for preliminary injunctive relief, ECF No. 66.

RELEVANT FACTS

Many of the facts in this case are hotly contested. For instance, the Petition depicts Khalil — who entered the United States in December 2022 on a student visa to attend Columbia University's School of International and Public Affairs, is married to a United States citizen, and has been a lawful permanent resident since 2024 — as an outspoken but peaceful leader of student protests held at Columbia University against Israel's actions in Gaza since the atrocities of October 7, 2023. Petition ¶¶ 20-29. By contrast, the Government has issued statements describing Khalil as leading "activities aligned to Hamas," "siding with terrorists," and a "threat to the foreign policy and national interests of the United States." *Id.* ¶¶ 74, 76-77, 79. More significant for present purposes, the Secretary of State has made a formal finding that Khalil's "presence or activities in the United States would have serious adverse foreign policy consequences for the United States," *id.* ¶ 82; *see also* ECF No. 48, at 7 (Notice to Appear), and,

on that basis, the Government apparently canceled Khalil's green card and now seeks his removal from the United States, *see* 8 U.S.C. § 1227(a)(4)(C)(i).

Significantly, however, the facts relevant to the threshold question of where this case should be heard — all of which relate to events between March 8 and 10, 2025 — are not really in dispute. On March 8, 2025, at approximately 8:30 p.m., agents from the United States Department of Homeland Security ("DHS") arrested Khalil outside his Columbia University apartment in New York City. Petition ¶¶ 45-48; ECF No. 48 ("Mar. 14, 2025 Joyce Decl."), ¶ 7. The agents approached Khalil and his wife and asked him to confirm his identity. Petition ¶ 47. When he did, the agents identified themselves as DHS agents and declared that they were taking him into custody. *Id.* Khalil asked why the agents were there, to which they replied that Khalil's visa had been revoked. *Id.* ¶ 48. Khalil then called his attorney, Amy Greer, who spoke with one of the agents present — Special Agent Elvin Hernandez — and explained that Khalil is a lawful permanent resident. *Id.* ¶¶ 49-51. Hernandez responded that the State Department had also revoked Khalil's green card and that he would be brought before an immigration judge. *Id.* ¶ 51.[2] The agents handcuffed Khalil, then informed his wife and lawyer that they were taking him to 26 Federal Plaza, the Immigration and Customs Enforcement ("ICE") Field Office in Manhattan. *Id.* ¶¶ 51-53. They proceeded to take him there, arriving at 9:20 p.m. *Id.* ¶ 58; Mar. 14, 2025 Joyce Decl. ¶ 7.

Once Khalil arrived at 26 Federal Plaza, ICE agents took his biometrics. Petition ¶ 58. While there, Khalil overheard an agent say to Agent Hernandez that "the White House is

[2] The Petition alleges that when Khalil's wife presented to one of the DHS agents documents "confirming Mr. Khalil's status as a lawful permanent resident," the agent "looked confused" and said to someone on the telephone: "'He has a green card.'" Petition ¶ 52. Khalil's wife then "heard the agent repeat that they were being ordered to bring Mr. Khalil anyway." *Id.*

requesting an update." *Id.* Khalil was then asked to sign a Notice to Appear ("NTA") for removal proceedings, a document that provides notice of the grounds for a noncitizen's removal from the country, and a Notice of Custody Determination, a document that provides notice of the grounds for a noncitizen's detention during removal proceedings. *Id.* ¶ 59; Mar. 14, 2025 Joyce Decl. ¶ 7. The Notice to Appear ordered Khalil to appear before an immigration judge at "830 Pinehill Rd, Jena, LA, 71342, LASALLE DETENTION FACILITY on March 27, 2025 at 8:30 AM." Petition ¶ 60; *see* ECF No. 48, at 7. The document was dated March 9, 2025, and the issuing officer's signature was timestamped at 12:40 a.m. Petition ¶ 60; *see* ECF No. 48, at 7-8. An ICE agent denied Khalil's request to speak with his lawyer about the Notice to Appear and the Notice of Custody Determination, and Khalil refused to sign the documents. Petition ¶ 59.

In the meantime, Greer began checking ICE's online Detainee Locator in an effort to locate Khalil. She first did so at 10:00 p.m. on March 8, 2025, but Khalil was not yet listed in the system. *Id.* ¶ 54. She checked the Detainee Locator again at 1:35 a.m. on Sunday, March 9, 2025, at which time Khalil was listed as being in custody in New York. *Id.* At 4:29 a.m., Greer checked the Detainee Locator again and observed that Khalil was still listed as being in New York. *Id.*[3] Eleven minutes later, at 4:40 a.m., Greer filed the Petition on Khalil's behalf; she filed it in this District "based on information and belief that ICE was still holding Mr. Khalil at 26 Federal Plaza" (which is located in this District). *Id.*; *see also* ECF No. 2. The Petition named as Respondents William P. Joyce, the Acting Field Office Director of the New York Field Office for ICE; Caleb Vitello, the Acting Director of ICE; Kristi Noem, the Secretary of DHS; and Pamela Bondi, the Attorney General of the United States. *See* ECF No. 2, ¶¶ 2-5. (The Petition has since been amended to name two additional Respondents, Donald J. Trump, the

[3] Although it is immaterial for present purposes, the Court notes that, on March 9, 2025, at 2:00 a.m. (Eastern Standard Time), the time changed to 3:00 a.m. (Eastern Daylight Time).

President of the United States; and Marco Rubio; the Secretary of State, and is now styled "Amended Petition for Writ of Habeas Corpus and Complaint." *See* Petition ¶¶ 10, 14.)

Significantly, it turns out that Khalil was no longer in the Southern District of New York when Greer filed the Petition. Declarations filed by the Government — and not disputed by Khalil — reveal that, on March 9, 2025, at 1:40 a.m. (Eastern Standard Time), ICE agents transported Khalil from 26 Federal Plaza to the Elizabeth Detention Facility in Newark, New Jersey, into which he was booked at 3:20 a.m. (Eastern Daylight Time — i.e., forty minutes after leaving 26 Federal Plaza). *See e.g.*, Mar. 14, 2025 Joyce Decl. ¶ 14; *see* ECF No. 32 ("Mar. 12, 2025 Joyce Decl."), ¶ 8. According to the Government, 26 Federal Plaza is a "Hold Room facility" used only for temporary detention and "does not have beds or overnight medical staff." Mar. 14, 2025 Joyce Decl. ¶ 13. Further, ICE policy provides that, "absent exceptional circumstances, no detainee should be housed in a Hold Room facility for longer than 12 hours." *Id.* (discussing ICE ERO policy number 11087.2). "In compliance with this policy," ICE transported Khalil from 26 Federal Plaza to the Elizabeth Detention Facility. *Id.* ¶ 14. The Government explains this move on the ground that, "[d]ue to a lack of detention space available" to ICE's New York Field Office, noncitizens arrested by ICE in the New York City area are frequently detained at facilities located elsewhere. *Id.* ¶ 8. It further explains that the Orange County Jail, which is located in this District, "did not have available detention space." *Id.* ¶ 9.

Although Khalil had left New York by 3:20 a.m. on March 9, 2025, the ICE Detainee Locator was not updated until later that morning. *See* Petition ¶ 55 ("The next morning, around 8:30 a.m. on Sunday, March 9, the ICE locator indicated that Mr. Khalil was still in New York."). "Sometime after 9 a.m." that day, the Detainee Locator changed to say — accurately — that he was detained at the Elizabeth Detention Facility in New Jersey. *Id.* At 9:29 a.m., Khalil's immigration attorney twice attempted to call the Elizabeth Detention Facility, but no one

answered. *Id.* At around 11:20 a.m. the same day, Khalil's wife went to the Elizabeth Detention Facility to see him, but she was informed that Khalil was not showing up in the system. *Id.*

At 11:30 a.m., agents removed Khalil from the Elizabeth Detention Facility to take him to the Central Louisiana ICE Processing Facility (also known as the LaSalle Detention Facility) located in Jena, Louisiana, where his removal hearing was noticed to occur on March 27, 2025. Mar. 14, 2025 Joyce Decl. ¶¶ 16-17; *see* Petition ¶ 60; ECF No. 48, at 7. The Government explains that the Elizabeth Detention Facility "was experiencing and continues to experience a bedbug issue that prevented [the facility] from accepting detainees as full transfers." Mar. 14, 2025 Joyce Decl. ¶ 11. Therefore, even before Khalil was moved from 26 Federal Plaza to the Elizabeth Detention Facility, the New York ICE office had requested and secured bedspace for Khalil from the New Orleans ICE Field Office and began arranging a flight to transport him there at 2:35 p.m. on March 9, 2025. *Id.* ¶ 12; ECF No. 72 ("Mar. 17, 2025 Joyce Decl."), ¶ 12.[4] The Government maintains that the New York Field Office "was responsible for locating bed space to detain Khalil," that it "did not receive any directives or instructions pertaining to Khalil's detention," and that it "made its decisions on where to detain him based solely on operational considerations." Mar. 17, 2025 Joyce Decl. ¶¶ 13-14.

Around noon on March 9, 2025, agents took Khalil to John F. Kennedy Airport in the Eastern District of New York (presumably passing back through the Southern District of New York en route). Mar. 14, 2025 Joyce Decl. ¶ 16; *see* Petition ¶ 63. At 1:22 p.m., Khalil's counsel emailed ICE in an effort to reach him; at 1:47 p.m., ICE responded — truthfully — by

[4] The Government represents that Khalil was one of sixteen detained noncitizens transported from the New York Field Office's area of responsibility to the New Orleans Field Office's area of responsibility between March 8, 2025, and March 9, 2025. Mar. 14, 2025 Joyce Decl. ¶ 10. Most of these transfers were for ongoing detention, as with Khalil, while a "small number" were moved there in preparation for removal from the country. *Id.*

email that Khalil was in the process of being transferred to a detention facility within the New Orleans ICE Field Office's area of responsibility. Petition ¶ 56. Khalil's counsel then contacted the U.S. Attorney's Office for the Southern District of New York, which confirmed that Khalil was en route to Louisiana. *Id.* Meanwhile, at John F. Kennedy Airport, Khalil boarded a flight at around 2:45 p.m. that brought him to Dallas, Texas, in the Northern District of Texas. *See id.* ¶ 65. From there, Khalil was placed on another flight at around 9:30 p.m., which landed in Alexandria, Louisiana, in the Western District of Louisiana, at around 1:00 a.m. on March 10, 2025. *Id.* ¶¶ 66-67. From there, agents drove Khalil to the Louisiana Detention Facility in Jena, Louisiana, in the Western District of Louisiana, into which he was booked at 1:33 a.m. on March 10, 2025. *Id.* ¶¶ 67, 70; Mar. 14, 2025 Joyce Decl. ¶ 17. He remains there today. Mar. 17, 2025 Joyce Decl. ¶ 19. The Government represents that "ICE has no current plans or intentions to transfer Khalil from [that facility] during the pendency of removal proceedings." *Id.*

DISCUSSION

The "merits of this case" — involving, among other things, the rights of a person lawfully present in the United States to the protections of the First and Fifth Amendments to the United States Constitution — are "indisputably of profound importance." *Padilla,* 542 U.S. at 450 (internal quotation marks omitted). As the Supreme Court has admonished, however, "it is surely just as necessary in important cases as in unimportant ones that courts take care not to exceed their respective jurisdictions established by Congress." *Id.* at 450-51 (internal quotation marks omitted). Thus, before the Court may address the merits of Khalil's important claims, it must address the Government's contention — made in a motion to dismiss or transfer Khalil's Petition — that it is not the proper tribunal to hear those claims. For reasons that follow, the Court agrees with the Government that it may not entertain the merits of Khalil's Petition, and it agrees with Khalil that the proper course is to transfer the Petition to the District of New Jersey.

A. This Court Lacks Jurisdiction to Consider Khalil's Petition

The Court begins with the central question of whether it may entertain Khalil's Petition given the undisputed fact that he was not in this District when his lawyer filed the Petition.

1. Applicable Law

The starting point for analysis is *Rumsfeld v. Padilla*, the Supreme Court's most recent and most relevant decision on the question of where a habeas petition can be heard. *Padilla* involved a United States citizen who was initially detained in the Southern District of New York on a material witness warrant (in connection with a grand jury investigation into the September 11th terrorist attacks), but then transferred into military custody in Charleston, South Carolina upon being designated by President George W. Bush as an "enemy combatant." 542 U.S. at 430. Two days after his transfer to South Carolina, Padilla's lawyer filed a habeas petition, pursuant to 28 U.S.C. § 2241, in the Southern District of New York, naming as respondents the President, the Secretary of Defense, and the Commander of the Consolidated Naval Brig in Charleston, where Padilla was then detained. *Id.* at 432. The Supreme Court granted certiorari to consider, among other things, whether Padilla properly filed his habeas petition in this District. *Id.* at 434. That question, the Court concluded, "br[oke] down into two related subquestions": first, who the proper respondent was for Padilla's petition, and second, where his petition seeking relief against that respondent should have been filed. *Id.*

As to the former, the Supreme Court concluded that both the statutory language of the federal habeas statute and its previous decision in *Wales v. Whitney*, 114 U.S. 564 (1885), confirmed the "longstanding practice" that in a "core" habeas petition challenging "present physical confinement," the proper respondent is the "the warden of the facility where the petitioner is being held," not a "remote supervisory official." *Padilla*, 542 U.S. at 435. The Court called this the "immediate custodian rule." *Id.* In reaching that conclusion, the Supreme

Court rejected the petitioner's argument that its decision in *Ex parte Endo*, 323 U.S. 283 (1944), called for a contrary result. In *Endo*, the Supreme Court had allowed a habeas petition by a Japanese-American citizen originally interned in California to proceed against the official responsible for her custody in California, even after she was transferred to Utah. *Padilla*, 542 U.S. at 440. According to the *Padilla* Court, *Endo* stood only "for the important but limited proposition" that a petitioner's relocation after a "properly file[d]" habeas petition does not deprive a district court of jurisdiction. *Id*. at 441.

As to the latter subquestion, the Court looked again to the "plain language" of the federal habeas statute — which limits district courts to granting relief "within their respective jurisdictions," 28 U.S.C. § 2241 — to conclude that a habeas petition naming a prisoner's custodian can be filed in only one district: "the district of confinement." 542 U.S. at 442 (internal quotation marks omitted). "The proviso that district courts may issue the writ only 'within their respective jurisdictions,'" the Court reasoned, "forms an important corollary to the immediate custodian rule in challenges to present physical custody under § 2241. Together they compose a simple rule that has been consistently applied in the lower courts . . . : Whenever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement." *Id.* at 447-48. This "simple rule," the Court continued, "serves the important purpose of preventing forum shopping by habeas petitioners" as well as "district courts with overlapping jurisdiction." *Id.* at 447.

Applying the immediate-custodian and district-of-confinement rules, the Supreme Court concluded that Padilla's petition could not be heard in the Southern District of New York. Notably, the Court rejected Padilla's "request for a new exception" to these rules "based upon the 'unique facts' of [the] case." *Id.* at 441. The Court rightly acknowledged that Padilla's

detention was "undeniably unique in many respects" but declared that, "at bottom," it was "a simple challenge to physical custody imposed by the Executive — the traditional core of the Great Writ. There is no indication that there was any attempt to manipulate behind Padilla's transfer . . . , and the Government did not attempt to hide from Padilla's lawyer where it had taken him." *Id.* Later in its opinion, the majority explicitly rejected the dissent's view that the Court had previously "made various exceptions to the immediate custodian and district of confinement rules whenever 'exceptional,' 'special,' or 'unusual' cases have arisen." *Id.* at 448. If the dissent's "view were accepted," the majority explained, "district courts would be consigned to making ad hoc determinations as to whether the circumstances of a given case are 'exceptional,' 'special,' or 'unusual' enough to require departure from the jurisdictional rules this Court has consistently applied. We do not think Congress intended such a result." *Id.* at 450.

The majority opinion in *Padilla* was joined by five Justices. But one of those Justices, Justice Kennedy, filed a concurring opinion, joined by Justice O'Connor, to make two points. First, he noted that the rules governing habeas jurisdiction "are not jurisdictional in the sense of a limitation on subject-matter jurisdiction" and instead implicate questions of "personal jurisdiction or venue." *Padilla*, 542 U.S. at 451 (Kennedy, J., concurring). That means both that objections to petitions on those grounds "can be waived by the Government" and that the rules themselves are "subject to exceptions." *Id.* at 452. Second, Justice Kennedy wrote that he "would acknowledge an exception" to the immediate-custodian and district-of-confinement rules "if there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention." *Id.* at 454. If, for example, "the Government had removed Padilla from the Southern District of New York but refused to tell his lawyer where he had been taken," Justice Kennedy

would have concluded that the Southern District of New York "had jurisdiction over the petition. Or, if the Government did inform the lawyer where a prisoner was being taken but kept moving him so a filing could not catch up to the prisoner, again, in [his] view, habeas jurisdiction would lie in the district or districts from which he had been removed." *Id.*

The *Padilla* Court explicitly reserved judgment on whether the immediate-custodian rule applies in the immigration context, *see id.* at 435 n.8, and the Second Circuit has not decided the issue either, *see Henderson v. I.N.S.*, 157 F.3d 106, 128 (2d Cir. 1998). In the years since, however, "a clear majority of courts in this circuit" — including *this* Court, on at least five separate occasions — "have held that the 'immediate custodian' rule applies" to "core" immigration habeas cases in which a petitioner challenges his or her detention pending removal "and that jurisdiction [in such cases] lies only in the district of confinement." *Singh v. Holder*, No. 12-CV-4731 (JMF), 2012 WL 5878677, at *2 (S.D.N.Y. Nov. 21, 2012) (internal quotation marks omitted) (collecting cases); *see Suraiya v. Cioppa*, No. 18-CV-6628 (JMF), ECF No. 18 (S.D.N.Y. Aug. 6, 2018); *Thomas v. Decker*, No. 19-CV-8690 (JMF), ECF No. 26 (S.D.N.Y. Oct. 17, 2019); *Tazu v. Barr*, No. 19-CV-1716 (JMF), ECF No. 16 (S.D.N.Y. Mar. 1, 2019); *Traore v. Decker*, No. 18-CV-7909 (JMF), ECF No. 9 (S.D.N.Y. Sept. 13, 2018); *see also Andoh v. Barr*, No. 19-CV-8016 (PAE), 2019 WL 4511623, at *2 (S.D.N.Y. Sept. 18, 2019) ("The substantial majority of judges in this District to consider this question have reached the same conclusion, holding that a defendant detained in New Jersey who seeks to challenge his detention, even if under the supervision of ICE personnel in this District, must bring a habeas action in the District of New Jersey." (citing *Almazo v. Decker*, No. 18-CV-9941 (PAE), 2018 WL 5919523, at *1 (S.D.N.Y. Nov. 13, 2018) (collecting cases))). By contrast, courts have generally held that for "non-core" habeas proceedings — for example, proceedings in which a

petitioner seeks "a stay of deportation or an adjustment of status" — jurisdiction can be proper outside the district of confinement. *Singh*, 2012 WL 5878677, at *2 (citing cases).

2. Analysis

As Khalil was in New Jersey when his lawyer filed the Petition here, this Court would plainly lack jurisdiction if the immediate-custodian and district-of-confinement rules apply in the normal course. Khalil presses three arguments to avoid that conclusion, but none of his arguments are persuasive. The first two can be swiftly rejected. First, citing the fact that the Supreme Court and the Second Circuit have not addressed whether the immediate-custodian rule applies in the immigration habeas context, Khalil contends that Joyce, the Acting Field Director of the ICE New York Field Office, was his "immediate custodian" at the time of filing because Joyce "took and never relinquished custody over Mr. Khalil" until he arrived in Louisiana. ECF No. 50 ("Pet.'s Opp'n"), at 12. But this Court does not write on a clean slate. As noted above, joining "a substantial majority" of judges in this District, *Andoh,* 2019 WL 4511623, at *2, it has rejected this exact legal argument no fewer than five times. It is a fundamental rule-of-law principle that like cases must be treated alike. *See Pepper v. United States*, 562 U.S. 476, 510 (2011) (Breyer, J., concurring in part and concurring in the judgment) ("A just legal system seeks not only to treat different cases differently but also to treat like cases alike."). That principle requires that the Court adhere to its prior conclusion here, even if the underlying circumstances of this case may be more unusual and more troubling than those in its prior cases. Put simply, those underlying circumstances are not relevant to the purely legal question of whether, as a general matter, the immediate-custodian rule applies to immigration habeas petitions.

Second, Khalil argues that application of the immediate-custodian and district-of-confinement rules is inappropriate because his Petition asserts both "core" and "non-core" habeas claims. *See* Pet.'s Opp'n 16-17. True, in addition to seeking release from detention, he

seeks injunctive and declaratory relief with respect to the Secretary of State's determinations that led to his detention and removal proceedings. *See, e.g.*, *S.N.C. v. Sessions*, 325 F. Supp. 3d 401, 406-07 (S.D.N.Y. 2018) (stating that "challenges to immigration-based detention" are "'core' immigration-based habeas challenges" but "challenges to forms of custody other than physical confinement, such as orders of removal" are not). In support of this argument, Khalil relies on *Calderon v. Sessions*, 330 F. Supp. 3d 944 (S.D.N.Y. 2018), in which a judge of this Court held that a district court may adjudicate "core" habeas claims even where the immediate-custodian and district-of-confinement rules point elsewhere if the petition's accompanying "non-core" claims "predominate," *id.* at 952. As Khalil all but acknowledges, however, *Calderon* is an outlier. *See* Pet.'s Opp'n 17 n.5. Most courts have correctly concluded that its approach "run[s] afoul of *Padilla*'s . . . rule: that 'core' claims must be brought in the district that has territorial jurisdiction over the custodian of the petitioner's present physical detention." *S.N.C.*, 325 F. Supp. 3d at 409; *see, e.g.*, *Sow v. Whitaker*, 18-CV-11394 (GBD) (RWL), 2019 WL 2023752, at *4 (S.D.N.Y. May 8, 2019) (citing cases). "When faced with a 'mixed' petition," these courts have held, "the approach most faithful to *Padilla*" is to order transfer "to the district that has *both* (a) territorial jurisdiction over the immediate custodian and (b) venue and personal jurisdiction over the legal custodian." *S.N.C.*, 325 F. Supp. 3d at 409 (emphasis added).

In any event, Khalil's "mixed petition" argument would almost certainly fail for either of two other reasons as well. First, all of his claims, at bottom, present a challenge to his detention. That is, Khalil seeks to vacate and set aside the Secretary of State's determination that his "presence or activities in the United States" would have "potentially serious foreign policy consequences for the United States" and seeks to enjoin Respondents' allegedly "unlawful Policy of targeting noncitizens for removal based on First Amendment protected speech." Petition ¶ 2; *id.* at Prayer for Relief, ¶¶ 2-3. But if the Court were to grant this relief, it would necessarily

require Khalil's release because without the Secretary of State's determination, Khalil would still be a lawful permanent resident and, as the Government concedes, he could not then "be detained." ECF No. 71 ("Gov't Reply"), at 9 n.6 (citing 8 U.S.C. § 1226(a), which only authorizes "detention pending removal proceedings"). Thus, Khalil's challenges to the revocation of his lawful permanent residence status are "unavoidably a challenge to [his] detention" and, in the circumstances here, likely "core" claims themselves. *Andoh*, 2019 WL 4511623, at *3. And second, even if Khalil's Petition is construed to bring "non-core" claims, it does not follow that they should be heard here. Instead, as discussed below, the Court would, in that instance, exercise its discretion to ensure that such claims are heard by a court that, unlike this Court, has the authority to consider Khalil's entire Petition.

Khalil's final argument — which relies on Justice Kennedy's concurrence in *Padilla* — is perhaps his most compelling, but it too falls short. *See* Pet.'s Opp'n 7-12. For one thing, it is far from clear that Justice Kennedy's opinion is the law of the land. The majority opinion in *Padilla* "enjoy[ed] the assent of five Justices" — including Justices Kennedy and O'Connor — which means that Justice Kennedy's concurrence cannot be construed as "the holding of the Court." *Marks v. United States*, 430 U.S. 188, 193 (1977). And the majority opinion itself referred to Justice Kennedy's proffered "exceptions" to the immediate-custodian rule as only "proposed," not "recognized." 542 U.S. at 435-36 ("No exceptions to this rule, either recognized or proposed, *see post* at 454 (KENNEDY, J., concurring), apply here." (footnote omitted)). Since *Padilla*, a smattering of district courts have cited Justice Kennedy's opinion, some as if it were binding law. *See, e.g.*, *Salcedo v. Decker*, No. 18-CV-8801 (RA), 2019 WL 339642, at *2 n.3 (S.D.N.Y. Jan. 18, 2019); *Sow*, 2019 WL 2023752, at *5; *Redding v. Thompson*, No. 17-CV-2740, 2018 WL 850147, at *6 (D. Minn. Jan. 23, 2018); *Xia v. King*, No. 24-cv-2000, 2025 WL 240792, at *2 (D. Minn. Jan 17, 2025); *Russell v. Bureau of Prisons*, No. 20-CV-1082, 2021 WL

7208910, at *4 n.5 (E.D. Ark. Sept. 27, 2021); *Vidal-Martinez v. Prim*, No. 20-CV-5099, 2020 WL 6441341, at *5 n.6 (N.D. Ill. Nov. 3, 2020); *see also Fuentes v. Choate*, No. 24-CV-1377 (NYW), 2024 WL 2978285, at *8 (D. Colo. June 13, 2024) (describing Justice Kennedy as having "proposed" exceptions to the immediate-custodian rule). But Khalil does not cite, and the Court has not found, a single example of Justice Kennedy's opinion being applied to award relief. From the get-go, then, Khalil's final argument rests on a shaky foundation.

Ultimately, however, the Court need not and does not decide whether Justice Kennedy's exceptions are good law because, even if they are, Khalil's attempts to invoke them fall short. Critically, in determining whether Justice Kennedy's exceptions would apply, the proper focus of the analysis is on the one and only transfer of Khalil with jurisdictional relevance: his transfer from 26 Federal Plaza in this District to the Elizabeth Detention Facility in the District of New Jersey. After all, it was the Government's transfer and detention of Khalil there in the hours before Khalil's lawyer filed the Petition that, under the "longstanding" rules reaffirmed in *Padilla*, would make this Court an improper forum to adjudicate his claims. 542 U.S. at 449. In other words, in considering the applicability of Justice Kennedy's proposed exceptions, the central questions are whether (1) "there is an indication that the Government's purpose in removing" Khalil from this District to the District of New Jersey was "to make it difficult for his lawyer to know where the habeas petition should be filed" and (2) whether, at the time of filing, "the Government was not forthcoming with respect to the identity of the custodian and the place of detention." *Id.* at 454 (Kennedy, J., concurring). The circumstances surrounding Khalil's later transfer to Louisiana, which post-dated the filing of his Petition, may shed some light on these questions, but they are ultimately secondary to the relevant legal analysis.

First, Khalil does not allege any facts giving rise to the plausible inference that the Government's "purpose" in moving him to New Jersey was "to make it difficult for his lawyer to

know where the habeas petition should be filed." *Id.* At the outset, this Court can attest from its own experience that noncitizens arrested and detained by immigration authorities in New York City are routinely processed at 26 Federal Plaza and then transferred to New Jersey for detention. *See, e.g.*, *see Suraiya*, No. 18-CV-6628 (JMF), ECF No. 17; *Thomas*, No. 19-CV-8690 (JMF), ECF No. 26; *Tazu*, No. 19-CV-1716 (JMF), ECF No. 14; *Traore*, No. 18-CV-7909 (JMF), ECF No. 9. That experience is far from anomalous. *See e.g., Abraham v. Decker*, 18-CV-3481 (CBA), 2018 WL 3387695, at *1 (E.D.N.Y. July 12, 2018) (petitioner arrested in Brooklyn, charged as removable at 26 Federal Plaza, then transferred to a New Jersey detention facility); *Xiu Qing You v. Nielsen*, No. 18-CV-5392 (GBD) (SN), 2020 WL 2837022, at *2 (S.D.N.Y. June 1, 2020) (petitioner arrested in Manhattan, held initially at 26 Federal Plaza, then transferred "[a]fter hours of waiting" to a New Jersey detention facility); *Montrevil v. Decker*, 20-CV-264 (WFK) (LB), 2021 WL 11690690, at *1 (E.D.N.Y. July 19, 2021) (petitioner arrested in Queens, held at 26 Federal Plaza "for several hours," then transferred to a New Jersey detention facility); *Sow*, 2019 WL 2023752, at *1 (petitioner arrested at his home, brought to 26 Federal Plaza, then moved "[l]ater that same day or evening" to New Jersey detention facility).

Against this backdrop, the Court cannot conclude that the Government's transfer of Khalil from New York to New Jersey was done to prevent his lawyer from promptly challenging his detention in federal court. Khalil's lawyers do not allege that they were prepared to file the Petition any earlier than 4:40 a.m. And, within a matter of hours, the Government did truthfully disclose Khalil's whereabouts, first via the online Detainee Locator "[s]ometime after 9 a.m.," Petition ¶ 55, and later that afternoon in communications with Khalil's counsel, *see id.* ¶ 56. What is more, all of this took place on a Sunday between 1:40 a.m. (Eastern Standard Time) and "[s]ometime after 9 a.m." (Eastern Daylight Time) — that is, at a time when the federal courts were closed. It would have been one thing if the Government had covertly transferred Khalil at a

time when federal courts were able and ready to consider a habeas petition. But in this case, Khalil's lawyer could not have obtained immediate relief even if she had known where he was detained at the moment she filed the Petition. Put differently, the Government disclosed Khalil's whereabouts to his lawyer well before any federal court could or would have entertained his Petition. Given these circumstances, there is no basis to conclude that the Government's purpose in transferring Khalil from New York to New Jersey was to frustrate the Great Writ.

That conclusion is compelling even if the Court were not to consider the Government's explanations for Khalil's transfer to New Jersey, but it is nearly inescapable if the Court does. In sworn declarations, the Government attests that the transfer was a function of its standard operating procedures and "operational considerations." Mar. 17, 2025 Joyce Decl. ¶ 13. The declarations affirm that noncitizens arrested by immigration authorities in New York are "often detained at facilities in other [areas of responsibility]" due to the "lack of available detention space" in New York. *Id.* ¶¶ 8-9. They further explain that "ICE's facility at 26 Federal Plaza is a Hold Room facility used for detention of individuals awaiting removal, transfer, . . . intra-facility movement, or other processing into or out of a facility" and that, pursuant to ICE policy, "no detainee should be housed in a Hold Room facility for longer than 12 hours." *Id.* ¶ 15. For these reasons, the Government explains, Khalil was moved to the Elizabeth Detention Facility, which was equipped with "overnight accommodations for detainees such as beds and 24-hour medical staff." *Id.* ¶ 16. Khalil does not controvert these explanations, which are consistent with the Court's experience and the case law cited above.[5]

[5] The Government invokes the "presumption of regularity" that attaches to many official acts of public officials. Gov't Reply 6-7 & n.2 (citing *Nat'l Archives and Records Admin. v. Favish*, 541 U.S. 157, 174 (2004)). It is not clear, however, that the presumption is appropriate here. *See Proctor v. LeClaire*, 846 F.3d 597, 608 n.4 (2d Cir. 2017) n.4 ("While we afford prison officials wide-ranging deference in the adoption and execution of policies designed to promote institutional safety, Defendants cite no case, and we cannot find one, that applies such a

Khalil cites the Government's "movement of him across four states" to suggest ICE treated him anomalously. Pet.'s Opp'n 10-11. But as discussed above, the only transfer that occurred prior to the filing of the Petition — that is, the only jurisdictionally relevant transfer — was the transfer from the short-term holding facility in New York to the Elizabeth Detention Facility in New Jersey, and Khalil fails to cast doubt on the Government's explanation that this specific transfer was a function of its standard operating procedures.

In any event, considering Khalil's later transfers — on the theory that they shed light on the Government's purpose in transferring him to New Jersey in the first instance — would not warrant a different conclusion. The practical, and unfortunate, reality is that "the Government regularly transfers detained noncitizens between facilities, often multiple times." *Garland v. Aleman Gonzalez*, 596 U.S. 543, 570 (2022) (Sotomayor, J., concurring in the judgment in part and dissenting in part); *see also Demore v. Kim*, 538 U.S. 510, 554 (2003) (Souter, J., concurring in part and dissenting in part) (explaining that immigration officials "detain, transfer, and isolate aliens away from their lawyers, witnesses, and evidence"); *see also Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 448 (3d Cir. 2021) (noting that "continuous transfer" can "permeate[] the reality of ICE detention"). And transfers to remote locations are routinely made without any prior notice to counsel. *See Anariba*, 17 F.4th at 448 (discussing how "the Government often repeatedly moves ICE detainees to remote locations far from counsel or their community without informing counsel of the transfer" (internal quotation marks omitted)); *Bell v. Ashcroft*, No. 03-CV-766 (HB), 2003 WL 22358800, at *3 (S.D.N.Y. Oct. 15, 2003)

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presumption in a constitutional challenge to state prison officials' periodic review of [Administrative Segregation]. We decline to do so today." (cleaned up)). Moreover, "the presumption of regularity — to the extent it is not rebutted — requires a court to treat the Government's record as accurate; it does not compel a determination that the record establishes what it is offered to prove." *Latif v. Obama*, 677 F.3d 1175, 1180-81 (D.C. Cir. 2011). In any event, the Court need not and does not decide the issue.

(observing that "aliens in federal custody are routinely transferred . . . to other, often far-away, facilities"); *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488, 1500 (C.D. Cal. 1988) ("INS follows a general practice of transferring detained class members from the place of arrest to detention centers located in remote and isolated areas."), *aff'd sub nom. Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990). However unusual or disturbing the circumstances leading to Khalil's arrest and detention may have been, his transfers from facility to facility — and, most critically, from 26 Federal Plaza to the Elizabeth Detention Facility on March 9, 2025 — do not appear to be that unusual. They are certainly not unusual enough for the Court to disregard the "longstanding" district-of-confinement and immediate-custodian rules.

Khalil also contends that the fact that his transfers took place "rapidly" — that is, in under twenty-four hours — "means [the Government's] conduct goes even more to the core of Justice Kennedy's concerns." Pet.'s Opp'n 12. But the swift nature of Khalil's transfer does not help his argument. For one thing, rapid transfers from one immigration detention facility to another also appear to be common, *see, e.g.*, *Xiu Qing You*, 2020 WL 2837022, at *2; *Montrevil*, 2021 WL 11690690, at *1; *Sow*, 2019 WL 2023752, at *1, and Khalil cites nothing to suggest otherwise. For another, to the extent that the core purpose of Justice Kennedy's exceptions is to "prevent the Kafkaesque specter of supplicants wandering endlessly from one jurisdiction to another in search of a proper forum," *Eisel v. Sec. of the Army*, 477 F.2d 1251, 1258 (D.C. Cir. 1973), that purpose is not served where, as here, the Government truthfully disclosed the petitioner's whereabouts within hours (on a Sunday no less) and the transfers concluded in short order. The absence of the gamesmanship with which Justice Kennedy was concerned is only underscored by the fact that, "[a]ccording to the copy of the [Notice to Appear] that Mr. Khalil's Counsel received on March 11, ICE was already preparing to transfer Mr. Khalil to the Central Louisiana ICE Processing Center while he was still detained at 26 Federal Plaza a few hours

after his arrest." Petition ¶ 56 n.17. In short, the full record does not support the idea that "the government played forum games or kept moving [Khalil] so that his filing could not catch up." *Griffin v. Ebbert*, 751 F.3d 288, 290 & n.2 (5th Cir. 2014) (citing *Padilla*, 542 U.S. at 454 (Kennedy, J., concurring)).

Khalil is arguably on firmer ground in seeking to avail himself of Justice Kennedy's second proposed exception — for when "the Government was not forthcoming with respect to the identity of the custodian and the place of detention," *Padilla*, 542 U.S. at 454 (Kennedy, J., concurring) — if only because the exception does not appear to require any showing of improper purpose. But here too, his arguments fall short. Once again, the relevant question is whether the Government was insufficiently forthcoming as to Khalil's detention *in New Jersey*. It was not. At the moment of arrest, the Government truthfully informed Khalil's wife and his attorney that he was being taken to 26 Federal Plaza. *See* Petition ¶¶ 51, 53. Between then and the moment the Petition was filed, Khalil's attorney never asked a Government official for additional information about Khalil's whereabouts. Instead, she relied on ICE's online Detainee Locator, which did not reflect Khalil's transfer from New York to New Jersey for a period of approximately six hours. *See* Petition ¶ 55; *see also* Mar. 17, 2025 Joyce Decl., ¶ 16. But those hours were in the middle of the night on a weekend when, as noted, Khalil's lawyer could not even have obtained the relief that he later sought. Thus, assuming for the sake of argument that the Government was in some way not "forthcoming," as Justice Kennedy used that term, it did nothing to materially frustrate Khalil's access to the Great Writ.

Moreover, the one-time overnight delay in updating the online Detainee Locator, without more, is not enough to support an "inference of Government secrecy." *Padilla*, 542 U.S. at 450 n.17. Although not cited by either party here, ICE's own policies require only that it notify a detainee's lawyer "as soon as practicable on the day of transfer" and "in no circumstances later

than twenty-four (24) hours after the transfer occurs." U.S. ICE, Policy No. 11022.1(5.3)(2)(a) (2012); *see also Sow*, 2019 WL 2023752, at *5 (holding that Justice Kennedy's exception did not apply even where ICE failed to provide notice within twenty-four hours because "there is no allegation that the Government refused to tell [the petitioner's] lawyer where he had been taken" (cleaned up)). And the reality is that "the Government often repeatedly moves ICE detainees to remote locations . . . without informing counsel of the transfer or updating the ICE detainee locator." *Anariba*, 17 F.4th at 448 (internal quotation marks omitted). Plainly, therefore, this is not the exceptional scenario Justice Kennedy imagined, in which "the Government had removed [its detainee] from the Southern District of New York but refused to tell his lawyer where he had been taken." *Padilla*, 542 U.S. at 454 (Kennedy, J., concurring). To the contrary, when Khalil's attorneys next requested information from the Government about his whereabouts on the afternoon of March 9, 2025, they received prompt and accurate replies. *See* Petition ¶ 56.

In short, even if Justice Kennedy's proposed exceptions were good law (or the Court were inclined to adopt them by itself), they would not support Khalil's argument that this Court may entertain his claims. It follows that the district-of-confinement and the immediate-custodian rules apply and that Khalil's Petition is not properly before this Court.[6]

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[6] Khalil argues that the Court should allow him "to conduct limited and expedited jurisdictional discovery" in the event that it is "not persuaded to deny the government's motion" to dismiss or transfer. Pet.'s Opp'n 17. But "a habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). And discovery here is not warranted because, as noted above, the facts relevant to the limited questions currently facing the Court — most notably, that Khalil was detained in the District of New Jersey when his lawyer filed the Petition — are not in dispute. If the Court were inclined to accept the Government's argument for transfer to the Western District of Louisiana, perhaps the case for jurisdictional discovery would be stronger given Khalil's insinuation that the White House was directly involved in the plan to move him there, *see* Petition ¶ 58; *see also* Pet.'s Opp'n 11, and the fact that, in the space of less than twenty-four hours, the Government hauled Khalil through at least six different districts (one likely twice): the Southern District of New York, the District of New Jersey, the Eastern District of New York, the Northern District of Texas, the Central District of Louisiana, and the Western District of

B. The Case Must Be Transferred to the District of New Jersey

That is not the end of the analysis. Instead, the lack of habeas jurisdiction in this District raises the questions of whether the Court should dismiss the case or transfer it to another district and, if the latter, to which district the case should be transferred. The Government argues that the Court should dismiss the case or, in the alternative, transfer it to the Western District of Louisiana on the theory that the Western District of Louisiana is the district in which Khalil is presently confined and, thus, the only district in which he could now bring his claims (at least to the extent they are "core" claims). ECF No. 31 ("Gov't Mem."), at 9. Khalil, on the other hand, opposes dismissal and argues that transfer to the District of New Jersey is appropriate. Pet.'s Opp'n 19. The Court agrees with Khalil.

For starters, it is important to note that the district-of-confinement and immediate-custodian rules are "not jurisdictional in the sense of a limitation on subject-matter jurisdiction," *Skaftouros v. United States*, 667 F.3d 144, 146 n.1 (2d Cir. 2011) (internal quotation marks omitted), but rather akin to "personal jurisdiction or venue rules," *Gooden v. Gonzales*, 162 Fed. App'x 28, 29 (2d Cir. 2005) (summary order); *see also Rivera-Perez v. Stover*, — F. Supp. 3d — , No. 23-CV-1348 (SRU), 2024 WL 4819250, at *5 (D. Conn. Nov. 18, 2024) (noting that courts have construed the immediate-custodian rule to raise questions of venue or personal jurisdiction, not subject-matter jurisdiction); *see generally Padilla*, 542 U.S. at 434 n.7 ("The word 'jurisdiction,' of course, is capable of different interpretations. We use it in the sense that it is used in the habeas statute, 28 U.S.C. § 2241(a), and not in the sense of subject-matter jurisdiction of the District Court."). That is significant because, if the Court lacked subject-matter jurisdiction, dismissal (albeit without prejudice) would likely be the proper result. *See, e.g.*,

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Louisiana. But because, for the reasons discussed below, the Court rejects the Government's argument for transfer to Louisiana, it need not and does not address that question.

Durant, Nichols, Houston, Hodgson & Cortese-Costa P.C. v. Dupont, 565 F.3d 56, 62-63 (2d Cir. 2009); *Katz v. Donna Karan Co., L.L.C.*, 872 F.3d 114, 121 (2d Cir. 2017).[7] But because the issue is one of either personal jurisdiction or venue, it is well established — and undisputed by the Government — that the Court has the discretion to transfer the case to another district rather than dismiss. *See, e.g.*, *SongByrd*, 206 F.3d at 179 n.9; *see also* Gov't Reply 12.

In the circumstances presented here, there are at least three reasons to exercise that discretion. First and foremost, as the Government acknowledges, a "prompt resolution" of this important case is "imperative." Gov't Reply 14-15. Requiring Khalil to refile his Petition (and his additional requests for relief, *see* ECF Nos. 11, 53, 66) would result in unnecessary delay. Second, dismissal would prejudice Khalil in several important ways. *See, e.g.*, *Cruz-Aguilera v. I.N.S.*, 245 F.3d 1070, 1074 (9th Cir. 2001) (considering "whether the failure to transfer would prejudice the litigant" in deciding between dismissal and transfer); *Liriano v. United States*, 95 F.3d 119, 122 (2d Cir. 1996) ("In determining whether a transfer is in the interest of justice, the equities of dismissing a claim when it could be transferred should be carefully weighed."). Dismissal would mean vacatur of the temporary relief this Court granted to Khalil, *see* ECF No. 9, and would allow for Khalil's expedited removal from the country before his claims could even be adjudicated. Requiring Khalil to refile his petition in the Western District of Louisiana (the only district in which a *new* petition could be filed) would also mean litigating far from his lawyers, from his eight-months-pregnant wife, and from the location where most (if not all) of the events relevant to his petition took place. *See* ECF No. 11, at 1-3. Finally, the record makes

[7] That said, 28 U.S.C. § 1631 — which provides that, when a "court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court . . . in which the action or appeal could have been brought at the time it was filed" — would arguably provide a basis for the Court to transfer Khalil's petition even if the defect were one of subject-matter jurisdiction. *See, e.g.*, *SongByrd, Inc. v. Est. of Grossman*, 206 F.3d 172, 179 n.9 (2d Cir. 2000).

plain that Khalil's lawyers filed the Petition in this District based on a good-faith and reasonable belief that he was then detained here. Transfer is thus appropriate to ensure that Khalil is not "penalized by . . . 'time-consuming and justice-defeating technicalities.'" *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 467 (1962); *see, e.g.*, *Liriano*, 95 F.3d at 122 (observing that the "good faith" filing of an action in an improper forum is a "[f]actor[] militating for a transfer" rather than dismissal).[8]

To which district, then, should the case be transferred? To answer that question, the Court must look, in the first instance, to the statute — enacted by Congress in 1948 — that governs the transfer of a civil case from "a district in which is filed a case laying venue in the wrong . . . district." 28 U.S.C. § 1406(a); *see SongByrd, Inc.*, 206 F.3d at 179 n.9 (observing that "a district court lacking both personal jurisdiction and proper venue" may transfer a case pursuant to Section 1406(a) "to a district where both defects [are] avoided"). Curiously, the parties failed to cite, let alone discuss, Section 1406(a) in their initial briefs addressing whether and to where this case should be transferred. In response to an Order from the Court directing them to do so, however, the parties both acknowledge (or, at least, do not dispute) the applicability of the statute. *See* ECF No. 70, at 5; Gov't Reply 14; *see also* ECF No. 63.[9] And in any event, cases in which district courts have relied on Section 1406(a) to transfer immigration habeas cases filed in the wrong district are legion. *See, e.g.*, *Conlin v. United States*, No. 23-CV-3272 (LTS), 2024 WL 458285, at *2-3 (S.D.N.Y. Jan. 11, 2024); *Casiano v. N.Y. State Niagara*

[8] Additionally, to the extent that this Court has jurisdiction to adjudicate any "non-core" claims raised in Khalil's petition, dismissal of the Petition in its entirety is plainly unwarranted.

[9] It follows that the parties have forfeited any argument against application of Section 1406(a). *See, e.g.*, *Whitehurst v. Staten Island Univ. Hosp.*, No. 18-CV-1090 (ARR), 2018 WL 11218905, at *2 (E.D.N.Y. July 24, 2018) ("An argument is waived or abandoned if a party fails to make it." (internal quotation marks omitted)).

Cnty., No. 24-CV-3850 (LTS), 2024 WL 3318225, at *1 (S.D.N.Y. June 17, 2024); *Bynum v. N.J.*, No. 24-CV-618 (LTS), 2024 WL 1023210, at *1 (S.D.N.Y. Feb. 26, 2024); *Moussaoui v. Biden*, No. 25-CV-691 (JGK), 2025 WL 457804, at *2 (S.D.N.Y. Jan. 28, 2025); *Darboe v. Ahrendt*, 442 F. Supp. 3d 592, 596 (S.D.N.Y. 2020); *see also, e.g.*, *United States v. Posey*, No. 16-CR-87 (RJA), 2023 WL 7124522, at *2 (W.D.N.Y. Oct. 30, 2023) (noting a court's "broad discretion" under Section 1406(a) "to transfer a habeas case to the proper judicial district").

Section 1406(a) provides for transfer "to any district . . . in which [the case] *could have been brought*." *Id.* (emphasis added). By its plain terms, therefore, the statute calls for transfer of Khalil's Petition to the District of New Jersey, the only district in which — due to the immediate-custodian and district-of-confinement rules — his "core" claims "could have been brought" at 4:40 a.m. on March 9, 2025. *See, e.g.*, *Alvarado v. Gillis*, No. 22-CV-10082 (JLR) (KHP), 2023 WL 5417157 (S.D.N.Y. Aug. 3, 2023), *report and recommendation adopted,* 2023 WL 5396499 (S.D.N.Y. Aug. 22, 2023) (ordering transfer of an immigration habeas petition to the district where the petitioner was detained at the time of filing); *Ali v. DHS/ICE/Dep't of Justice*, No. 19-CV-8645 (LGS), 2020 WL 3057383, at *2 (S.D.N.Y. June 9, 2020) (same); *Persaud v. ICE*, No. 04-CV-282 (FB), 2004 WL 1936213, at *1 (E.D.N.Y. Aug. 31, 2004) ("Although petitioner is currently confined in Alabama, at the time that he filed this petition he was confined in the Western District of Louisiana. Accordingly, the Court orders the petition to be transferred to the United States District Court for the Western District of Louisiana."); *cf. Fuentes v. Choate*, No. 24-CV-1377 (NYW), 2024 WL 2978285, at *10-11 (D. Colo. June 13, 2024) (observing that when transfer is necessary due to improper venue under *Padilla*, "many courts choose to transfer habeas cases" to the district where the action "could have been brought at the time it was filed or noticed"). Indeed, the Court cannot do otherwise because where, as here, "a federal statute covers the point in dispute," "that is the end of the matter; federal courts

are bound to apply rules enacted by Congress with respect to matters over which it has legislative power." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 27 (1988) (cleaned up).

Relying on *Padilla*, the Government argues instead for transfer to the Western District of Louisiana, Khalil's present district of confinement. The "proper course," it insists, is "to transfer this case to the Western District of Louisiana — *i.e.*, the only district where Khalil could refile a petition today . . . . Put simply, 'jurisdiction lies in only one district: the district of confinement.'" Gov't Mem. 10 (quoting *Padilla*, 542 U.S. at 443). In *Hoffman v. Blaski*, 363 U.S. 335, 342-43 (1960), however, the Supreme Court rejected a nearly identical argument with respect to 28 U.S.C. § 1404(a), which provides — in nearly identical language — for transfer of a civil case to another "district . . . where it might have been brought." There, the petitioners argued that "the phrase 'where it might have been brought' should be held to relate not only to the time of the bringing of the action, but also to the time of the transfer." *Id.* at 342. "We do not think," the Court declared, "the . . . phrase 'where it might have been brought' can be interpreted to mean . . . 'where it may now be *rebrought*, with defendants' consent.'" *Id.* (emphasis added). Section 1404(a) "is unambiguous, direct and clear, and . . . the unequivocal words of § 1404(a) and the legislative history establish that Congress indeed meant what it said." *Id.* (cleaned up). The same can be said for Section 1406(a).

Padilla does not affect that conclusion. To the contrary, it is fatal to the Government's argument because it dictates that, at "the time of the bringing of the action," *id.* at 342, habeas "jurisdiction lies in only one district: the district of confinement," *Padilla*, 542 U.S. at 443. At that time, of course, Khalil was confined in the District of New Jersey, not in the Western District of Louisiana. Moreover, to the extent that *Padilla* discusses the jurisdictional effect of prisoner relocation at all, it says that a prisoner's transfer after a petition is filed does not deprive a court that would otherwise have jurisdiction of the ability to adjudicate his petition. *See id.* at

441. Finally, *Padilla* does not address the effect of Section 1406(a), the plain language of which is just as binding on courts as the plain language of the statute that the Supreme Court there applied. The *Padilla* decision thus offers guidance about where a habeas petition is properly filed in the first instance, but it leaves open where a case should be transferred when, as here, a petition is filed in the wrong venue and the petitioner's present district of confinement differs from his district of confinement at the time of filing.

The Government's related argument that "the transfer statutes," including Sections 1404(a) and 1406(a), "do not independently vest courts with jurisdiction they would otherwise lack," Gov't Reply 14, suffers from a similar misunderstanding of *Padilla*. No statute is required to "vest" the District of New Jersey with otherwise-absent jurisdiction because habeas jurisdiction is "not jurisdictional in the sense of a limitation on subject-matter jurisdiction." *Padilla*, 542 U.S. at 451 (Kennedy, J., concurring); *see also Skaftouros*, 667 F.3d at 146 n.1 (same). And as the *Padilla* Court's discussion of *Endo* makes clear, the fact that a detainee has been transferred away from a district that otherwise has jurisdiction to hear his or her claims does not necessarily deprive that district of habeas jurisdiction. *See Padilla*, 542 U.S. at 441.

In short, applying the plain language of Section 1406(a), the Court concludes that Khalil's "core" habeas claims — those seeking his release from detention — must be transferred to the District of New Jersey, the one and only district in which he could have filed them when he did. As discussed above, that arguably includes all of Khalil's claims. But to the extent that Khalil's Petition also includes "non-core" claims over which this Court would have jurisdiction, transfer of those claims to the District of New Jersey is also appropriate, albeit under Section 1404(a). That statute authorizes transfer of a case "[f]or the convenience of parties and witnesses, in the interest of justice . . . to any [] district or division where it might have been brought." 28 U.S.C. § 1404(a). In deciding whether transfer is warranted under Section 1404(a),

courts consider various factors, including "the convenience to parties," "the convenience to witnesses," "where the case can be tried more expeditiously and inexpensively," and "the interests of justice." *Pierce v. Coughlin*, 806 F. Supp. 426, 428 (S.D.N.Y. 1992) (internal quotation marks omitted). Applying those factors, courts have transferred cases when an "action raising identical issues is pending" in another district, *Williams v. City of New York*, No. 03-CV-5342 (RWS), 2006 WL 399456, at *1 (S.D.N.Y. Feb. 21, 2006), or when transfer is otherwise required of "some, but not all, of the . . . claims in a given case," *JM Smith Corp. v. AstraZeneca Pharms. L.P.*, No. 19-CV-7233 (CM), 2020 WL 4605241, at *9 (S.D.N.Y. Aug. 11, 2020); *see also Jewell v. Music Lifeboat*, 254 F. Supp. 3d 410, 415 (E.D.N.Y. 2017) ("Rather than continue the case piecemeal, I also transfer the remaining claims . . . pursuant to 28 U.S.C. § 1404(a).").

Here, the relevant factors counsel in favor of transferring any remaining claims over which this Court might have jurisdiction to the District of New Jersey. As the Court discussed above, Khalil's claims challenging the Secretary of State's determination that he is removable are inextricably intertwined with his "core" habeas claims. Given that Khalil must litigate his "core" claims in New Jersey, it would be both more "convenient" for all involved and "in the interests of justice" for the New Jersey court to resolve any "non-core" claims that he may bring as well. *See, e.g.*, *Convergence Technologies (USA), LLC v. Microloops Corp.*, 711 F. Supp. 2d 626, 642 (E.D. Va. 2010) ("It is well-settled that transfer under § 1404(a) is generally in the interest of justice if a decision not to transfer would lead to courts rendering inconsistent judgments on the same issue."); *Cont'l Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26 (1960) ("To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that § 1404(a) was designed to prevent"). Accordingly, the Court concludes that — pursuant to Section 1406(a) or a combination of that statute and Section 1404(a) — transfer of

Khalil's entire Petition to the District of New Jersey is necessary and appropriate.

CONCLUSION

In sum, the Court DENIES the Government's motion to dismiss Khalil's Petition but GRANTS its motion to transfer, albeit to the District of New Jersey, not to the Western District of Louisiana.[10] That conclusion is compelled by well-established rules and principles that this Court is bound to follow. First, given the undisputed fact that Khalil was detained in the District of New Jersey at the time his lawyer filed the Petition, this Court lacks jurisdiction over most, if not all, of Khalil's claims. Second, given that the District of New Jersey is the one and only district in which Khalil could have filed his Petition when he did, the statutes that govern transfer of civil cases from one federal district court to another dictate that the case be sent there, not to the Western District of Louisiana. Put simply, the law precludes this Court from reaching the merits of Khalil's claims, as serious and important as they may be, and it mandates that the Court allow a tribunal with jurisdiction to take the matter up from here.

To be clear, "when an action is transferred, it remains what it was; all further proceedings in it are merely referred to another tribunal, leaving untouched whatever has been already done." *Magnetic Eng'g & Mfg. Co. v. Dings Mfg. Co.*, 178 F.2d 866, 868 (2d Cir. 1950). This transfer is no different. It will be up to the transferee court in New Jersey to consider not only Khalil's Petition, over which it alone has jurisdiction, but also the various motions that Khalil has filed to

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[10] Khalil's pro forma request for leave to amend his Petition in the event the Court concludes that it cannot be heard in this District, *see* Pet.'s Mem. 19-20, is denied. First, the defect in most, if not all, of Khalil's claims is substantive, so amendment would be futile. *See, e.g., Roundtree v. NYC*, No. 19-CV-2475 (JMF), 2021 WL 1667193, at *6 (S.D.N.Y. Apr. 28, 2021) (collecting cases). Second, Khalil does not suggest that he possesses any facts that could cure the jurisdictional problems with his Petition. *See, e.g., Clark v. Kitt*, No. 12-CV-8061 (CS), 2014 WL 4054284, at *15 (S.D.N.Y. Aug. 15, 2014) ("A plaintiff need not be given leave to amend if he fails to specify how amendment would cure the pleading deficiencies in his complaint."), *aff'd*, 619 F. App'x 34 (2d Cir. 2015) (summary order); *accord TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 505 (2d Cir. 2014).

date in connection with his Petition, namely his motion to move him from the Western District of Louisiana to a detention facility in this District (or perhaps now New Jersey), ECF No. 11; his motion for immediate release on bail, ECF No. 53; and his motion for preliminary injunctive relief, ECF No. 66. To avoid any unnecessary delay, the briefing schedules in effect for those motions, *see* ECF Nos. 29, 43, shall remain in effect unless and until the transferee court orders otherwise. And to ensure that Khalil gets an opportunity to have his Petition and these motions considered by a court in the normal course — and to preserve the status quo — the Court's March 10, 2025 Order barring the Government from removing him (to which the Government has never raised an objection and which the Government has not asked the Court to lift in the event of transfer) shall similarly remain in effect unless and until the transferee court orders otherwise. *See, e.g.*, *Burke v. People*, No. CIV.A. 04-4404, 2004 WL 2381198, at *2 (E.D. Pa. Oct. 25, 2004) ("The court also ordered that the stay of removal remain in place until further order of the transferee court.").

The Clerk of Court is directed to terminate ECF No. 30 and to transfer this case to the United States District Court for the District of New Jersey. Further, consistent with the Government's own request, the Clerk of Court is directed to do so immediately, without regard for Local Civil Rule 83.1, which provides that "the Clerk [of Court], unless otherwise ordered, shall upon the expiration of seven (7) days effectuate the transfer of the case to the transferee court." *See* Gov't Mem. 9 n.3 ("Should the Court transfer the case, to minimize any delay in having the case heard in the proper forum, the government respectfully requests that the Court waive the seven-day waiting period contained in Local Civil Rule 83.1.").

SO ORDERED.

Dated: March 19, 2025
New York, New York

JESSE M. FURMAN
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MAHMOUD KHALIL,

Petitioner,

v.

WILLIAM P. JOYCE et al.,

Respondents.

No. 25-cv-01963 (MEF)

ORDER

This case had been pending in the United States District Court for the Southern District of New York. There, on March 10, the Court ordered that the Petitioner may not be removed from the United States, pending a ruling on the Petition. See ECF 9.

Today, the case was transferred to this Court. See ECF 79.

The Court orders: the Petitioner shall not be removed from the United States, unless and until the Court issues a contrary Order.

The purpose of this Order is to preserve the Court's jurisdiction, so that the Petition can be reviewed and ruled on.

The authority for this is the All Writs Act, at Title 28, United States Code, Section 1651, as it has been interpreted by the Court of Appeals for the Third Circuit. See, e.g., Dabone v. Karn, 763 F.2d 593, 597 n.2 (3d Cir. 1985) (citing FTC v. Dean Foods Co., 384 U.S. 597, 603 (1966)).

IT IS on this 19th day of March, 2025, so **ORDERED**.

Michael E. Farbiarz, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MAHMOUD KHALIL, *Petitioner,* v. WILLIAM P. JOYCE, *et al.*, *Respondents.*	*Civ. Act. No.* 25-cv-1963 (MEF)

RESPONDENTS' BRIEF IN SUPPORT OF THEIR RENEWED MOTION TO DISMISS OR TO TRANSFER THE CASE

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PRELIMINARY STATEMENT

Petitioner Mahmoud Khalil brings this habeas action under 28 U.S.C. § 2241 to challenge his detention by U.S. Immigration and Customs Enforcement ("ICE") during the pendency of his removal proceedings. Although the United States District Court for the Southern District of New York transferred the action, this Court is still not the proper forum. Federal district courts possess limited authority to grant writs of habeas corpus within their respective jurisdictions. As the Supreme Court has explained, "the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). And for challenges to detention, "jurisdiction lies in only one district: the district of confinement." *Id.* at 443.

At the time that this action was filed in the Southern District of New York, Khalil was physically present and detained at the Elizabeth Detention Facility in Newark, New Jersey. That petition was thus improper, because Khalil was not being held in the Southern District of New York—as Judge Furman correctly recognized. But Judge Furman erred in transferring this case to this Court. This Court has never had habeas jurisdiction over this matter, because no proper petition has ever been filed in this Court. And it does not have habeas jurisdiction over this matter now, because it neither has jurisdiction over the proper respondent in this action, nor is this district the district of confinement. Judge Furman concluded that the general transfer statutes could cure this jurisdictional defect, but that was in error: Those statutes do not independently vest courts with jurisdiction and cannot supply a court with habeas jurisdiction that it never had and presently lacks. Thus, while the parties have already litigated the issue of venue and jurisdiction before Judge Furman, this Court still has an independent responsibility to consider these issues and either dismiss this action without prejudice—so that Khalil can refile his petition in the Western District of Louisiana—or transfer it there—provided Khalil also consents.

None of this is to say that habeas relief is available in the first place at this time. Under a straightforward application of binding precedent and the federal immigration laws, a court should deny or dismiss the petition, and that court sits in the Western District of Louisiana. *See, e.g.*, 8 U.S.C. § 1252(g).

BACKGROUND

A. Khalil's immigration detention

Mahmoud Khalil ("Khalil"), a native of Syria and citizen of Algeria, entered the United States on a student visa in December 2022. *See* Declaration of Acting Field Office Director William Joyce ("Joyce Decl.") ¶ 5 (ECF No. 32). He adjusted to lawful permanent resident status in November 2024. *Id.* ¶ 6. On March 8, 2025, Special Agents from the ICE Homeland Security Investigations ("HSI") Office of the Special Agent in Charge for the New York Area of Responsibility detained Khalil at 8:35 p.m. at 195 Claremont Avenue in Manhattan, New York, for the purpose of placing him in removal proceedings. *Id.* ¶ 7; Second Supplemental Declaration of Acting Field Office Director William Joyce ("2d Supp. Joyce Decl."), ¶ 7. HSI transported him to 26 Federal Plaza at 8:44 p.m. for processing. *Id.* While at 26 Federal Plaza, HSI served Khalil with a Notice to Appear ("NTA"), the charging document used to commence removal proceedings, which charged him as being removable pursuant to 8 U.S.C. § 1227(a)(4)(C)(i), in that the Secretary of State has reasonable grounds to believe that his presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States. *Id.*; *see also* 2d Supp. Joyce Decl., Ex. A – NTA, Mar. 9, 2025 (ECF No. 72). The NTA ordered that Khalil appear for a removal hearing at 8:30 a.m. on March 27, 2025, at the Immigration Court located at 830 Pinehill Road, Jena, Louisiana. *See* NTA. ICE also served Khalil with a Notice of Custody Determination, notifying Khalil that his detention was governed by 8 U.S.C. § 1226(a) (immigration custody during removal proceedings). Joyce Decl. ¶ 7.

Upon completion of processing, ICE transported Khalil from 26 Federal Plaza to the Elizabeth Detention Facility in Newark, New Jersey,[1] where he was physically present and booked into the detention facility at 2:20 a.m. Eastern Standard Time (3:20 a.m. Eastern Daylight Time) on March 9, 2025. *Id.* ¶ 8. The 26 Federal Plaza location serves a processing center, which is effectively a short-term hold room for individuals. 2d Supp. Joyce Decl. ¶ 15. The facility does not have any beds or overnight medical staff. *Id.* ICE's own policy "dictates that absent exceptional circumstances, no detainee should be housed in a Hold Room facility for longer than 12 hours." *Id.* The Elizabeth Detention Center was also a brief stop because the facility was dealing with bedbug issues, and the facility could not accept anyone as a full transfer. *Id.* ¶ 11. ICE made an operational decision to not inquire into bedspace of surrounding areas of responsibility given the "awareness of general paucity of bedspace." *Id.* The request to ERO New Orleans was made on March 8, 2025, and a flight was scheduled for 2:35pm on March 9, 2025. *Id.* Therefore, shortly before noon on March 9, Khalil departed the Elizabeth Detention Facility and was brought to the airport to be transported to the Central Louisiana ICE Processing Facility in Jena, Louisiana. Joyce Decl. ¶ 11. ICE, specifically Enforcement and Removal Operations New York, "did not receive any directives or instructions pertaining to Khalil's detention." 2d Supp. Joyce Decl. ¶ 14. Khalil was booked into the Central Louisiana ICE Processing Facility at 12:33 a.m. on March 10, 2025, and he remains detained at that facility. Joyce Decl. ¶ 12.

[1] Elizabeth Detention Facility has comprehensive overnight accommodations for detainees, such as bends and 24-hour medical staff, whereas 26 Federal Plaza is a Hold Room facility used for detention of individuals awaiting removal, transfer, immigration court hearings, medical treatment, intra-facility movement, or other processing into or out of a facility, and it does not have beds or overnight medical staff. Joyce Decl. ¶ 10.

On March 9, 2025, Khalil's NTA was filed with the Immigration Court at the LaSalle Detention Facility, vesting that court with jurisdiction over his removal proceedings. *See* 8 C.F.R. § 1003.14(a) ("Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court."); Ex. A, NTA; 2d Supp. Joyce Decl. ¶ 20 ("Except for this ongoing lawsuit, ERO New York is not involved in Khalil's immigration removal proceedings which are pending before the LaSalle Immigration Court in Jena, Louisiana."). ICE has no current plans or intentions to transfer Khalil during the pendency of his removal proceedings. 2d Supp. Joyce Decl. ¶ 19.

B. Khalil's habeas petition

At 4:41 a.m. on March 9, 2025, Khalil's attorney filed the instant habeas petition under 28 U.S.C. § 2241, while Khalil was physically present and detained in New Jersey. Joyce Decl. ¶¶ 8-9; *see also* ECF No. 11 at 6 ("Counsel filed the instant habeas corpus petition on Mr. Khalil's behalf on March 9, 2025, at 4:41 a.m."). By her account, Khalil's attorney filed the instant habeas petition in this District, because (i) DHS agents had previously told Khalil's wife that he was being sent to 26 Federal Plaza (as he was), and (ii) the public "ICE Online Detainee Locator System" had not yet been updated at that hour to show he had been transferred to New Jersey. Declaration of Amy Greer ("Greer Decl.") (ECF No. 11-1) ¶¶ 7, 9. Khalil's operative petition challenges his current immigration detention as unlawful, and he seeks an order from this Court requiring ICE to release him immediately. Am. Pet. (ECF No. 38). Khalil seeks other relief in addition to release from custody. Am. Pet. at 31, Prayer for Relief.

C. Procedural History and Transfer to this Court

After Khalil had filed his habeas petition, the parties briefed whether venue in the Southern District of New York was proper. On March 19, 2025, the court ("SDNY court") transferred the action to the District of New Jersey. *See* Order Transferring Petition (ECF No. 78). The SDNY court

found that it lacked jurisdiction over Khalil's habeas petition because he was in New Jersey at the time that the petition was filed. *Id.* at 15. Relying on decisions that rejected Khalil's arguments in other cases, Judge Furman applied the immediate-custodian rule to this habeas petition, concluding that the "core" and any potential "non-core" claims should be heard by a court that "has the authority to consider Khalil's entire Petition." *Id.* at 17. The SDNY court refused to find that Khalil's allegations "plausibl[y] infer[red] that the Government's 'purpose' in moving him to New Jersey" constituted some sort of gamesmanship. *Id.* at 18. Indeed, it went on to note instances in which detainees had been processed through 26 Federal Plaza and then were transferred to New Jersey. *Id.* at 19. Recounting the events that transpired when detaining Khalil, the SDNY court stated that there would be various reasons for moving Khalil to New Jersey and found that the instant petition was not properly before it. *Id.* at 20.

The SDNY court declined to transfer the action to the Western District of Louisiana and instead sent to the District of New Jersey. *Id.* at 25. Doing so, it noted that the district-of-confinement and immediate-custodian rules are not matters of subject-matter jurisdiction. *Id.* The SDNY court looked to 28 U.S.C. § 1406(a) and held that New Jersey was the appropriate jurisdiction because Khalil could have brought his action there at the time of filing. *Id.* at 28. It did not apply *Padilla* in this context, concluding that the statute permits transfer to a court that could have heard the case at the time it was brought. *Id.* at 29-30. The SDNY court rejected arguments that the transfer statutes would not independently vest jurisdiction where there was none to begin with because the Supreme Court previously noted that a transfer would not affect a district court's habeas jurisdiction. *Id.* at 30. Finally, the SDNY weighed the relevant facts and determined that it would be in the interest of justice for this Court to hear the habeas action. *Id.* at 30-31.

ARGUMENT

This Court should either dismiss this petition without prejudice, or transfer this action to a proper forum, because the proper venue is exclusively the Western District of Louisiana.

1. A habeas petition brought under 28 U.S.C. § 2241 challenging detention must be brought against the immediate custodian and filed in the district in which the petitioner is detained. The Supreme Court has made clear that in "core" habeas petitions—that is, petitions like the instant one that challenges the petitioner's present physical confinement—the petitioner must file the petition in the district in which he is confined (that is, the district of confinement) and name his warden as the respondent. *See Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004).

In *Padilla*, the Supreme Court described habeas petitions challenging a petitioner's present physical confinement (*i.e.*, detention) as "core" habeas petitions. *Id.* at 445. For review of such "core" petitions, "jurisdiction lies in only one district: the district of confinement." *Id.* at 443. Accordingly, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement."[2] *Id.* at 447; *see id.* at 443 (explaining that "[t]he plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement").

Courts within this Circuit have regularly applied *Padilla* in the immigration context, with respect to habeas petitions just like this one. *See, e.g.*, *Guzman v. Moshannon Valley Processing Ctr.*, Civ. Act. No. 24-1054 (JKS), 2024 WL 1251170, at *1 ("District courts are limited to granting habeas relief

[2] In adopting the "immediate custodian" rule, the Supreme Court rejected the "legal reality of control" standard and held that legal control does not determine the proper respondent in a habeas petition that challenges present physical confinement. *See Padilla*, 542 U.S. at 437-39; *see also id.* at 439 ("In challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.").

within their respective jurisdictions, so that the court issuing the writ has jurisdiction over the custodian.") (cleaned up); *Eddine v. Chertoff*, Civ. Act. No. 07-6117 FSH, 2008 WL 630043, at *2 (D.N.J. Mar. 5, 2008) (noting that a petition should file in the district of confinement because "the court issuing the writ must be able to exercise personal jurisdiction over the custodian of the petitioner."); *Allen v. Chertoff*, Civ. Act. No. 10-1003 (FLW), 2010 WL 743916, at *2 (D.N.J. Mar. 4, 2010) (same); *Leybinsky v. U.S. Dep't of Homeland Sec.*, Civ. Act. No. 09-1965 (GEB), 2009 WL 1228586, at *2 (D.N.J. May 1, 2009) (same); *Ali v. Sec'y, Dep't of Homeland Sec.*, Civ. Act. No. 11-2072, 2012 WL 15750, at *2 (D.N.J. Jan. 4, 2012) (same).

2. Nobody disputes that if Khalil filed his petition today, it would have to be in the Western District of Louisiana. The only question before this Court is whether that principle no longer holds, because Khalil was temporarily in New Jersey when he improperly filed his original habeas petition in New York. The answer is no.

As relevant, the Supreme Court has recognized a "limited" exception to the district-of-confinement rule, namely, only "when the Government moves a habeas petitioner after she *properly files* a petition naming her immediate custodian." *Id.* at 441 (emphasis added) (discussing *Ex Parte Endo*, 323 U.S. 283 (1944)); *see Argueta Anariba v. Dir. Hudson Cty. Corr. Ctr.*, 17 F.4th 434, 446 (3d Cir. 2021) ("Our precedent likewise reflects an adherence to the general rule articulated in *Endo*, that the government's post-filing transfer of a § 2241 petitioner out of the court's territorial jurisdiction does not strip the court of jurisdiction over the petition."). Under those circumstances, the court where jurisdiction originally vested may retain the case. *See Argueta Anariba*, 14 F.4th at 446 (collecting cases).

That limited exception does not apply here. Khalil has never filed a habeas petition in this Court. Importantly, that means that habeas jurisdiction has never vested in this Court. And as a corollary to that, it means the limited exception just described is not implicated. That exception applies only where the original court is able to "retain[] jurisdiction," even after someone is removed from its

territorial reach. *Padilla*, 542 U.S. at 441. But where a court never *had* habeas jurisdiction in the first place, there is nothing to retain. *See Azize v. Bur. of Citizenship & Imm. Serv.*, No. 04Civ.9684 (SHS)(JCF), 2005 WL 3488333, at *1 (S.D.N.Y. Oct. 7, 2005); *see, e.g.*, *Barden v. Keohane*, 921 F.2d 476, 477 n.1 (3d Cir.1990) (noting that jurisdiction over a habeas petition is determined at the time it is filed and retaining jurisdiction because the original petition had properly named respondent); *United States v. Vidal*, 647 F. App'x 59, 60 (3d Cir. 2016) ("A § 2241 petition is properly filed in the jurisdiction in which the prisoner is confined. At the time Vidal filed his motion, he was confined in a facility outside the territory of the District of New Jersey. Accordingly, the District Court lacked jurisdiction to consider his motion.") (citations omitted).

The "default rule" articulated in *Padilla* thus controls here. 542 U.S. at 435. Because Khalil's original petition was improper, no court has yet had proper habeas jurisdiction over this matter. And the only place where habeas jurisdiction would be proper today is the Western District of Louisiana. *See Wooten v. Zickefoose*, No. CIV. 10-4599 NLH, 2011 WL 794393, at *3 (D.N.J. Feb. 28, 2011). This because, , "jurisdiction lies in only one district: the district of confinement," *Padilla*, 542 U.S. at 443, and in this case, it is the Western District of Louisiana. *See, e.g.*, *Burkey v. Marberry*, 556 F.3d 142, 146 (3d Cir. 2009) (noting that the petitioner, who challenged the BOP's determination that he was ineligible for early release, had "appropriately filed his habeas corpus petition in the district of confinement"); *Furnari v. U.S. Parole Comm'n*, 531 F.3d 241, 255 (3d Cir. 2008) ("28 U.S.C. § 2241 allows habeas corpus petitions to be brought . . . in the district in which the petitioner is confined."); *Yi v. Maugans*, 24 F.3d 500, 503 (3d Cir. 1994) ("A district court's habeas corpus jurisdiction is territorially limited and extends only to persons detained and custodial officials acting within the boundaries of that district.") (citations omitted); *see also United States v. Means*, 572 F. App'x. 793, 794 (11th Cir. 2014) (refiled petition should be filed in district where petitioner "currently incarcerated");

Magee v. Clinton, No. 04-5247, 2005 WL 613248, at *1 (D.C. Cir. 2005) (similar); *United States v. Little*, 392 F.3d 671, 680 (4th Cir. 2004) (similar).

3. The transfer statutes do not alter this analysis. In sending this case to this Court, Judge Furman relied on 28 U.S.C. § 1406(a), which provides: "The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought."

It is true that at the time Khalil's original petition was filed, it could have been properly filed in this district. But the SDNY court erred in treating that fact as dispositive. *See* Op. at 28-29. While Khalil's case "could have been brought" here at the time of filing, that does not mean it can be heard here and now. And it cannot, under *Padilla*—or the specific statutory text it interpreted. Section 2241(a) states that writs of habeas corpus "may be granted by … the district courts … within their respective jurisdictions." *Padilla* interpreted that text—namely, "jurisdiction[]"—to require that a habeas petitioner satisfy both the immediate custodian and district-of-confinement rules in order for a federal court to be able to issue a writ of habeas corpus. Section 1406(a) can permit transfer but only if the transferee court would also have subject matter jurisdiction over the matter. *See Cortez v. Baskin*, Civ. Act. No. 19-12261-NLH-AMD, 2019 WL 2142902, at *1 n.1 (D.N.J. May 16, 2019); *see also Spiniello Companies v. Moynier*, 2014 WL 7205349, at *5–6 (D.N.J. 2014) (explaining that if a court determines that venue has been improperly laid within its district, § 1406(a) confers discretion to transfer the case or dismiss it); *id.* ("To effectuate a § 1406(a) transfer to a proper venue, a court must possess subject matter jurisdiction over the case."); C. Wright, A. Miller, et al., 14D Fed. Prac. & Proc: Juris. § 3827 (4th ed.) ("A district judge may not order transfer under Section 1406(a) unless the court has jurisdiction of the subject matter of the action...."); *cf. Sinochem International Co. v. Malaysia International Shipping Corp.*, 549 U.S. 422 (2007) (convenience-based venue issues may be addressed

before the threshold issue of subject-matter jurisdiction); *In re: Howmedica Osteonics Corp.*, 867 F.3d 390, 404 (3d Cir. 2017)(same). This is where the SDNY court erred. *See* Op. at 30.

Nothing in § 1406(a)'s general authorization for transfer displaces those specific conditions for habeas relief or purports to vest this Court with jurisdiction that would not otherwise exist. This Court has never had jurisdiction over this matter, and it cannot exercise jurisdiction over it now. *See Padilla*, 542 U.S. at 441-42. Even if that transfer statute technically permitted transfer to this Court as a matter of civil procedure, that does not somehow vest this Court with the statutory authority to issue a specific remedy—and do so notwithstanding the specific preconditions for such relief. Put otherwise, in order for this Court to award habeas relief under 2241(a), it must have "jurisdiction" to do so—as construed by *Padilla*. Nothing in the transfer statutes alters that limitation.

4. The transfer statutes all contemplate transfer to a district where an action "could have been brought in the first instance." *Parker v. Hazelwood*, Civ. No. 17-484-LM, 2019 WL 4261832, at *6 (D.N.H. 2019). Because that is only this district—and because this district is unavailable—those laws are broadly unavailable. That is why, as noted, the typical course on this posture is dismissal without prejudice, so that Khalil may properly refile in the right district. That said, 28 U.S.C. § 1404(a) allows transfer where the parties consent. And the United States would consent to transfer to the Western District of Louisiana, so that this petition can promptly be resolved. *See Pittman v. Pullen*, No. 22-cv-1651 (JAM), 2023 WL 6379371, at *3 (D. Conn. 2023).

The United States would consent to such transfer, because transfer of this action to the Western District of Louisiana serves the interest of justice. An immediate transfer to the proper forum is the best way to promptly resolve this habeas petition. *See Verissimo v. I.N.S.*, 204 F. Supp. 2d 818, 820 (D.N.J. 2002) (recognizing that the place of detainment may often be the most convenient forum to the parties) (citing *McCoy v. United States Board of Parole*, 537 F.2d 962, 966 (8th Cir. 1976)). Transferring also serves the interest of justice because the LaSalle Immigration Court has jurisdiction

over Khalil's removal proceedings and ICE has no plans to transfer him during the pendency of those proceedings. *See* 8 C.F.R. § 1003.14(a); Ex. A – as-filed-NTA; 2d Supp. Joyce Decl. ¶ 20.

Should he do so, Khalil's reliance on the law-of-the-case doctrine would be misplaced in this case. Order Transferring Petition at 29-30 (ECF No. 78). The doctrine "directs courts to refrain from re-deciding issues that were resolved earlier in the litigation." *Pub. Int. Rsch. Grp. of New Jersey, Inc. v. Magnesium Elektron, Inc.*, 123 F.3d 111, 116 (3d Cir. 1997). But this discretionary doctrine in no way limits this Court's power to decide its own jurisdiction. *Id.* (citing *Arizona v. California*, 460 U.S. 605, 619 (1983)). Given the substantial jurisdictional concerns with the original petition and the lack of filing in the proper district at the outset, the Court's exercise of discretion would not be warranted. *See id.* at 117 (declining to apply doctrine when it would affect jurisdictional issues).

* * *

CONCLUSION

There is no doubt that this case has garnered much attention and involves important issues. "But it is surely just as necessary in important cases as unimportant ones that courts take care not to exceed their 'respective jurisdictions' established by Congress." *Padilla*, 542 U.S. at 450-51. The well-settled "jurisdictional rules" that govern habeas proceedings compel that this case must be heard in one forum, and one forum only: The Western District of Louisiana, where Khalil is now being held. For the foregoing reasons, the Court should dismiss this petition without prejudice, or transfer it to that district.

Dated: March 20, 2025

Respectfully submitted,

YAAKOV M. ROTH
Acting Assistant Attorney General
Civil Division

SARAH S. WILSON
Assistant Director

ALANNA T. DUONG
Senior Litigation Counsel

s/ Dhruman Y. Sampat
DHRUMAN Y. SAMPAT
Senior Litigation Counsel
Office of Immigration Litigation
General Litigation and Appeals Section
PO Box 878, Ben Franklin Station
Washington, D.C. 20044
dhruman.y.sampat@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing filing was served on counsel of record via this Court's CM/ECF system on March 20, 2025.

s/ Dhruman Y. Sampat
DHRUMAN Y. SAMPAT
Senior Litigation Counsel

EXHIBIT A

Uploaded on: 03/09/2025 at 10:27:47 AM Central Daylight Time from Rose City, IN IP: 172.56.249.44
Case 2:25-cv-01963-MEF-MAH Document 44-2 Filed 03/12/25 Page 2 of 3 PageID: 125

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [redacted]

Event No: [redacted]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [redacted] FINS: [redacted] File No: [redacted]

In the Matter of:

Respondent: MAHMOUD KHALIL currently residing at:

[redacted]

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ You are an arriving alien.

☐ You are an alien present in the United States who has not been admitted or paroled.

☒ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;

2. You are a native of SYRIA and a citizen of ALGERIA;

3. You were admitted to the United States at unknown place on or about unknown date as a unknown manner;ORYour status was adjusted to that of a lawful permanent resident on November 2024 under section 212 (a)(3)(C) of the Act;

4. The Secretary of State has determined that your presence or activities in the United States would have serious adverse foreign policy consequences for the United States.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(4)(C)(i) of the Immigration and Nationality Act, as amended, in that the Secretary of State has reasonable ground to believe that your presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

830 PINEHILL RD JENA LA 71342. LASALLE DETENTION FACILITY

(Complete Address of Immigration Court, including Room Number, if any)

on March 27, 2025 *(Date)* at 8:30 AM *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

TIMOTHY MORAN - Supervisory Special Agent TIMOTHY M MORAN JR Digitally signed by TIMOTHY M MORAN JR Date: 2025.03.09 08:41:11 -05'00'

(Signature and Title of Issuing Officer)

Date: March 9, 2025

26 Federal Plaza, New York, NY

(City and State)

EOIR – 1 of 3

Uploaded on: 03/09/2025 at 10:23:17 AM Central Daylight Time from Rose City, MI IP Address: 174.209.126.126

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at http://www.ice.gov/contact/ero, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before: _____

_____ *(Signature of Respondent)*

_____ Date: _____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on March 9, 2025, in the following manner and in compliance with section 239(a)(1) of the Act.

☒ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☐ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(X) Refused to sign JG

(Signature of Respondent if Personally Served)

TIMOTHY M MORAN JR Digitally signed by TIMOTHY M MORAN JR Date: 2025.03.09 09:41:28 -05'00'

TIMOTHY MORAN - Supervisory Special Agent

(Signature and Title of officer)

EOIR – 2 of 3

DHS Form I-862 (6/22)

Uploaded on: 03/03/2025 at 09:27:47 AM Central Daylight Time Rose City, MI
Case 2:25-cv-10237-LJM-APP ECF No. 2-2, PageID.128 Filed 03/10/25 Page 4 of 5
Case: 25-1267 Document: 2 Page: 2 Filed: 03/20/2025 PageID: 127

Privacy Act Statement

Authority:
The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:
You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:
For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at https://www.dhs.gov/system-records-notices-sorns. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at https://www.justice.gov/opcl/doj-systems-records. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:
Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

EOIR – 3 of 3

Uploaded on: 03/17/2025 at 05:22:02 PM (Central Daylight Time) Based on IP: [redacted]
Case 2:25-cv-02162-LEF Document 2 Page: 2 of 2 Date Filed: 03/20/2025 PageID: 128

U.S. Department of Homeland Security
Immigration and Customs Enforcement

Additional Charges of Inadmissibility / Deportability

In: **[x] Removal proceedings under section 240 of the Immigration and Nationality Act**

[ ] Deportation proceedings commenced prior to April 1, 1997, under former section 242 of the Immigration and Nationality Act

In the Matter of:
Alien/Respondent: Mahmoud Khalil

File No: _____ Address: 830 Pinehill Road, Jena, Louisiana 71342

[ ] - 1. You are an arriving alien.
[ ] 2. You are an alien present in the United States who has not been admitted or paroled.
[X] 3. You have been admitted to the United States, but are removable for the reasons stated below.

There is/are hereby lodged against you the following allegation(s), [ ] in addition to or [X] in lieu of, those set forth in the original charging document:

1. You are not a citizen or national of the United States;
2. You are a native of Syria and a citizen of Algeria;
3. You were admitted to the United States at John F. Kennedy International Airport, Queens, New York, on or about December 20, 2022, as an F-1 nonimmigrant student to attend Columbia University in New York, New York;
4. Your status was adjusted to that of a conditional lawful permanent resident on November 16, 2024, based on marriage to a U.S. Citizen spouse, under section 245(a) of the Immigration and Nationality Act;
5. The Secretary of State has determined that your activities and presence in the United States would have potentially serious adverse foreign policy consequences and would compromise a compelling U.S. foreign policy interest;
6. On your Form I-485, Application to Register Permanent Residence or Adjust Status, signed on March 26, 2024 and mailed on March 29, 2024, in response to the question at part 8, page 9, you failed to disclose that you were a member of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) from June through November 2023, as a political affairs officer;
7. On your Form I-485, Application to Register Permanent Residence or Adjust Status, signed on March 26, 2024 and mailed on March 29, 2024, in response to the question at part 3, page 6, you failed to disclose your continuing employment as a Program Manager by the Syria Office in the British Embassy in Beirut beyond 2022.
8. On your Form I-485, Application to Register Permanent Residence or Adjust Status, signed on March 26, 2024 and mailed on March 29, 2024, in response to the question part 8, page 9, you failed to disclose that you were a member of the Columbia University Apartheid Divest (CUAD).

There is/are hereby lodged against you the following charge(s), [X] in addition to or [ ] in lieu of, those set forth in the original charging document:

Section 237(a)(1)(A) of the Immigration and Nationality Act, as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who seek to procure, or have sought to procure, or who have procured a visa, other documentation, or admission into the United States, or other benefit provided under the Act, by fraud or by willfully misrepresenting a material fact, under Section 212(a)(6)(C)(i) of the Act.

3/17/2025
Dated:

(Signature of Deportation Officer)

EOIR – 1 of 2

FORM I-261

Uploaded on: 03/17/2025 05:22:02 PM Central Daylight Time Based IP: JMA 30 Case 2:25-cv-02162-EFM-ADM Document 2 Page: 2 of 2 Date Filed: 03/20/2025 Page 6 of 6 PageID: 129

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing, you will be given the opportunity to admit or deny any or all of the allegations in the charging document and that you are inadmissible or deportable on the charges contained in the charging document. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change you address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Certificate of Service

This charging document was served on the respondent on 3/17/25, in the following manner in compliance with section 239(a)(1)(F) of the Act.

☒ in person ☐ by certified mail, return receipt requested ☐ by regular mail

to: 830 Pinehill Rd Jena LA 71342
(Alien's address)

☒ The alien was provided oral notice in the English language of the time and place of his or her hearing and of the consequences of failure to appear as provided in Section 240(b)(7) of the Act.

Refuse to Sign
(Signature of respondent if personally served)

DO
(Signature and title of officer)

EOIR – 2 of 2

EXHIBIT I

Case 2:25-cv-01963-MEF-MAH Document 44-2 Page: 209 Date Filed: 08/20/2025

March 19, 2025
[redacted]

Honorable Michael E. Farbiarz
United States District Judge
District of New Jersey
Martin Luther King Courthouse
50 Walnut Street
Newark, NJ 07101

PURSUANT TO 28 USC 1746, I HEREBY DECLARE THE FOLLOWING:

Dear Judge Farbiarz,

I am writing this letter to you in support of Mahmoud Khalil. My name is [redacted] and I am a U.S. citizen and identify as Jewish. I graduated from Columbia University's School of International and Public Affairs (SIPA) in May 2024 and have known Mahmoud Khalil for about two years since he started his studies at SIPA in January 2023.

I consider Mahmoud a colleague, fellow advocate and profound human being. I regard Mahmoud as a thoughtful, committed, highly intelligent, curious and pacifistic person. I developed this understanding of his character through my many interactions with him at Columbia in classrooms, social outings, and advocacy circles. I have had countless discussions with him about international affairs, politics and the Israeli-Palestinian conflict. I can point to several specific examples that highlight Mahmoud commitment to non-violent, respectful language and building an inclusive pro-Palestinian movement on campus.

My first interaction with Mahmoud was in March 2023. Over the prior winter break, I participated in a trip to the Occupied Palestinian Territories organized by PalTrek National. As a follow-up to the trip, a discussion was convened with participants of the trip to highlight our experience. I offered to speak about my experience as a Jewish person who has traveled to Israel on multiple occasions before this trip. I was honest about my participation in Birthright International, a fully-funded trip for American Jewish youth to experience Israel. Birthright has received criticism from anti-Israel groups for its support of resettling American Jews to Israel, often at the expense of Palestinian families. While some students at SIPA expressed valid concerns about including my experience over others from the trip, Mahmoud personally welcomed my inclusion in the panel. Mahmoud saw the importance of including my voice in this discussion and highlighting the complicated pressures on American Jews. Mahmoud, starting at SIPA in January, did not participate in the trip and did not know me beyond my identity as

Jewish and previous participant in Birthright. Instead of leaning into stereotypes or succumbing to the pressures of others, Mahmoud saw me as a human being with a long and complicated relationship to my religious identity and its connection to the state of Israel.

The next incident I'd like to highlight occurred in October 2023. Following the Hamas-led terrorist attacks on October 7th and subsequent military response by Israel, the Dean of SIPA, Keren Yarhi-Milo, asked to meet with some SIPA students to understand the impact of the war on Palestinian students. Mahmoud was in attendance. Mahmoud began the meeting by asking Dean Yarhi-Milo, an Israeli citizen, how she, her family and community were doing in light of the terrorist attack. In asking the question, Mahmoud condemned the violent, hateful act by Hamas terrorists and expressed grief for the immediate loss of life and continued impact on the communities. Even Dean Yarhi-Milo appeared touched by the question and expressed gratitude for his consideration of her experience of this violence as an Israeli woman.

From October 2023, tensions on campus elevated. I've watched Mahmoud on several occasions de-escalate tense situations on campus, leading with peace to usher a constructive dialogue rather than inciting aggression that leads to hate speech. I saw Mahmoud, as well as other Arab classmates, confronted and, at times, harassed by other students, asking him if he supported Hamas. Mahmoud would not raise his voice or respond with aggression, but instead simply answer the question by condemning Hamas and all forms of violent extremism. Mahmoud recognized this was a tactic to coerce him to promote hateful or extremist language, but he never wavered in his denouncement of all forms of violent extremism, including the actions of Hamas on October 7th.

On October 25th 2023, over 20 students, including myself, were targeted in a doxing campaign by the right-wing media organization, Accuracy in Media. The organization launched an online petition, personal website for each student, and paraded a billboard truck around campus displaying my name and photo under the banner, "Columbia's Leading Antisemite." The false statement was attributed to my position as the President of SIPA's Human Rights Working Group. Mahmoud, not targeted at that time by this doxing campaign, reached out to me personally to check in on my well-being. He recognized that my identity and work experience with Jewish organizations contradicted the claim of antisemitism, and offered his support. He expressed his support not in justification of antisemitism, but as defamatory action to distract from legitimate antisemitism happening on campus, saying to me, "by targeting the Jewish student and ignoring the very real antisemitism happening on campus, [Accuracy in Media] has made it clear their motives are not to protect Jewish people."

I can point to additional incidents that occurred in April 2024 during the Solidarity Encampment at Columbia University. During the Encampment, Mahmoud led community-wide discussions on how to ensure the space was free from hate and discrimination. Through this, he helped develop

community guidelines for the encampment that indicated any expression of hate speech will not be tolerated. On one occasion, some individuals made remarks that I personally found offensive as a Jewish person. I saw Mahmoud visibly uncomfortable, and instead of berating or verbally attacking the individuals, he approached them calmly to deescalate the situation by saying, "that's not a productive approach. We need to focus on law, not emotion." His priority has always been advocacy through nonviolent means, centering facts, legal arguments, and mutual respect.

ICE may attempt to use his participation in the Encampment protest against him, but that would be a complete distortion of reality. Mahmoud has actively included Jewish voices in conversations about Israel-Palestine. In fact, during the first day of Jewish Holy Days of Passover, I asked Mahmoud for his help in hosting a Passover Seder at the Encampment specifically for a non-Jewish audience. Mahmoud was very helpful in connecting me with the leadership of the Encampment and ensuring I had a large, safe space to host the Seder. Not only did he attend the Seder, Mahmoud invited his non-Jewish friends, understanding the importance of including non-Jews in the celebration of this Holy Day. Following the Seder, he commented to me directly, "thank you for hosting and inviting me to this Seder. It was my first time being invited to a Passover Seder and I am very thankful to have learned more about Judaism." His gratitude and support of this initiative further highlights his understanding of the value of including Jewish voices in typically non-Jewish spaces. In that moment, Mahmoud saw me, not just as a Jew but as a fellow human being equally committed to his message of nonviolence and peace.

Additionally, ICE and Federal officials may penalize Mahmoud for his visibility during Columbia's protests because he was selected as a press representative from the student negotiating team. Only specific students were selected for these roles to ensure the peaceful purpose of the protests were expressed calmly and without hatred. I watched him on several occasions be tested by the press with leading questions that sought to charge the conversation with antisemitic or extremist messaging, and Mahmoud maintained his calmness, commitment to promoting peace on campus and sensitivity to hateful or extremist rhetoric. His role as a student negotiator underscores his commitment to finding a peaceful end to the Encampment through dialogue with Columbia's administration.

I trust these examples provide insight into Mahmoud's character and context to his participation in nonviolent protests that may be weaponized against him. His commitment to peaceful dialogue, particularly the creation of interfaith spaces, exemplifies what I have personally witnessed: Mahmoud has never engaged in or expressed support for antisemitic nor extremist ideology. He is an incredible advocate, good-faith member of the Columbia Alumni community, and a kind human being. I urge you to support his immediate release.

I DECLARE UNDER PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON 3/19/2025

[redacted]

[redacted]

Phone number: [redacted]
Mailing Address: [redacted]

Thank you for your time and consideration. I sincerely appreciate the Court's attention to this matter. If the Court requires any further information, I can be reached at the contact information above.

[redacted]

Honorable Jesse M. Furman,
United States District Judge, Southern District of New York,
Thurgood Marshall Courthouse, 40 Centre Street, New York, NY

18 March 2025

Statement in support of Mahmoud Khalil

Dear Judge Furman,

My name is [redacted], I am a friend and former colleague of Mahmoud Khalil. I write to express my support for him, and to vouch for his conduct and character.

I know Mahmoud in both a professional and personal capacity. Professionally, we spent two years working for the same team in the [redacted]. Mahmoud worked for the [redacted]. I joined [redacted].

At work, Mahmoud was thoughtful and hard-working, consistently receiving the highest grade in his yearly appraisal. It is notable that Mahmoud was security cleared to work at the British Embassy in Beirut, one of the most politically sensitive posts in the diplomatic network. He was a trusted member of the team, showing discretion and personal integrity in all that he did. This is abundantly clear when examining the nature of Mahmoud's day-to-day work. Mahmoud was responsible for overseeing the Chevening Scholarship fund that brings some of the brightest students from Syria to study at British universities. In this role, he was privy to the sensitive personal information of hundreds of young Syrians who had grown up in Bashar al-Assad's brutal dictatorship - information which he handled with total discretion.

After I left the [redacted], I moved to Beirut to study Arabic and start a new career in journalism. It is at this time that I really became friends with Mahmoud. Outside of work he is tremendously fun to be with, especially when there is music involved. He is a loyal friend and is always generous with his time. He has spent hours answering my questions about the vagaries of regional politics, and would always insist on giving me a lift home across town after a disappointing evening of watching England play football (soccer).

President Trump's characterization of Mahmoud could not be further from the truth. His activism is a reflection of the very best of his character, not some radical impulse or subversive agenda. Mahmoud is motivated by the desire to see justice for Palestinians, but one does not need to agree with his politics to admire his courage in pursuing that aim. As an immigrant of Palestinian-Syrian heritage, Mahmoud has been dealt one of the weakest geo-political hands imaginable, and yet he stood up to one of the most powerful educational institutions in the world, despite the personal risk that this involved. His integrity and moral conviction is an example to all of us.

I hope you will take this testimony into consideration, and I would be happy to provide any further information that might help with your judgement.

Yours sincerely,
[redacted]

Contact: [redacted]

Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Centre Street, New York, NY

Dear Judge Furman,
I am writing in support of my friend and neighbor Mahmoud Khalil. My name is [redacted] and I am an Associate Professor at Columbia University. Over the past year, I have joined with a diverse group of other Jewish colleagues to speak out in defense of our students' right to protest the ongoing violence in Gaza. Through this advocacy, I have had the good fortune to get to know Mahmoud well. He is an upstanding, principled, and well-respected member of our community.

I wish to convey to you in the strongest possible terms that the slander, insinuations, and guilt-by-association leveled against Mahmoud by everyone from anonymous trolls on social media to the White House could not be further from the truth known by those of us who know Mahmoud firsthand. I first got to know Mahmoud when he invited me to a film screening and panel discussion organized by himself and other Palestinian students in an interest of dialogue and understanding about the roots of disagreement on our campus. After the Gaza Solidarity Encampment arose on our campus and he stepped in as a mediator and spokesman, I only grew more impressed by his character, his kindness, and his commitment to a vision of liberation and justice both here and in Israel-Palestine that includes everyone, of all creeds and backgrounds.

Mahmoud's commitments to peace and collective liberation are a matter of public record. I myself have heard him openly express his opposition to antisemitism and all other forms of prejudice. I have given him my personal phone number and we have spoken often, whether just to catch up or whenever either one of us had a concern or question about something happening on campus. I have given him my trust on sensitive subjects and he has extended his in return. I have heard personally from Jewish students and others about how welcome and safe they feel around Mahmoud. I have heard firsthand how he has rebuked people who have said hurtful or prejudicial things in the context of the protest movement. I have stood beside him on live television to defend our students' right to protest and I would not have done this if I believed any of the things being said about him by the government or by his doxers and harassers on social media were true.

My understanding is that even unkind people have rights. However, since Mahmoud's character and beliefs are, I understand, at issue in this case, let it be said Mahmoud is among the kindest, gentlest, and most principled people I have had the chance to meet over the last year and a half of turmoil on our campus. There are not many people whose phone calls I will take at any hour without hesitation. Mahmoud has always listened to my concerns in private and always spoken for inclusive visions of peace and collective liberation in public. His role in the campus protests has always been that of mediator, spokesman, of peacemaker, as one who seeks resolution, not inflammation, to conflict. He represents the best of what this student body has to offer.

I am happy to provide more information if it can be helpful to the court. I can be reached by phone at [redacted] or by mail at [redacted]. Thank you for your consideration of my experience and perspective.

Sincerely,

[redacted]

[redacted]

Honorable Jesse M. Furman
United States District Judge
District of New Jersey
50 Walnut St., #4015
Newark, New Jersey 07102

Dear Judge Farbiarz,

I am writing this letter in support of Mahmoud Khalil.

My name is [redacted], and I bring more than decade of award-winning journalism and entrepreneurism to my role as [redacted]—a research action center at Temple University in Philadelphia, dedicated to education equity. Based in the Middle East for almost a decade, I was one of the first women columnists at [redacted] and co-founded [redacted], an initiative dedicated to amplifying female voices in international affairs. I'm the co-founder of [redacted], a [redacted] campaign in Malawi and Guatemala that provides bicycles for adolescent girls to get to school. I am also the founding deputy editor of the [redacted] in Egypt, where I was a U.S. Fulbright fellow and Pulitzer Center grantee.

I met Mahmoud almost 12 years ago, when I spent a summer in Beirut reporting on the Syrian refugee crisis. Mahmoud was 18 and had just recently fled Syria by himself. He was painstakingly teaching himself English and volunteering his time to help fellow Syrians build new lives from the rubble of a brutal dictatorship and civil war. He often referred to himself as a "double refugee"—a Palestinian in Syria, who grew up in a refugee camp in Damascus, and a Syrian refugee in Lebanon. He was one of the most courageous, gentle, and kind souls I ever met. And he remains one of the most courageous, gentle, and kind humans I know. Mahmoud shouldn't have to be extraordinary to deserve our empathy—or to ignite our rage over the injustice of it all. But he is.

When we crossed paths in Istanbul a few years ago during Ramadan, we celebrated over a huge iftar—the breaking of the fast. Mahmoud was admitted to Columbia SIPA as a graduate student. He was deeply humbled and full of hope. Against all odds, he not only built a new life for himself, but was now going to further his development studies so to better serve marginalized communities around this world. "This will help me serve all the others—so many others—who didn't and won't get a chance," he told me. That's the thing about Mahmoud: his north star is creating opportunities for others, even when he barely had any himself as an 18-year-old refugee fleeing Bashar Al-Assad's murderous dictatorship.

Columbia should be honored to call Mahmoud, a humanitarian in the truest sense of the word, an alumnus.

Mahmoud has dedicated his life to protecting the dignity of others. And we now must protect his.

You can reach me at [redacted] and [redacted]

Thank you,

[redacted]
March 20, 2025

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK
DEPARTMENT OF HISTORY

March 19, 2025

Honorable Michael E. Farbiarz
United States District Judge
District of New Jersey
Martin Luther King Courthouse
50 Walnut Street
Newark, NJ 07101

Dear Judge Farbiarz,

I am writing this letter in support of Mr. Mahmoud Khalil, whom I have known since he took the graduate section of my course, "History of the Modern Middle East," HIST 6998, in the fall semester of 2023.

I am the [redacted] in the Department of History at Columbia University, where I taught for a total of 23 years until my retirement in July 2024. Before that I taught for sixteen years in the Department of History at the University of Chicago. I have also taught at Georgetown University, the American University of Beirut, and the Lebanese University. I have served as the President of the Middle East Studies Association, and as an adviser to the Palestinian delegation during the 1991-1993 Madrid-Washington Palestinian-Israel peace negotiations. I am the author of eight books on Middle Eastern history that have been translated into dozens of languages, and the co-editor of three others.

Mr. Khalil was an outstanding student in my course, taking an active part in the discussion sessions and in class, producing excellent take-home essays in the midterm and final exams, and obtaining the grade of A. Although he had far broader experience than they did of the history and politics of the Middle East, having grown up there and having worked for the British Embassy in Beirut, he was always respectful of other less knowledgeable students, and never dominated the discussions. His contributions were thoughtful and always to the point.

I got to know Mr. Khalil further during the subsequent months, when he became a negotiator for the students protesting Israel's war on Gaza with the Columbia administration, trying to bring the protests to a peaceful, mutually satisfactory end. This was a difficult task, as the administration was under intense external pressure. As far as I could tell, he performed this task in good faith, although his efforts, and those of faculty colleagues of mine to achieve the same end, were ultimately unsuccessful.

413 Fayerweather Hall 1180 Amsterdam Avenue New York, NY 10027 212-854-4646 Fax 212-851-5963

I also got to know Mahmoud through my wife, a former [redacted] at the School of International and Public Affairs (SIPA), where he was a student, as he and other SIPA students often consulted her for career advice and sometimes personal advice. We got to know him and his wife Noor socially, and I found him to be a dedicated family man, caring of her, and deeply considerate. He was also a source of solace and support for younger Palestinian students who had been doxed, harassed and callously treated by the University, which provided them with little or no support.

Mr. Khalil is a straight-forward, honest and soft-spoken individual, whom I have always found to be clear headed and mature beyond his years. In stark contrast with the entirely false picture of him portrayed by some, he is neither an extremist nor a hot-head, but rather someone deeply concerned about the fate of his people, the Palestinians. This is perfectly understandable, coming from someone whose family were forced to take refuge in Syria in 1948 after being driven from their homeland, and then had to leave Damascus due to the civil war there of the past fourteen years, which destroyed their home, and made them refugees once again.

I hope this background on Mr. Khalil is helpful to you in deciding on his case.

Sincerely yours,

[redacted]

[redacted]

[redacted]

History Department, Columbia University

Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Centre Street, New York, NY

RE: Letter in Support of Mahmoud Khalil's Bail Hearing

Dear Judge Furman,

I am writing this letter in support of my dear friend Mahmoud Khalil. My name is [redacted], and I am a recent graduate of Columbia University, Mailman School of Public Health, Class of 2024. As a proud U.S. citizen, I deeply value free speech and am committed to protecting our First Amendment and constitutional rights. What has happened to Mahmoud Khalil greatly troubles me and raises serious concerns about the future of our country.

Mahmoud is more than just a friend; he is a dear brother whom I was fortunate to meet during my time at Columbia and in New York. The first time I met Mahmoud was at a refugee advocacy and human rights event organized by SIPA. I was sitting in the front row, listening to a top diplomat's testimony when Mahmoud raised his hand and shared his personal refugee story, leaving us all in awe. Mahmoud's journey of displacement and resilience should be taught in every classroom across the world. I have yet to meet anyone who humanizes people, situations, and stories like Mahmoud does. It didn't take long for me to understand the essence of who Mahmoud is. He is affable, generous, intelligent, articulate, funny, caring, and humble. After the event, I approached him, we chatted, walked across campus together, and, as expected, he invited me over for tea. He convinced me to drink it by promising to make the best mujaddara (lentil rice dish from the Levant)—and he delivered; it was delicious. Beyond his culinary talents, Mahmoud's taste in music is worldly. His playlists reflect every experience and place he's visited, and, of course, every song has a story behind it—spanning from his time in Syria to the vibrant nights in Beirut.

On a professional level, I had the privilege of working with Mahmoud during our internships at the United Nations while pursuing our graduate studies. I witnessed firsthand Mahmoud's dedication to social justice, global issues, and his political acumen. Mahmoud is pragmatic, diplomatic, and sensible—traits that are evident in his successful relationships with colleagues, classmates, and professors.

Mahmoud has a unique ability to make people feel seen and heard. Above all, he is a loving husband, married to a kind-hearted woman, and I have no doubt that he will be an amazing father. His wife deserves to have him by her side during the birth of their first child, and we owe it to their child to be born in a country that values free speech and upholds the fundamental freedoms of its residents.

The absence of Mahmoud is profoundly felt by his loved ones, as well as by the broader academic and professional circles he is part of. His influence on both our intellectual and social spheres is immeasurable, and his detention marks a significant loss for all who know him.

Therefore, I respectfully urge the court to release Mahmoud from his unjust detention and bring him back home to his wife. I ask the court not to rob Mahmoud of one of the most significant moments of his life as he prepares to welcome his firstborn.

Sincerely,
[redacted]

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON MARCH 19, 2025

[redacted]
Mobile: [redacted] or
Email: [redacted]

Thank you for your time and consideration. I sincerely appreciate the Court's attention to this matter. If the Court requires any further information, I can be reached at the contact information above.

Honorable Michael E. Farbiarz
United States District Judge
District of New Jersey
Martin Luther King Courthouse
50 Walnut Street
Newark, NJ 07101

March 19th, 2025

Dear Judge Farbiarz,

I am writing this letter in full support of Mahmoud Khalil. I am a Lecturer at Columbia University's School of International and Public Affairs (SIPA), where I have been teaching courses in quantitative methods and data analysis for ten years. Mahmoud was not a student of mine; rather, I had the pleasure of meeting him through his advocacy on campus to raise awareness of the humanitarian crisis in Gaza and help support affected students.

I understand that Mahmoud has been an invaluable contributor to the Development Practice program at SIPA, organizing events and programming in his role as Program Assistant. He also served as the Teaching Assistant for a core Development Practice Lab course. He did all of this as a full-time student, while advocating for an end to the war and human suffering in Gaza, and supporting affecting students. On top of this, I know Mahmoud to be a kind and devoted husband and friend to so many at SIPA.

I remember chatting with Mahmoud at several events he participated in. One was a panel that included Palestinian SIPA students who shared their stories of trying to exist as students while their family and friends were under constant bombardment in Gaza. Another event was a discussion with two Columbia faculty members about the charged geopolitical situation in the Middle East. Mahmoud's participation in these events offer just two examples of Mahmoud working to bring people together to foster dialogue and a greater understanding of unfolding events and their impact on the SIPA community. I also remember talking to Mahmoud in my office about designing a survey to gauge the views of students about the school's handling of the situation and allocation of resources. He wanted the school and university leadership to understand the views of their students. The Mahmoud I came to know worked tirelessly to foster understanding, raise awareness, and bring people together.

Mahmoud is interested in building bridges. I know him to be a warm and kind advocate for those whose voices are marginalized, here at SIPA and the world beyond. He came to SIPA to pursue a career in public service, and is deeply committed to fighting oppression through advocacy, public policy, and diplomacy. I understand that his professional goals are to work with

international organizations to influence United Nations member states to uphold international humanitarian law and protect human rights.

Personally, I have had a hard time knowing that there are those at Columbia who are not interested in understanding the different ways that many people in the community are suffering. It gives me hope that there are people like Mahmoud who are deeply committed to fostering mutual understanding. In Mahmoud I found community. I am so incredibly grateful for all that he has done to raise awareness and bring people together. Without him here on campus, I believe that the path forward to a safe and inclusive Columbia is a little less hopeful.

Should you have any additional questions about Mahmoud, please do not hesitate to reach out to me by phone [redacted] or email [redacted].

Sincerely,

[redacted]

[redacted]

Columbia University | SIPA

Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Centre Street, New York, NY

Dear Judge Furman,

I am writing this letter in support of Mahmoud Khalil. My name is [redacted], and I am a second-year Ph.D. student at Columbia University. Prior to this, I was a Fellow at Harvard Divinity School. As an older student with significant experience in both governmental and non-governmental sectors, I have encountered a wide range of people and personalities. Today, however, I write to you not only as a friend, colleague, and sister like the figure of Mahmoud's, I write to you in my capacity as a mother.

In Fall of 2023, when I moved to New York last year to pursue my passion and obtain a Ph.D., I found myself navigating this vast city alone with two young children. My days were filled with the challenges of juggling motherhood and attending classes, while my nights were long, spent reading and writing to my carpal tunnel's delight. During these challenging times, I came to realize how crucial community really is. Mahmoud, seeing the struggles I faced, stepped in without hesitation. He took on the role of an older brother, inviting us over for dinners and engaging my children in games. Soon enough, my 4-year-old son began asking, "Are we going to see your funny friends?" whenever he wanted to see Mahmoud.

Never hesitating to help, Mahmoud has a natural and effortless way of stepping in and making everyone feel at ease. I remember, one day last Summer, while attending a street festival, my son had stopped in the middle of the bustling sidewalk to protest what he deemed to be an unfair allocation of ice cream between him and his older sister. Desperate to avoid being swept by the crowd, I pleaded for him to keep walking. Defiant, he swung his arms around his little body, picked up his foot and kicked the ground not knowing my toes had shuffled into that very same spot. In the midst of my silent discomfort, Mahmoud stepped in, offering a water bottle and giving my son a ride on his shoulders. While I recovered from the pain and muttered under my breath, Mahmoud had successfully and effortlessly fended off one of many future encounters I hope he has with his son.

That's who Mahmoud is: a caretaker. He empathizes with everyone, quickly identifies what's needed, and fills the gap without hesitation. He's never flustered, always calm, and a steady presence in times of stress. Mahmoud is grounded in logic, adept at resolving conflict, and always ready to serve as a mediator. In fact, he was the *father figure* the university neglected to be.

Mahmoud cares about injustice in any form, whether it's watching a mom get her toe stepped on by a screaming toddler or watching the children of Gaza be torn to shreds. Therefore, although

Mahmoud is a friend, and a big brother, I write to you as a mother: Mahmoud deserves to be a father. It is who he is and all he has ever been.

Kind Regards,

[redacted]

3/18/2025

[redacted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Mahmoud KHALIL, *Petitioner*, v. Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement;[1] Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice, *Respondents*.	No. 25-cv-1963-MEF-MAH

PETITIONER'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS' RENEWED MOTION TO DISMISS OR TRANSFER & IN SUPPORT OF HIS CROSS-MOTION FOR RE-TRANSFER

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CLEAR PROJECT
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[1] Respondent Yolanda Pittman, in her official capacity as Warden of Elizabeth Contact Detention Facility, will be added.

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**Pro hac vice application pending or forthcoming*

Counsel for Petitioner

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INTRODUCTION

This unprecedented case involves government efforts to detain, under cover of night, Mahmoud Khalil, a lawful permanent resident, and then, "in the space of less than twenty-four hours, . . . haul[]" him "through at least six different districts (one likely twice)." Op. at 24 n.6 (ECF 78). Within hours of his arrest and detention, Petitioner Mahmoud Khalil filed a habeas petition to challenge the government's efforts to punish and silence him for his speech. All of the information his lawyers had that night pointed to New York as the location of his detention, and that is where they filed. But as the world now knows, Mr. Khalil was not in New York when his lawyers filed his petition. Instead, he was here, in New Jersey—though nobody but the government would know that until he was already gone.

The government renews a motion it has already lost to send Mr. Khalil's case on to its orchestrated venue, the Western District of Louisiana. Just five days ago, Judge Furman ruled that because Mr. Khalil was in New Jersey at the time of his habeas filing, Petitioner's case should be transferred here in the interests of justice. In his opinion, Judge Furman rejected all of the arguments the government makes here in its "renewed" motion to transfer the case to Louisiana, and his decision is the law of the case. Even if it were not, the government's arguments are contrary to binding precedent that holds that the proper venue for a habeas petition

is where the petitioner was being held at the time the petition was filed. Those arguments are also intolerably inconsistent with the fundamental purposes underlying habeas corpus.

As Judge Furman held, this Court is a proper venue for Mr. Khalil's petition, which challenges his unconstitutional and illegal detention and threatened deportation. While Mr. Khalil preserves his prior arguments that the Southern District of New York was a proper venue at the time he filed his petition, he is ready to proceed on his emergency motions and claims before this Court. The Court should deny the government's motion.[2]

FACTUAL BACKGROUND

At approximately 8:30 p.m. on the night of March 8, 2025, Mr. Khalil and his wife, who is eight months pregnant, were returning to their home on the Upper West Side of Manhattan after attending an Iftar dinner, which is a meal eaten at sunset to break the daylong fast Muslims observe during the holy month of Ramadan. Am. Pet. ¶ 45 (ECF 38).[3] Plainclothes officers followed them into the lobby of their apartment building, asked to confirm Mr. Khalil's identity, and

[2] As explained below, Petitioner has filed a cross-motion for re-transfer to the S.D.N.Y. purely to preserve for any future appellate review the argument that venue over his petition was proper there. *See infra* Part II. He waives his reply on that cross-motion.

[3] Petitioner has verified the facts in the Amended Petition. *See* Salama Decl. (ECF 50-1).

announced that they were Department of Homeland Security ("DHS") agents there to take him into custody. *Id.* ¶¶ 46–47. Two other agents were already waiting inside. *Id.* ¶ 47. After Mr. Khalil asked, one of the agents represented that they had a warrant on a mobile phone and they would show it to him. *Id.* ¶ 48. (Neither Mr. Khalil nor his lawyers have yet to see any warrant.) As Mr. Khalil explained that he was a permanent resident with a green card, the agents began to create a physical barrier between him and his wife, and then threatened his wife that she would be arrested if she did not comply with their orders. *Id.*

Mr. Khalil called one of his lawyers, Amy Greer, who spoke with Special Agent Elvin Hernandez. *Id.* ¶ 49. Agent Hernandez represented that he and his colleagues had an administrative warrant and that Mr. Khalil's student visa had been revoked by the U.S. State Department. *Id*. When Ms. Greer informed Agent Hernandez that Mr. Khalil was a permanent resident, Agent Hernandez responded that the State Department had revoked that, too. *Id.* ¶ 51. He told Ms. Greer that he would be bringing Mr. Khalil to 26 Federal Plaza, the location of the ICE New York Field Office. *Id.* After Ms. Greer attempted to ask further questions, Agent Hernandez hung up the phone. *Id.*

After the DHS agents took Mr. Khalil outside, they told his wife that he would be brought to 26 Federal Plaza but otherwise refused to answer any

questions. *Id.* ¶ 53. They did not identify themselves, the grounds for her husband's arrest, or who she could contact to inquire about his location or condition. *Id.*

Believing that Mr. Khalil's arrest, detention, and threatened deportation were unlawful, Mr. Khalil's lawyers raced to draft a habeas petition on Mr. Khalil's behalf. That night, Ms. Greer checked the ICE online detainee locator multiple times to confirm the location of her client. *Id.* ¶ 54. At 10:00 p.m., Mr. Khalil was not yet entered in the system. *Id.* Hours later, at 1:35 a.m. the next morning, the system informed her that Mr. Khalil was in custody in New York City and instructed her to call the ICE New York Field Office for information. *Id.* Several hours after that, the locator revealed the same information. *Id.* ¶¶ 54–55.

While Mr. Khalil was being held at 26 Federal Plaza, as ICE agents took his biometrics, an agent approached Agent Hernandez and said, "the White House is requesting an update." *Id.* ¶ 58. As Mr. Khalil waited, agents prepared a Notice to Appear ("NTA"), a document that contains details about the grounds for a noncitizen's removal from the country. *Id.* ¶ 59. They presented the NTA to him for signature, but after they refused his request to speak with his lawyer, he declined to sign it. *Id.* The NTA indicated he had been assigned an immigration court date, several weeks out, in Louisiana. *Id.* ¶ 60.

At some point overnight, agents from the New York Field Office transported Mr. Khalil in handcuffs and shackles to Elizabeth Detention Center ("EDC") in

New Jersey. *Id.* ¶ 61. Upon arrival at EDC, Mr. Khalil requested yet again to speak with his lawyer and was again refused. *Id.* ¶ 62; Khalil Decl. ¶ 9 (ECF 73-1). He asked once more the next morning, and was again refused. Khalil Decl. ¶ 12.

Meanwhile, Mr. Khalil's attorneys continued to work on Mr. Khalil's habeas petition. At 4:40 a.m. on March 9, after confirming that the locator showed that Mr. Khalil remained in New York City, Ms. Greer filed the petition in the U.S. District Court for the Southern District of New York. Am. Pet. ¶ 54; *see* Pet. (ECF 2). The petition sought, among other things, to enjoin transfer outside the district. *See* Pet. at 10–11. Almost four hours later after filing the petition, Ms. Greer checked the ICE locator again, and it still showed Mr. Khalil as being in New York City. Am. Pet. ¶ 55. Some time after that, she checked once more, and found that the system had updated to show that Mr. Khalil was being held in Elizabeth, New Jersey, at the EDC, a detention center privately operated by the corporation CoreCivic. *Id.* Alarmed and scared, Ms. Greer and a colleague made two attempts to contact her client by phone, but no one at the facility answered. *Id.* And around 11:20 a.m., Mr. Khalil's wife arrived at the facility to look for him, but she was told he was not in their system, and she was turned away. *Id.*

Mr. Khalil had spent the night in EDC and was there, according to the government, at the time that Ms. Greer filed his habeas petition. Second Suppl. Joyce Decl. ¶ 17 (ECF 72). Around noon, ICE officers—including one Mr. Khalil

believes he recognized from the night before at 26 Federal Plaza—arrived at the EDC and handcuffed and shackled him and placed him in a van, where he also found two plastic bags containing the clothing and items the ICE agents had taken from him the night before. Am. Pet. ¶ 63; Khalil Decl. ¶¶ 20–21. Mr. Khalil was told he was then going to JFK without further clarification. Am. Pet. ¶ 63; Khalil Decl. ¶ 20.

That afternoon, ICE informed Mr. Khalil's counsel that the government was in the process of transferring Mr. Khalil to its New Orleans Field Office, almost 1500 miles away. Am. Pet. ¶ 56. Mr. Khalil's counsel emailed attorneys in the U.S. Attorney's Office for the Southern District of New York, who confirmed that Mr. Khalil was on the way to Louisiana. *Id.* She requested Mr. Khalil's immediate return to New York, but was told that ICE would not consent to his return absent a court order. *Id.* And when Mr. Khalil's counsel attempted to schedule a telephone call with Mr. Khalil—a process that, for detained immigrants in New York, typically occurs the same or next day—authorities in the Louisiana ICE detention facility offered a date ten days away. *Id.*

In the early hours of the morning on March 10, almost 40 hours after his arrest, Mr. Khalil arrived at the Louisiana Detention Facility in Jena, Louisiana, where he remains today. *Id.* ¶¶ 67, 70, 99.

ARGUMENT

As Judge Furman has already held, venue is proper in this District. That is the law of the case, and regardless, it is correct.

I. Venue is proper in the District of New Jersey.

A. This Court has venue under the law of the case.

That the government has "renew[ed]" its motion to transfer gives the game away. ECF 89 at 1. Judge Furman rejected the government's argument that dismissal or transfer to Louisiana was appropriate in a reasoned opinion that was fully litigated by the government. *See* Op. at 25–32 (ECF 78).[4] In this Circuit, venue transfer decisions made by the transferor court are the law of the case. *Hayman Cash Reg. Co. v. Sarokin*, 669 F.2d 162, 166 (3d Cir. 1982); *Bobian v. CSA Czech Airlines*, 222 F. Supp. 2d 598, 602 (D.N.J. 2002). The "only" circumstances in which the transferee court—this Court—may make "a determination of venue and jurisdiction" is when that "determination has not previously been made by the transferor court." *Sarokin*, 669 F.2d at 166; *see Hoffenberg v. United States*, No. 12-cv-4833-JBS, 2013 WL 135134, at *1 (D.N.J. Jan. 8, 2013) (Where "the transferor court . . . expressly ma[kes] a reasoned determination that venue is proper in this District" and the Court "has personal

[4] *Available at Khalil v. Joyce*, No. 25 Civ. 1935 (JMF), 2025 WL 849803 (S.D.N.Y. Mar. 19, 2025).

jurisdiction" over the defendant, "the law of the case doctrine prohibits reconsideration of venue transfer . . . ."). The matter is closed.[5]

The government says that the "law of the case doctrine" does not apply here, or at least that it is "discretion[ary]." Renewed Transfer Mem. at 11 (ECF 90). But the government's own case makes clear that even where the Court maintains the *power* to reconsider an earlier decision, it should be "loathe" to exercise that power, and it may do so only in cases of manifest injustice to the party seeking reconsideration. *Pub. Int. Rsch. Grp. of N.J., Inc. v. Magnesium Elektron, Inc. (PIRG of N.J.)*, 123 F.3d 111, 117 (3d Cir. 1997). The government suggests that "the substantial jurisdictional concerns with the original petition and the lack of filing in the proper district at the outset" amount to such circumstances, Renewed Transfer Mem. at 11, but they are not even close. Nothing about Judge Furman's decision suggests reevaluation based on "new evidence," "supervening new law," or "clear[] erro[r]" that would "create manifest injustice." *PIRG of N.J.*, 123 F.3d at 117. Judge Furman ruled five days ago. And in his opinion, he articulated why transfer to this Court *served* the interest of justice, instead of working the opposite. Op. at 26–27 (explaining that even the government agreed that "prompt resolution"

[5] The Third Circuit has suggested that a party challenging a transfer could "seek reconsideration in the transferor court." *Sarokin*, 669 F.2d at 168. The government did not seek reconsideration of Judge Furman's order here.

is "imperative," and concluding that dismissal and delay "would prejudice Mr. Khalil in several important ways").

There is also no argument that Judge Furman's decision to transfer Mr. Khalil's petition to this District was clear error. Judge Furman firmly grounded his decision in the clear language of one of the federal transfer statutes, 28 U.S.C. § 1406(a), which permits transfer of a case filed in the wrong district "to any district . . . in which [the case] could have been brought." Op. at 28. As he explained, the transfer statute does not permit transfer to a district (like the Western District of Louisiana) where a case "may now be *rebrought*," but only where it "could have been brought" in the first place. *Id.* at 29 (quoting *Hoffman v. Blaski*, 363 U.S. 335, 342 (1960)). As Judge Furman explained, the D.N.J. was "the one and only district in which [Mr. Khalil] could have filed" his petition at just past 4 o'clock in the morning on March 9, when the petition was filed in the S.D.N.Y. *Id.* at 30. And, he found, justice would be served by transfer here in lieu of dismissal, because the latter would have meant "litigating far from [Mr. Khalil's] lawyers, from his eight-months-pregnant wife, and from the location where most (if not all) of the events relevant to his petition took place," and his "lawyers filed the Petition in [the S.D.N.Y.] based on a good-faith and reasonable belief that he was then detained [t]here." *Id.* at 26–27.

The government does not specifically take issue with that analysis so much as suggest that this Court must undertake it all anew and somehow arrive at a new result. The government appears to rely on *PIRG of N.J.* for the proposition that this Court can and should send the case to Louisiana because it must re-evaluate its own "jurisdiction[]," and because Judge Furman got that question wrong.[6] But *PIRG of N.J.* was about a court's non-negotiable Article III jurisdiction over a matter; there, a prior decision on standing had been "undermine[d]" by later-in-time factual findings. 123 F.3d at 117. That is a *real* question of jurisdiction.[7]

Judge Furman, addressing the government's "jurisdictional" argument, made clear that it "suffers from a . . . misunderstanding of" the Supreme Court's decision in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004). Op. at 30. "[H]abeas jurisdiction is 'not jurisdictional in the sense of a limitation on subject-matter jurisdiction.'" *Id.* (quoting *Padilla*, 542 U.S. at 451 (Kennedy, J., concurring)); *see Grigorian v. Morton*, No. CIV.A 10-3441, 2010 WL 2902537, at *2 n.4 (E.D. Pa. July 23,

[6] Actually, all the government can muster is "concern[]" with Judge Furman's ruling. Renewed Transfer Mem. at 11. That is far from a clarion call for clear error.

[7] The government also cites *Arizona v. California*, 460 U.S. 605 (1984), but the law-of-the-case issue there concerned the unique scenario of the Supreme Court's original jurisdiction, and even without directly applying the doctrine, the Court invoked "the principles upon which" it is based to decide against reconsideration of the previously litigated jurisdictional question before it. *Id.* at 619. The Court also reiterated that the doctrine applied absent a showing of clear error or manifest injustice. *Id.* at 619 n.8.

2010) ("the term 'jurisdiction,' as used in [the habeas] context, does not refer to a limitation on the power of the Court to hear the case" (citing *Padilla*, 542 U.S. at 451–52)). Instead, it is a venue rule. *Padilla*, 542 U.S. at 452 ("Because the immediate-custodian and territorial-jurisdiction rules are like personal-jurisdiction or venue rules, objections to the filing of petitions based on those grounds can be waived by the Government.").[8] As a result, "[n]o statute is required to 'vest' the District of New Jersey with otherwise-absent jurisdiction." Op. at 30 (rejecting the government's argument found in Transfer Reply Mem. at 14 (ECF 71)).[9]

Even if the question of *subject-matter* jurisdiction were both actually at issue and a close call here, the law of the case doctrine would still apply. The Supreme Court has explained that, in cases transferred under the federal statutes, courts "should encourage, not discourage, quick settlement of questions of transfer." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 819 (1988) (quoting *Hoffman*, 363 U.S. at 349 (Frankfurter, J., dissenting)); *accord Sarokin*, 669 F.2d at 167–68. As important as jurisdiction is in any given case, courts should work to

[8] *See also Cruz v. Decker*, No. 18 Civ. 9948, 2019 WL 4038555, at *2 (S.D.N.Y. Aug. 27, 2019) ("*Padilla*'s 'immediate custodian rule is a venue rule.'" (quoting *Mahmood v. Nielsen*, 312 F. Supp. 3d 417, 423 (S.D.N.Y. 2018)), *aff'd*, 2019 WL 6318627 (S.D.N.Y. Nov. 26, 2019))); *Rivera-Perez v. Stover*, No. 23-CV-1348, 2024 WL 4819250, at *5 (D. Conn. Nov. 18, 2024) (same).

[9] Judge Furman pointed out that, "even if the defect were one of subject-matter jurisdiction," the Court "would arguably" have had a basis to transfer Mr. Khalil's petition under 28 U.S.C. § 1631. Op. at 26. n.7.

avoid engaging "in a perpetual game of jurisdictional ping-pong . . . until one of the parties surrenders to futility." *Id.* at 818. That would "undermine public confidence in our judiciary" and "squander private and public resources" in ways Congress's transfer statutes never intended. *Id.* at 818–19. That rationale applies with even more force in a case like this, involving an unprecedented exercise of executive power that, for two weeks, a detained Petitioner has been challenging as blatantly unconstitutional. As a result, and because "the doctrine of the law of the case is . . . a heavy deterrent to vacillation on arguable issues," "reversals" of a transferor court's decisions "should necessarily be exceptional," and "if the transferee court can find the transfer decision *plausible*, its jurisdictional inquiry is at an end." *Id.* at 819 (cleaned up). Judge Furman's transfer decision easily clears that low bar.

B. Venue is proper in the District of New Jersey because Mr. Khalil could have filed his petition here at the time he filed it in the Southern District of New York.

Judge Furman's analysis is all more than sound, and there is no reason for this Court to even revisit it, let alone overrule it as clearly wrong. It is consistent with the "default" rule in habeas cases—at least outside of the immigration context, *Padilla*, 542 U.S. at 435 n.8 (majority op.), and in this Circuit within it as well, *Anariba v. v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 444 (3d Cir. 2021)—that the proper respondent is the warden of the facility where the prisoner

is being held" at the time the petition was filed. *Padilla*, 542 U.S. at 435–36. It is also consistent with this Circuit's law regarding the transfers of habeas petitioners. "When a prisoner is transferred while the litigation is pending, habeas jurisdiction as a general matter continues to be in the district where the prisoner was incarcerated at the time the habeas petition was filed." *Chapman v. Mairoanna*, No. 12–4116, 2013 WL 1491550, at *1 n.1 (3d Cir. Apr. 12, 2013) (cleaned up) (quoting *Blair–Bey v. Quick*, 151 F.3d 1036, 1039 n. 1 (D.C. Cir. 1998)); *Anariba*, 17 F.4th at 445–46; *Barden v. Keohane*, 921 F.2d 476, 477 n.1 (3d Cir. 1990). And where a habeas petitioner is "transferred multiple times" after his petition was filed, "[p]roper jurisdiction over the action thus remains in the District Petitioner was incarcerated at the time of filing." *Joseph v. Sniezek*, No. CV-13-1889, 2013 WL 5351078, at *3–4 (M.D. Pa. Sept. 23, 2013).

This caselaw synthesizes both the longstanding federal transfer statutes and the rule of *Ex Parte Endo*, 323 U.S. 283 (1944), which no court has seriously questioned in more than eighty years. The federal transfer statutes, including (as in this case) 28 U.S.C. § 1406(a), permit courts, "in the interest of justice," to "transfer" cases "laying venue in the wrong . . . district" to "any district . . . in which it could have been brought." And, under *Endo*, "[t]he fact that a detainee has been transferred far away from a district that otherwise has jurisdiction to hear his or her claims does not necessarily deprive that district of habeas jurisdiction." Op.

at 30 (citing *Padilla*, 542 U.S. at 441 (majority op.), itself discussing *Endo*). Indeed, even before *Endo*, the Third Circuit had "adhere[d] to the general rule . . . that the government's post-filing transfer of a § 2241 petitioner out of the court's territorial jurisdiction does not strip the court of jurisdiction over the petition." *Anariba*, 17 F.4th at 445–46 (discussing *Ex parte Catanzaro*, 138 F.2d 100 (3d Cir. 1943)).

All of that compels the same conclusion that Judge Furman already reached. Despite this, the government argues that because Mr. Khalil "has never filed a habeas petition in this Court, . . . habeas jurisdiction has never vested in this Court." Renewed Transfer Mem. at 7; *see id.* (suggesting that *Endo* does not apply because Mr. Khalil's petition was never "*properly*" filed in the District of New Jersey); Transfer Reply Mem. at 13–14 (same). But the government's position makes no sense.

First, as Judge Furman found, because the government did not even mention section 1406(a) in its brief supporting its first motion to transfer (ECF 31), the government has "forfeited any argument against application of" the transfer statute in this case. Op. at 27 n.9.

Second, Judge Furman already dealt with the government's objection, explaining that because habeas jurisdiction is not the same as subject-matter jurisdiction, the government's "vesting" argument goes nowhere. Op. at 30.

Third, to the extent that the government might be arguing that the problem here is that Mr. Khalil named the wrong respondent in his initial petition, *see* Renewed Transfer Mem. at 8 (implying, in a somewhat inaccurate case parenthetical, that its argument might be that Mr. Khalil's petition lacks a "properly named respondent"), that issue is easily and routinely cured.[10] And notably, the habeas pleading statute only requires the

[10] Petitioner maintains that Respondent Joyce is was and is a proper Respondent, *see infra* Part II; *see* Opp'n to Transfer Mem. at 12–16 (ECF 50), and that substitute of the EDC warden here is a pro forma matter. Courts frequently (and *sua sponte*) direct the Clerk of Court to substitute the name of the proper warden upon the transfer of habeas cases. *See, e.g.*, Order, *Durel B. v. Decker*, No. 20-3430-KM (D.N.J. Apr. 1, 2020) (ECF 18) (after transfer from S.D.N.Y. to D.N.J., reviewing a habeas petition for COVID-19 relief and directly adding the "proper respondent"); *see also, e.g.*, *Hinds v. Hufford*, No. 17-CV-488, 2017 WL 6346413, at *3 n.1 (M.D. Pa. Dec. 12, 2017); *Smith v. Gaetz*, No. CIV 10-616, 2010 WL 3926868, at *2 (S.D. Ill. Oct. 5, 2010); *Kaufman v. Trammell*, No. 08-CV-276, 2012 WL 380351, at *6 n.1 (N.D. Okla. Feb. 6, 2012); *Soto v. Pugh*, No. CV 306-092, 2007 WL 113945, at *3 n.1 (S.D. Ga. Jan. 10, 2007); *Steele v. Beasley*, No. 19-CV-23, 2019 WL 1270932, at *3 n.1 (E.D. Ark. Mar. 19, 2019), *report and recommendation adopted*, No. 19-CV-23, 2019 WL 1461909 (E.D. Ark. Apr. 2, 2019), *aff'd sub nom. Steele v. Doe*, No. 19-1830, 2019 WL 5390950 (8th Cir. Aug. 6, 2019).

However, should the Court believe a motion to amend the caption is required, Petitioner respectfully requests leave to promptly file such a motion. *See, e.g.*, *Cruz-Aguilera v. INS*, 245 F.3d 1070, 1073 n.2 (9th Cir. 2001) ("Necessary amendments to perfect the form of the habeas petition can be made in the district court upon transfer."); *see also, e.g.*, *Nottingham v. U.S. Dist. Ct. for Middle Dist. of Penn.*, No. 21-CV-396, 2021 WL 1313526, at *4 (M.D. Pa. Apr. 8, 2021) ("The Third Circuit Court of Appeals requires district courts to grant leave to amend before dismissing a civil rights complaint when curative amendment is conceivable." (citing *Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*,

naming of the petitioner's warden "if known." 28 U.S.C. § 2242. Mr. Khalil's lawyers did not and could not have known to name the EDC warden when they filed the initial petition. Am. Pet. ¶ 54.

Fourth, the government's reading of the transfer statute is circular, and it would thwart Congress' explicit purpose in enacting the statute. The government argues that Judge Furman's transfer of the case to this District is inoperative because "no court has yet had proper habeas jurisdiction over this matter." Renewed Transfer Mem. at 8. But the whole point of the congressionally granted transfer authority is to move a case from a place a case was filed (but cannot be litigated) to a place where it "could have been brought" (but, in fact, was not). And the government's argument renders the statute completely useless. Under its view, jurisdiction never vested in the original court (under the immediate custodian rule), so the case cannot be heard there. And, it continues, jurisdiction never vested in the transferee court (because it was not brought there originally), so the case cannot be heard there, either. If that were somehow correct, no court could *ever* transfer an action under section 1406(a), even "in the interest of justice," and

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482 F.3d 247, 251 (3d Cir. 2007); *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002))).

courts would simply dismiss all improperly filed petitions as a matter of course.

As Judge Furman pointed out, that view is belied the "legion" of "cases in which district courts have relied on Section 1406(a) to transfer immigration habeas cases filed in the wrong district." Op. at 27 (citing, as examples, multiple cases). As those cases make clear, detainees file habeas petitions in the wrong place all the time, and courts routinely, and very often at the government's urging, send those petitions to the districts where the petitioners were detained at the time of filing.[11] No habeas case that is transferred after a habeas petitioner "erred at the outset by filing" in the wrong district, *Joseph*, 2013 WL 5351078, at *4, had already "vested" in the transferee court prior to the transfer. And that is likely why, despite four opportunities, the government has been unable to cite a single case where a court agreed with the argument it is making here[12]—or, even more telling, a

[11] *See, e.g.*, *Golding v. Sessions*, No. 18-CV-3036, 2018 WL 6444400, at *1, *3 (S.D.N.Y. Dec. 6, 2018) (granting government's requested transfer of habeas petition to the D.N.J. upon government's argument that the immediate custodian rule, under which a petitioner should "file that action in the district in which he is physically present at the time of filing," required it—despite the fact that the petitioner had named the Attorney General instead of "the person with day-to-day control over Petitioner (at the time of filing)," namely "the warden of the Bergen County Jail").

[12] The government has cited *Pittman v. Pullen*, No. 22-cv-01651, 2023 WL 6379371 (D. Conn. Sept. 29, 2023), which it claims supports the notion that "where a petitioner improperly filed a petition, but has since been moved to a

single case in which the government even *made* the argument it is making here.[13]

Fifth, the government's argument would profoundly undermine the *Endo* rule. According to the government, *Endo* means that the government cannot move a petitioner who has "properly filed" a petition in order to unilaterally choose a different venue—but *Endo* has nothing to say about the government moving a petitioner in a way that prevents any "proper" filing in the first place. That is a bafflingly dim view of *Endo*, which is bedrock habeas law. *See Anariba*, 17 F. 4th at 445–46. "The objective of habeas relief," the Supreme Court held in *Endo*, "may be *in no way* impaired or defeated by the removal of the prisoner from the territorial jurisdiction of the District Court." 323 U.S. at 307 (cleaned up and emphasis added). And the Third Circuit has been explicit, when addressing an *Endo* issue in a related context that speaks directly to this case, that the

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different location[,] courts typically dismiss without prejudice." Transfer Reply Mem. at 14 (citing no other cases). But *Pittman* is irrelevant. In that case, a petitioner sought injunctive relief regarding conditions claims he brought against the warden of a facility, and was then transferred to another facility, mooting his claims. 2023 WL 6379371, at *2. Under those circumstances, dismissal was appropriate because, under the federal transfer statutes, the petition could *not* have been brought in the district of confinement (N.D. Ga.) at the time it was filed. *Id.*

[13] *See* Transfer Mem. at 10 n.4 (ECF 31) (arguing that cases going against its position are irrelevant because, in them, the government did not make the argument it makes here).

consequences of undermining the rule would be intolerable. In applying *Endo*, courts cannot allow the government to:

> willingly transfer an ICE detainee seeking habeas relief from continued detention to a jurisdiction that is more amenable to the Government's position, or . . . transfer an ICE detainee for the purpose of intentionally introducing complicated jurisdictional defects to delay the merits review of already lengthy § 2241 claims. Taken to an extreme, the Government could transfer a petitioner with such consistency as to evade a district court ever even obtaining jurisdiction over a petitioner's § 2241 claims.

Anariba, 17 F.4th at 447; *see id.* at 448 (casting doubt upon the legitimacy of "[t]he frequency and circumstances surrounding" the government's frequent transfers of ICE detainees, including the government's apparent practice of "often repeatedly mov[ing] ICE detainees to remote locations far from counsel or their community without informing counsel of the transfer or updating the ICE detainee locator" (quoting a declaration)).

Last, but surely not least, the government's argument is wholly inconsistent with the fundamental purpose of habeas. As the Supreme Court has instructed, habeas corpus "must not be subject to manipulation by those whose power it is designed to restrain." *Boumediene v. Bush*, 553 U.S. 723, 765–66 (2008). And while *Padilla* was premised in part on concerns that habeas petitioners might engage in forum-shopping, "it is equally true that the government should also be dissuaded from forum shopping" under *Padilla*, "particularly considering that ICE unilaterally directs where

immigrants are detained, there would be almost no check on the government's ability to forum shop." *Gallego v. Decker*, No. 19 Civ. 8263, 2020 WL 5370448, at *4 (S.D.N.Y. Sept. 8, 2020) (cleaned up), *vacated as moot* (Sept. 22, 2020); *see Doe v. Barr*, No. 20-cv-02263, 2020 WL 1984266, at *5 (N.D. Cal. Apr. 27, 2020) ("[I]t should not go without mention that by detaining immigration prisoners in remote jail facilities . . . it at least appears that Respondents may be attempting to take advantage of the immediate custodian rule to frustrate Petitioner's effective access to habeas corpus litigation.").

The government's argument here is radical. It maintains that the longstanding, protective rule of *Endo*, based in the equitable nature of habeas corpus, and a protective transfer statute explicitly aimed at achieving "justice," do not protect Mr. Khalil because the government never told Mr. Khalil's lawyers that he was being detained in New Jersey, after it had consistently told them that he was being detained in New York, until he was already on the way to being detained in Louisiana—even though his lawyers, who he was not permitted to contact despite multiple requests, filed a petition for his release in the middle of the night.

Under either law or equity, that does not hold up.[14] The purpose of habeas, including its most rigorous rules, is not to err on the side of executive authority, but to ensure the legitimacy of the judicial check upon it. *Cf. Boumediene*, 553 U.S. at 779. The government's renewed motion to transfer this case is nothing but an invitation to the Court to abide "the Kafkaesque specter" of Mr. Khalil "wandering endlessly from one jurisdiction to another in search of a proper forum, only to find that it lies elsewhere." *Eisel v. Sec'y of the Army*, 477 F.2d 1251, 1257–58 (D.C. Cir. 1973); *see* Op. at 33 (emphasizing the need to "avoid any unnecessary delay," Mr. Khalil's multiple pending motions, and waiving the ordinary seven-day waiting period after transfer under local rules).

Enough is enough: Mr. Khalil's petition should stay with this Court.

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[14] Notably, the Second Circuit has applied equitable estoppel in an immigration case where the withholding of critical information caused a noncitizen grave harm. *See Corneil-Rodriguez v. INS*, 532 F.2d 301, 306 (2d Cir. 1976) (the "failure to provide the warning mandated by [a regulation] was fully as misleading as the misinformation given to" an individual in a persuasive Seventh Circuit case, "and certainly as unjust and as seriously prejudicial to her interests" (citing *Lee You Fee v. Dulles*, 236 F.2d 885 (7th Cir. 1956), *rev'd on other grounds*, 355 U.S. 61 (1957) (per curium))); *see United States v. Asmar*, 827 F.2d 907, 911–13 (3d Cir. 1987) (discussing availability of equitable estoppel against the government where it engages in "affirmative misconduct"); *see also Heckler v. Cmty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 60–61 (1984) ("[W]e are hesitant, when it is unnecessary to decide this case, to say that there are no cases in which the public interest in ensuring that the Government can enforce the law free from estoppel might be outweighed by the countervailing interest of citizens in some minimum standard of decency, honor, and reliability in their dealings with their Government.").

C. Even if the law of the case and ordinary habeas principles did not venue the petition in this Court, the government's transfer of Mr. Khalil from New Jersey to Louisiana demands the application of an exception because the government frustrated the proper filing of his petition.

The above more than justifies rejection of the government's renewed motion, and there is no need for the Court to address anything more. But if the Court disagrees, it should still keep the case in this District, relying on the exceptions to the immediate custodian rule described in *Padilla*. Habeas is the most "adaptable" remedy in American law. *Boumediene*, 553 U.S. at 779. And as the *Padilla* exceptions suggest, it simply cannot be that the government may detain a person, keep their counsel and family from knowing where they are being held, look on as that counsel timely files a habeas petition challenging the unlawful detention in the only place the detainee was known to be for more than 12 hours after his arrest, move the detainee 1000 miles away, and end up in the venue the government intended to manufacture all along.

Historically, the writ of habeas has been about principles, not rules. The Framers who codified habeas corpus in essentially the form in which it exists today modeled it on England's Habeas Corpus Act of 1679. *See id.* at 742. That Act, in turn, was specifically meant to counter practices that de facto threatened access to the writ, in ways that reverberate today through this case: "Prisoners were moved from gaol to gaol so that it was impossible to serve the proper gaoler with the writ

and some prisoners were removed overseas so giving rise to practical difficulties in terms of communication (between the detained person and those acting on his behalf), service (on the relevant gaoler), and enforcement of the writ (by production of the detained person) if the writ was issued." Br. for the Commonwealth Lawyers Ass'n as Amicus Curiae at *6, *Boumediene v. Bush*, Nos. 06-1195 & 06-1196, 2007 WL 2414902 (U.S. Aug. 24, 2007) (quoting the Act). And it is clear that the writ was never intended to depend on technicalities that could easily be abused by the executive to restrict relief. *See* Stephen I. Vladeck, *The New Habeas Revisionism*, 124 Harv. L. Rev. 941, 948 (2011); *see also Holiday v. Johnston*, 313 U.S. 342, 350 (1941).

Of course, rules still matter, and this Court must apply them. *See supra* Part I.A–B. But the Supreme Court in *Padilla* also accepted that, in rare but important cases, the default rule would not apply. In a widely recognized concurring opinion, Justice Kennedy, joined by Justice O'Connor, explained that the immediate custodian rule is "subject to exceptions." 542 U.S. at 452 (Kennedy, J., concurring). And he emphasized that the five-vote majority opinion—of which the two concurring Justices were a pivotal part—"acknowledged" the same thing. *Id.* (citing *id.* at 435–36, 437–42, 444–47 (majority op.)).[15] The exceptions allow

[15] Judge Furman was uncertain whether these exceptions were "the law of the land," Op. at 3, but where the vote of a Supreme Court Justice (let alone two of them) is "necessary to the formation of a majority," that Justice's concurrence is at

courts to fashion flexible outcomes in unique, outlier cases that are tailored to the particular situation. They do not open the door to a free-for-all, permitting the filing of a petition in "any one of the federal district courts," but only in "the one with the most immediate connection to the named custodian." *Id.* at 453 (Kennedy, J., concurring).

Justice Kennedy listed various examples of past exceptions the Supreme Court had made to the immediate custodian rule. *See id.* at 454 (citing, e.g., *Endo*, 323 U.S. 283). And, of particular relevance here, he explained that, as a matter of fairness and in the interests of justice, he would acknowledge exceptions "if there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention." *Id.* "In cases of that sort," he continued:

> habeas jurisdiction would be in the district court from whose territory the petitioner had been removed. In this case, if the Government had removed Padilla from the Southern District of New York but refused to tell his lawyer where he had been taken, the District Court would have had jurisdiction over the petition. Or, if the Government did inform the lawyer where a prisoner was being taken but kept moving him so a filing could not catch up to the prisoner, again, in my view, habeas jurisdiction would lie in the district or districts from which he had been removed.

Id.

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least "given particular weight." *Schmitz v Zilveti*, 20 F.3d 1043, 1045 (9th Cir. 1994).

In *Padilla*, the majority and concurrence took pains to ensure that future courts—courts just like this one—would exercise their habeas authority to address extraordinary circumstances, in extraordinary moments, and prevent the grave injustice they imagined, but did not see directly before them, from ever coming to pass.[16] It is true, as Judge Furman observed, that while courts have left open the possibility that the *Padilla* exceptions remained available in a shocking case,[17] that apparently no court to date has invoked them to "award relief" to a habeas

[16] The *Padilla* majority—again, of which both Justice Kennedy and Justice O'Connor formed a crucial part—twice emphasized that Justice Kennedy's proposed exception had not been met in the case before the Court. *See* 542 U.S. at 435–36 (majority op.) ("No exceptions to this rule, either recognized or proposed, apply here." (cleaned up)); *id.* at 441–42 ("There is no indication that there was any attempt to manipulate behind Padilla's transfer—he was taken to the same facility where other al Qaeda members were already being held, and the Government did not attempt to hide from Padilla's lawyer where it had taken him.").

[17] *See, e.g.*, *Vasquez v. Reno*, 233 F.3d 688, 696 (1st Cir. 2000) ("[W]e can envision that there may be extraordinary circumstances in which the Attorney General appropriately might be named as the respondent to an alien habeas petition. . . . An[] example of an extraordinary circumstance might be a case in which the INS spirited an alien from one site to another in an attempt to manipulate jurisdiction."); *Griffin v. Ebbert*, 751 F.3d 288, 290 (5th Cir. 2014) (warning against the potential that the government would "play[] forum games or ke[ep] moving" a detainee "so that his filing could not catch up"); *Sow v. Whitaker*, No. 18 Civ. 11394, 2019 WL 2023752, at *6 (S.D.N.Y. May 8, 2019) ("This Court agrees that *Padilla* should not be interpreted so as to condone or encourage misbehavior or deceptive conduct by the Government in transferring immigrant detainees.").

petitioner. Op. at 18. But of course, *some* court, *some* day, would have to become the first, if the circumstances demanded it.

In asking Judge Furman to keep his case, Petitioner made a similar argument, and despite acknowledging that it was "compelling," the court rejected it. Op. at 17.[18] But critically, Judge Furman was careful to spell out that his conclusion only applied to Mr. Khalil's "transfer from [the S.D.N.Y.] to the District of New Jersey," as that was "the only transfer relevant to the jurisdictional analysis" before him. Op. at 3; *see id.* at 18. Judge Furman concluded that the evidence "f[e]ll short" when it came to the first transfer. *Id.* at 18. To get there, he called on his "own experience that noncitizens arrested and detained by immigration authorities in New York City are routinely processed at 26 Federal Plaza and then transferred to New Jersey for detention" to call Mr. Khalil's transfer from New York to New Jersey "far from anomalous." *Id.* at 19. But even as he did, he acknowledged that Mr. Khalil's second transfer, from New Jersey to Louisiana, was something else entirely—particularly given the White House's apparent

[18] Judge Furman remarked that *Padilla* "could be described as even more extraordinary than this one." Op. at 2. In at least one way—the military detention of a U.S. citizen on U.S. soil—that is true. But in the way that is critical to the application of the exceptions, it is not. The *Padilla* petition was incorrectly filed in the S.D.N.Y. two days after the petitioner was transferred to South Carolina. 542 U.S. at 431–32. But here, even according to the government's account, Mr. Khalil's petition was incorrectly filed in the S.D.N.Y. a mere 80 minutes after he arrived in New Jersey. *See* Second Suppl. Joyce Decl. ¶ 16; Am. Pet. ¶ 54.

"direct[] involve[ment] in the plan to move him there, . . . and the fact that, in the space of less than twenty-four hours, the Government hauled Khalil through at least six different districts (one likely twice)." Op. at 24 n.6.

The government's given justifications for transferring Mr. Khalil, after a brief stay in New Jersey, to Louisiana—again, without ever telling his lawyers that he was in this District, or permitting him an opportunity to call them—are not credible.[19]

- Sometime between the night of March 8 and early hours of March 9, the government decided, apparently in coordination with the White House, that it intended to send Mr. Khalil to Louisiana. Am. Pet. ¶¶ 58–60. By setting that plan in place, but then moving Mr. Khalil to a location that was never disclosed to his lawyers or family until he was sent down South, the government ensured that it would be able to argue—as it did from the start of this case—that "jurisdiction never vested" in this District. Tr. at 9:8–9 (ECF 44).

- The government did not, in fact, ever inquire into whether ICE facilities had a single bed for Mr. Khalil in any of its many detention centers in the tri-state area. It says that "[t]he decision for the petitioner to be ultimately detained in Louisiana was made pursuant to neutral operational considerations," Transfer Reply Mem. at 5–6, including "an awareness of general paucity of bedspace" in detention facilities around the tri-state area "compared to the known availability of bedspace" in Louisiana, Second Suppl. Joyce Decl. ¶ 11. But had the government actually

[19] As Judge Furman pointed out, to whatever extent the government is generally relying on any presumption of regularity (and it does not raise the point in its brief supporting its renewed motion), all that presumption does—"to the extent it is not rebutted"—is "require[] a court to treat the Government's record as accurate; it does not compel a determination that the record establishes what it is offered to prove.'" Op. at 20–21 n.5 (quoting *Latif v. Obama*, 677 F.3d 1175, 1180-81 (D.C. Cir. 2011)).

inquired, rather than relying on a general "awareness," it would have learned that Orange County Jail in Goshen, New York, was accepting new detainees during the same time period that Respondent Joyce contends it could not accommodate Mr. Khalil. Kim Decl. ¶¶ 9–10 (ECF 73-2).[20]

- The government says that Mr. Khalil could not remain at EDC for long-term detention because the facility was "experienc[ing] a bedbug issue that prevented them from accepting detainees as full transfers"—full stop. Second Suppl. Joyce Decl. ¶ 11. But the facility processed at least four individuals for detention at Elizabeth between March 6 and March 13, 2025, Major Decl. ¶¶ 6 (ECF 73-3), and Mr. Khalil himself saw at least three men being processed for detention, to be kept at Elizabeth, during his time in that facility, Khalil Decl. ¶¶ 13–14.

- Upon arrival at EDC, Mr. Khalil requested to speak with his lawyer, and he was refused. Am. Pet. ¶ 62; Khalil Decl. ¶ 9. He asked once more the next morning, and he was again refused. Khalil Decl. ¶ 12.

- The government appears to have violated its own policy to avoid transfers of detainees where there is immediate family or an attorney of record in the area.[21]

The truth is that the *Padilla* exceptions speak directly to this case. There is far more than "an indication" that "the Government was not forthcoming with respect to the identity of the custodian and the place of detention," *Padilla*, 542

[20] Importantly, in part because Judge Furman narrowed the question before him to the propriety of Mr. Khalil's transfer from New York to New Jersey, and not his second transfer from New Jersey to Louisiana, Judge Furman's opinion did address the evidence submitted by Petitioner that is cited in this and the next paragraph. That evidence was submitted in connection with Petitioner's reply brief in support of his motion for a temporary restraining order. ECF 73.

[21] *See* John Morton, ICE Director, *Policy 11022.1: Detainee Transfers* (Jan. 4, 2012), https://www.ice.gov/doclib/detention-reform/pdf/hd-detainee-transfers.pdf.

U.S. at 454—it simply was not. This alone is sufficient for this Court to invoke that exception. And, separately, there is far more than "an indication" that the government sent Mr. Khalil to Louisiana before ever telling his lawyers that he even set foot in this District "to make it difficult . . . to know where the habeas petition should be filed." *Id.* There is no way to read *Padilla* and conclude that not only Justices Kennedy and O'Connor, but anyone in the majority, would have approved of the government's attempt here to "manipulate" and "hide" critical facts from Mr. Khalil's lawyers, *id.* at 441 (majority op.), then—over weeks of litigation that has delayed the prompt resolution of Mr. Khalil's urgent claims (and motions for return to the area and release)—argue that, as a result, the lawyers had missed their chance at a "proper" habeas filing. *See Anariba*, 17 F.4th at 448 ("When continuous transfer permeates the reality of ICE detention, it suggests that the Government has the machinery already in place to permit extensive forum shopping.").

This Court should therefore hold that it has venue over Mr. Khalil's detention claims based on the exceptions to *Padilla*'s default rule. If those exceptions do not apply to this case, it becomes difficult to imagine what kinds of scenarios the majority and concurrence were contemplating at all.[22]

[22] All of the above, and the existing factual record, make it crystal clear that Mr. Khalil's petition should remain before this Court. But if the Court is still not persuaded to deny the government's motion, it should allow Petitioner to conduct

II. Purely for the purpose of preserving the argument for future appellate review, Petitioner maintains that venue was proper in the Southern District of New York.

Petitioner has already argued the merits of his position that the Southern District of New York was a proper venue for his petition. *See* Opp'n to Transfer Mem. at 7–17 (arguing that the *Padilla* exceptions, the facts regarding Mr. Khalil's "immediate custodian," and the inclusion of both core and non-core habeas claims in his petition yielded venue in the S.D.N.Y.).[23] He lost that argument, accepts that he did, and has no desire to waste the Court's time re-arguing a closed issue. *See supra* Part I.A (explaining why Judge Furman's transfer order is the law of the case). But in order to preserve any potential future appellate review of that question, should it become necessary, Petitioner has also filed a cross-motion for

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limited and expedited jurisdictional discovery before deciding that dismissal or transfer to Louisiana is appropriate. At the very least, the circumstances of this case raise serious questions about the government's conduct in handling Mr. Khalil's detention. And given the stakes, those questions would demand a fulsome examination before an irreversible resolution on the government's motion sends Mr. Khalil out of the District—possibly forever. Op. at 24 n.6 (explaining why "the case for jurisdictional discovery would be stronger" in the context of the New Jersey-to-Louisiana transfer than in the context of the New-York-to-New-Jersey one). Because the interest in swift proceedings is Mr. Khalil's, and not the government's, the government will not be prejudiced by a short delay for discovery, and the interests of justice will be served. *See, e.g.*, *Better Packages, Inc. v. Zheng*, No. CIV.A 05-4477-SRC, 2006 WL 1373055, at *4 (D.N.J. May 17, 2006) (applying a "reasonableness standard" to a request for expedited discovery, and citing cases); *see also* Opp'n to Transfer Mem. at 17–19.

[23] Petitioner incorporates those arguments, made in opposition to the government's first motion to transfer in this litigation, into this brief.

re-transfer to the S.D.N.Y. *See SongByrd, Inc. v. Est. of Grossman*, 206 F.3d 172, 177 (2d Cir. 2000) ("Most Circuits," including the Third, "have held that in order to preserve the opportunity for review of a transfer order in the transferee Circuit, a party must move for retransfer in the transferee district court."); *see Nascone v. Spudnuts, Inc.*, 735 F.2d 763, 765–66 (3d Cir. 1984).[24]

CONCLUSION

Respectfully, the Court should deny the government's renewed motion to dismiss or transfer venue and proceed to deciding the important and urgent issues raised by Mr. Khalil's petition and pending motions before the Court.

Dated: March 24, 2025

/s/*Baher Azmy*

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing filing was served on counsel of record via this Court's CM/ECF system on March 24, 2025.

/s/ *Baher Azmy*
Baher Azmy
Counsel for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963
(MEF-MAH)

SECOND AMENDED PETITION[1] FOR WRIT OF HABEAS CORPUS AND COMPLAINT

INTRODUCTION

1. This case concerns the government's targeted, retaliatory detention and attempted removal of a student protestor because of his constitutionally protected speech. Petitioner Mahmoud Khalil is Palestinian, a lawful permanent resident of the United States, and a recent graduate student at Columbia University. Over the last year and a half, Mr. Khalil has been a mediator, an active participant in, and at times the public face of, student protests on Columbia's campus related to Israel's military campaign in Gaza. The Trump administration has made no secret of its opposition to those protests and has repeatedly threatened to weaponize immigration

[1] Petitioner files this Second Amended Petition pursuant to the Court's instruction in its Opinion and Order dated April 1, 2025. *See* ECF 153, n. 32.

law to punish noncitizens who have participated.

2. On or before March 8, 2025, Respondents adopted a policy ("the Policy") to retaliate against and punish noncitizens like Mr. Khalil for their participation in protests concerning Israel's military campaign in Gaza. Under the Policy, Respondent Marco Rubio, the Secretary of State, would make determinations that the protestors' presence or activities in the United States would have potentially serious foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest. These determinations would then permit the Department of Homeland Security to seek to detain and deport the protestors.

3. Pursuant to the Policy, Respondent Rubio, the Secretary of State, purportedly made such a determination as to Mr. Khalil (the "Rubio Determination"). Secretary Rubio made this determination based on Mr. Khalil's lawful activity protected by the First Amendment: his participation in protests and his statements regarding Palestine and Israel.

4. Neither Secretary Rubio nor any other government official has alleged that Mr. Khalil has committed any crime or, indeed, broken any law whatsoever.

5. Pursuant to the Rubio Determination, the Department of Homeland Security decided to arrest Mr. Khalil, detain him, and place him in removal proceedings. On the evening of March 8, 2025, agents from the Department of Homeland Security ("DHS") arrested Mr. Khalil with no prior notice at his home and initiated proceedings to remove him from this country. After repeatedly transferring him across jurisdictions, the government ultimately detained Mr. Khalil in Louisiana, a thousand miles from his attorneys and his wife, who is a U.S. citizen and due to give birth next month.

6. During his arrest, the agents stated first that Mr. Khalil's "student visa" was being

"revoked." After learning that he was in fact a lawful permanent resident, they instead stated that status was being "revoked" too.

7. It later came to light that the Department of Homeland Security was charging Mr. Khalil with being removable based on Section 237(a)(4)(C)(i) of the Immigration and Nationality Act (the "Foreign Policy Ground") and the Rubio Determination.

8. The Rubio Determination and the government's subsequent actions, including its ongoing detention of Mr. Khalil in rural Louisiana, isolating him from his wife, community, and legal team, are plainly intended as retaliation and punishment for Mr. Khalil's protected speech and intended to silence, or at the very least restrict and chill, his speech now and in the future, all in violation of the First Amendment. Indeed, contemporaneous and subsequent statements by administration officials expressly characterize the invocation of this rarely used provision as punishment for Mr. Khalil's lawful and protected speech. The Rubio Determination and Mr. Khalil's unjustified detention also violate his due process rights. Finally, the government's unlawful Policy of targeting noncitizens for removal based on protected speech is arbitrary and capricious and contrary to law in violation of the Administrative Procedure Act, and viewpoint discriminatory in violation of the First Amendment. Accordingly, this Court should vacate the Rubio Determination and the Policy, order Mr. Khalil's immediate release, and set aside the government's unlawful policy.

PARTIES

9. Petitioner Mahmoud Khalil is a Palestinian, born in a refugee camp in Syria, who holds Algerian citizenship. He is married to a U.S. Citizen, a soon-to-be father, a lawful permanent resident of the United States with no criminal history, and a Palestinian human rights activist on Columbia University's campus. In May 2025, he will graduate with a master's degree in public

administration from the Columbia University's School of International and Public Affairs ("SIPA"), where he has been a student since January 2023. Mr. Khalil and his wife, who is eight months pregnant, live in Columbia's residential housing in New York City.

10. Respondent Donald J. Trump is named in his official capacity as the President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of State and Department of Homeland Security. Respondent Trump's address is the White House, 1600 Pennsylvania Ave. NW, Washington, D.C. 20500.

11. Respondent William P. Joyce is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a custodian of Petitioner. Respondent Joyce's address is New York ICE Field Office, 26 Federal Plaza, New York, New York 10278.

11a. Respondent Yolanda Pittman is named in her official capacity as the Warden of Elizabeth Contract Detention Facility, also referred to as Elizabeth Detention Center. As Warden, she is responsible for the operations of Elizabeth Detention Center, including overseeing the people in the facility's custody, and as such she is a custodian of the Petitioner. Respondent Pittman's office address is Elizabeth Detention Center, 625 Evans St, Elizabeth, New Jersey, 07201.

12. Respondent Caleb Vitello is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove the

Petitioner; and as such is a custodian of the Petitioner. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

13. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

14. Respondent Marco Rubio is named in his official capacity as the United States Secretary of State. In this capacity, among other things, he has the authority to determine, based on "reasonable" grounds, that the "presence or activities" of a noncitizen "would have serious adverse foreign policy consequences for the United States." Following such a determination, DHS may initiate removal proceedings under 8 U.S.C. § 1227(a)(4)(C)(i) (INA § 237(a)(4)(C)(i).) In addition to his legal responsibilities under Section 237(a)(4)(C)(i), he routinely transacts business in the Southern District of New York and as such is a custodian of the Petitioner. His address is United States Department of State, 2201 C Street, NW, Washington, D.C. 20520.

15. Respondent Pamela Bondi is Attorney General of the United States. In this capacity, she routinely transacts business in the Southern District of New York; is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g) (2007); and as such is a custodian of the Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.

JURISDICTION & VENUE

16. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241, Article I, § 9, cl. 2 (the Suspension Clause) and Article III of the U.S. Constitution, the Administrative Procedure Act, 5 U.S.C. § 701 et seq.; and 28 U.S.C. § 2201 (Declaratory Judgment).

17. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.

18. Venue is proper in the Southern District of New York Under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Petitioner is detained at the direction of Mr. Joyce, and a substantial part of the events giving rise to the claims and relevant facts occurred within this district. Moreover, according to the federal government's official records at the time of filing, Mr. Khalil was detained at 26 Federal Plaza at the time this habeas was initiated. The New York Field Office and Respondent Joyce directed Mr. Khalil's arrest and detention in New York, New York; told his counsel that he was being taken to 26 Federal Plaza in New York, New York; and entered his location on the ICE detainee locator as being in New York, New York. At the time of filing, the detainee locator stated that Mr. Khalil was held in New York, New York, information upon which his counsel reasonably relied to identify his location. To the extent the New York Field Office and Respondent Joyce moved Mr. Khalil across state lines to New Jersey for a transitory period of time shortly before his habeas was filed, the New York Field Office prevented Mr. Khalil from communicating that information to his counsel in bad faith. Moreover, the New York Field Office then brought Mr. Khalil back across state lines to New York before then transferring him, after the filing of the instant petition, to Louisiana.

FACTS

Mr. Khalil's Background

19. Petitioner Mahmoud Khalil is Palestinian, but he grew up in a Palestinian refugee camp in Syria because his grandparents were forcibly removed from their ancestral home in Tiberias, Palestine. When war broke out in Syria, his family was again displaced and are now dispersed throughout Europe and West Asia.

20. Mr. Khalil entered the United States on a student visa in or around December 2022 to pursue a Master's degree in Public Administration from the Columbia University's School of International and Public Affairs ("SIPA"). Mr. Khalil completed his program in December 2024, and has an anticipated graduation date of May 2025.

21. Mr. Khalil became a Lawful Permanent Resident in 2024. Mr. Khalil and his wife, a U.S. citizen, are expecting their first child next month, in April 2025. Together, they live in an apartment building owned and operated by Columbia University.

Mr. Khalil's Student Activism and Speech on Matters of Public Concern

22. As a Palestinian, Mr. Khalil has felt compelled to be an outspoken advocate for Palestinian human rights and, since October 2023, has spoken repeatedly about Israel's military operation in Gaza. Mr. Khalil has called Israel's actions in Gaza a genocide and criticized Columbia University for, in his view, financing and in other ways facilitating such violence. Mr. Khalil is committed to peaceful protest and being a voice for his people.

23. That commitment has taken on many forms. For example, in April 2023, Mr. Khalil became co-president of the Palestine Working Group at the School of International and Public Affairs (SIPA), where he helped organize educational events and lectures on Palestine. In the fall of 2023, Mr. Khalil became president of the Palestinian Student Society at Columbia (DAR), which "serves to engage with and celebrate Palestinian culture, history, and identity."

24. Additionally, Mr. Khalil has acted as a mediator and negotiator, facilitating dialogue between Columbia University's administration and its students. In this role, Mr. Khalil has advocated for his peers to be treated humanely and fairly by the university, while helping to ensure student safety and the smooth functioning of the university. For example, in the Spring of 2024, Mr. Khalil facilitated negotiations between members of the Gaza Solidarity Encampment[2] and the university administration. Indeed, Mr. Khalil was approached to take on this role because of his prior work at a British Embassy overseas, an internship with the United Nations in New York, as well his established relationships with the university administration.

25. Mr. Khalil stated in a CNN interview in Spring of 2024 that "as a Palestinian student, I believe that the liberation of the Palestinian people and the Jewish people are intertwined and go hand-by-hand and you cannot achieve one without the other." Mr. Khalil also explained that the student movement "is a movement for social justice and freedom and equality for everyone."[3]

26. Mr. Khalil's prominence as an outspoken student activist, along with Columbia University's position as a national focal point of student protests against Israel's military campaign in Gaza over the past year and a half, has propelled Mr. Khalil into the public eye. His visibility has been further amplified through his continued participation in interviews with national and international media outlets, including the BBC and CNN, as well as local press conferences.

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[2] *See* Isha Banerjee, *Timeline of the Gaza Solidarity Encampment*, Columbia Spectator (May 2, 2024), *available at* https://www.columbiaspectator.com/news/2024/05/02/timeline-the-gaza-solidarity-encampment/.

[3] Chelsea Bailey, *Who is Mahmoud Khalil? Palestinian activist detained by ICE over Columbia University protests*, CNN (March 11, 2025), *available at*: https://www.cnn.com/2025/03/11/us/mahmoud-khalil-columbia-ice-green-card-hnk/index.html. Chelsea Bailey, *Who is Mahmoud Khalil? Palestinian activist detained by ICE over Columbia University protests*, CNN, *available at*: https://www.cnn.com/2025/03/11/us/mahmoud-khalil-columbia-ice-green-card-hnk/index.html.

27. Mr. Khalil's speech regarding international law, the obligations that the U.S. and Columbia University have under that law, the human rights of the Palestinian people, and related matters is speech protected by the First Amendment, including because it is speech on matters of public concern and is political speech at the core of the protection of the First Amendment.

28. Like many student activists advocating for Palestinian rights, Mr. Khalil has endured immense scrutiny and personal attacks by private actors, including doxing and harassment. But until recently, he understood that because of the First Amendment, the government would not be able to retaliate against or punish him for his speech, or silence him by locking him up or banishing him from the country, even if powerful government officials disagreed with what he had to say.

The Federal Government's Hostile Campaign Against Palestinian Rights Advocacy: A Concerted Effort to Silence Protected Political Speech

29. In the fall of 2023, students from diverse racial, ethnic, religious, and socioeconomic backgrounds—including Mr. Khalil—began to mobilize on their campuses, many criticizing what they characterized as their universities' and the United States government's unwavering support for Israel's policies. These protests included Jewish students who sought to convey the message that such policies were "not in our name." In response, opponents of these students' messages—including President Donald J. Trump—frequently characterized peaceful protest and any speech in favor of Palestinian rights as inherently supportive of Hamas and antisemitic. For example, in several instances, he President Trump described a Jewish lawmaker who had criticized Israeli Prime Minister Benjamin Netanyahu as "a proud member of Hamas" and "a Palestinian," using "Palestinian" as a slur.[4]

[4] Niha Masih, *Trump draws condemnation for using 'Palestinian' as a slur against Schumer*, Washington Post (March 13, 2025), https://www.washingtonpost.com/politics/2025/03/13/trump-

30. During his campaign for re-election, President Trump repeatedly vowed to revoke the visas of international students engaged in pro-Palestinian protests or who publicly criticized Israel's actions.

31. For example, at a rally in Las Vegas on October 28, 2023, Trump pledged to "terminate the visas of all of those Hamas sympathizers, and we'll get them off our college campuses, out of our cities, and get them the hell out of our country."[5]

32. While the Gaza Solidarity encampments at college campuses took place in the Spring of 2024, Trump promised campaign donors that he would deport pro-Palestinian student demonstrators to get them to "behave." Upon information and belief, at a round table event in New York, he stated, "One thing I do is, any student that protests, I throw them out of the country. You know, there are a lot of foreign students. As soon as they hear that, they're going to behave."[6]

33. Similarly, in a social media post on his official X account on October 15, 2023, then-Senator Marco Rubio, referring to ongoing student protests in support of Palestinians, stated the U.S. should "cancel the visa of every foreign national out there supporting Hamas and get them out of America."[7]

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schumer-palestinian-slur/. Indeed, in his first term, President Trump also issued Executive Order 13899, titled "Combating Anti-Semitism," which, among other things, adopted a definition of antisemitism that includes plainly protected criticism of Israel and its policies. *See* 84 Fed. Reg. 68779 (Dec. 11, 2019) (including as an example of antisemitism "drawing comparisons of contemporary Israeli policy to that of the Nazis").

[5] Andrea Shalal and Susan Heavey, *Trump administration to cancel student visas of pro-Palestinian protesters*, Reuters (Jan. 29, 2025), available at: https://www.reuters.com/world/us/trump-administration-cancel-student-visas-all-hamas-sympathizers-white-house-2025-01-29/.29, 2025), available at: https://www.reuters.com/world/us/trump-administration-cancel-student-visas-all-hamas-sympathizers-white-house-2025-01-29/

[6] *Trump told donors he will crush pro-Palestinian protestors*, Washington Post, available at: https://www.washingtonpost.com/politics/2024/05/27/trump-israel-gaza-policy-donors/.

[7] Twitter, *available at*: https://x.com/marcorubio/status/1713652113098539120. In the CNN

President Trump Issues Executive Orders to Target Speech of Noncitizen Protestors

34. Shortly after assuming office on January 20, 2025, President Trump signed two executive orders aimed at fulfilling the above campaign promises: Executive Order 14161, titled "Protecting the United States from Foreign Terrorists and other National Security and Public Safety Threats," signed on January 20, 2025, and Executive Order 14188, titled "Additional Measures to Combat Anti-Semitism," signed on January 29, 2025.

35. Executive Order 14161 states that it is the United States' policy to "protect its citizens" from noncitizens who "espouse hateful ideology." It further articulates the administration's desire to target noncitizens who "advocate for, aid, or support designated foreign terrorists and other threats to our national security," those who hold "hateful" views, and those who "bear hostile attitudes toward [America's] citizens, culture, government, institutions, or founding principles." The order's broad framing of "hostile attitudes" towards the American government could encompass any form of political dissent, including Palestinian rights advocacy.

36. Executive Order 14188 states that, in order to "combat campus anti-Semitism," the administration will target for investigation "post-October 7, 2023, campus anti-Semitism." The order adopts a definition of antisemitism that includes constitutionally protected criticism of the Israeli government and its policies.[8] In a fact sheet accompanying Executive Order 14188, the White House described the measure as "forceful and unprecedented," specifically targeting "leftist, anti-American colleges and universities." It framed the order as a "promise" to "deport Hamas sympathizers and revoke student visas," sending a clear message to all "resident aliens who participated in pro-jihadist protests" that the federal government "will find you… and deport you."

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interview he included as part of the same post, then-Senator Rubio stated that "people marching at universities" were "supporters of Hamas" and "need to go."

[8] *See supra* note 3 (describing definitions adopted in Executive Order 13899, titled "Combating Anti-Semitism," 84 Fed. Reg. 68779 (Dec. 11, 2019), and reaffirmed in Executive Order 14188).

The Government Responds to Groups Identifying Noncitizen Protestors for Deportation By Adopting the Unlawful Policy

37. In response to these Executive Orders and as part of an escalating attack on the core political speech at issue, prominent groups at Columbia University opposed to Palestinian rights protests began publicizing names of individuals they wanted the government to deport. Specifically, these groups compiled lists of students who had engaged in Palestine-related advocacy and, upon information and belief, submitted these lists to ICE's tip line.[9]

38. For example, Betar USA—a self-described "Zionist activist organization"[10]—has published lists of Columbia student protestors, urging ICE to deport them under the executive orders. In a statement to a media outlet, Betar stated that it had "already submitted names of hundreds of terror supporters to the Trump administration."[11]

39. Betar identified Mr. Khalil, specifically, as one of its targets for deportation, including him on their "deport list." On January 29, the organization posted on social media that ICE is "aware of his home address and whereabouts" and confirmed that they "have provided all his information to multiple contacts."[12]

40. Media reports in March of this year described widespread fear of retaliation for pro-Palestine speech among noncitizen students, noting that the executive orders "already appear to be chilling political activism."[13]

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[9] https://theintercept.com/2025/02/15/columbia-alumni-israel-whatsapp-deport-gaza-protesters/

[10] https://betarus.org/; https://www.middleeasteye.net/explainers/betar-who-is-far-right-jewish-american-group-blood-gaza

[11] Nicholas Liu, *A pro-Israel group says it gave the Trump administration a list of students to deport*, Salon.com (Jan. 31, 2025), *available at* https://www.salon.com/2025/01/31/pledged-to-deport-pro-palestine--and-a-pro-israel-group-has-already-made-a-list/.

[12] https://x.com/Betar_USA/status/1884796686020550930. This social media post falsely accused Mr. Khalil of saying inflammatory statements. *See id. See also* https://zeteo.com/p/scoop-emails-show-mahmoud-khalil-ask-columbia-protection-ice

[13] https://www.npr.org/2025/03/03/nx-s1-5307187/trump-executive-order-visa-pro-palestinian-foreign-students-protests-hamas-hezbollah-israel

41. Then, the week beginning Monday, March 3, 2025, ICE was spotted on Columbia's campus, increasing fears and further chilling students' ability to speak freely.

42. That same week, pro-Israel activists reportedly met with members of Congress as well as Secretary of State Rubio, specifically seeking Mr. Khalil's deportation.[14]

43. On March 7, 2025, Mr. Khalil emailed the Columbia University interim president writing that, "I haven't been able to sleep, fearing that ICE or a dangerous individual might come to my home."[15]

44. On or before March 8, 2025, Respondents adopted the Policy by which they would retaliate against and punish noncitizens like Mr. Khalil for their participation in protests concerning Israel's military campaign in Gaza. Under the Policy, Respondent Rubio, the Secretary of State, would make determinations that the protestors' presence or activities in the United States would have potentially serious foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest. These determinations would then permit the Department of Homeland Security to seek to detain and deport the protestors

DHS Arrests Mr. Khalil as a First Implementation of the Policy and a "Blueprint" for Future Investigations and Deportations of Prominent Student Activists

45. On the evening of March 8, 2025, at approximately 8:30 p.m., Mr. Khalil and his wife were returning to their apartment from an Iftar[16] dinner at a friend's home.

46. When Mr. Khalil and his wife arrived at their apartment building, two individuals in plain clothes followed them into the lobby of the apartment building, which is owned and operated by Columbia University.

[14] https://forward.com/news/703018/mahmoud-khalil-columbia-cuad-ice/
[15] https://zeteo.com/p/scoop-emails-show-mahmoud-khalil-ask-columbia-protection-ice
[16] Iftar is the name of the evening meal eaten at sunset by Muslims to break their fast during the holy month of Ramadan.

47. The individuals approached Mr. Khalil and asked, "Are you Mahmoud Khalil?" When Mr. Khalil answered in the affirmative, the men identified themselves as being with the Department of Homeland Security ("DHS") and announced that they had to take Mr. Khalil into custody. Mr. Khalil heard them announce on a radio, "he's here," at which point Mr. Khalil noticed two other individuals approach from inside of the building. Based on their location, they would have required a key or otherwise been given permission to enter the building.

48. Mr. Khalil asked whether the agents had a warrant and they said that they had one on the phone and that they would show it to him. However, the agents never showed him a warrant. Mr. Khalil asked why they were here and they asserted that Mr. Khalil's visa was revoked. Mr. Khalil explained that he has a green card. At this point, the agents were creating a barrier between Mr. Khalil and his wife. The agents threatened Mr. Khalil's wife that she would also be arrested if she did not comply.

49. Mr. Khalil called his attorney, Amy Greer. Attorney Greer spoke with an agent who identified himself as Special Agent Elvin Hernandez. Agent Hernandez stated they had an administrative warrant and that Mr. Khalil's student visa had been revoked by the U.S. Department of State and therefore they were detaining him. Despite several requests by Mr. Khalil to see the warrant, the agents never showed him the administrative warrant.

50. Mr. Khalil's wife then went to the apartment to retrieve Mr. Khalil's immigration documents. She saw another individual in plain clothes on their floor of the apartment building holding a radio.

51. Attorney Greer advised Agent Hernandez that Mr. Khalil is a lawful permanent resident and has the right to due process. Agent Hernandez responded that the Department of State had revoked Mr. Khalil's green card, too, and that he would be brought in front of an immigration

judge. Agent Hernandez stated that he would be taking Mr. Khalil to 26 Federal Plaza, the location of the ICE Field Office in Manhattan, New York. When Attorney Greer began to ask more questions, Agent Hernandez hung up on her. When Mr. Khalil requested to call her back, Agent Hernandez refused to allow Mr. Khalil to speak to his attorney again.

52. Mr. Khalil's wife presented the DHS agents with documents confirming Mr. Khalil's status as a lawful permanent resident, handing them to an agent who was speaking on the phone. The agent looked confused when he saw the documents and said, "He has a green card" to the individual with whom he was on the phone. Mr. Khalil's wife heard the agent repeat that they were being ordered to bring Mr. Khalil in anyway.

53. The agents then handcuffed Mr. Khalil and brought him outside where there were multiple unmarked vehicles waiting. Mr. Khalil's wife asked for the names of the agents, their contact information, and how to reach them to follow up on her husband's detention, but they only advised her that Mr. Khalil would be taken to 26 Federal Plaza and otherwise refused to speak with her. They left her no business card or any information at all as to how to find out where her husband would be taken, on what grounds, or who she could contact.

54. The night of the arrest, Attorney Greer checked the ICE Detainee Locator ("ICE Locator") several times to confirm her client's location. She first checked the locator at 10:00 p.m. on Saturday, March 8th and found that Mr. Khalil was not yet listed in the system. She checked again at 1:35 a.m. on Sunday, March 9th, and saw that Mr. Khalil was listed as being in custody in New York. The ICE Locator entry also included an instruction to contact the New York field office. At 4:29 a.m. on Sunday, March 9,[17] Attorney Greer checked the locator once more, and the information remained the same. Shortly thereafter, at around 4:40 a.m. on Sunday, March 9th,

[17] Daylight Saving time began on March 9, meaning that clocks moved forward from 1:59am to 3am over the course of these events.

Attorney Greer filed the original habeas corpus petition in in this case (ECF 2) in the Southern District of New York, based on information and belief that ICE was still holding Mr. Khalil at 26 Federal Plaza. During this time, Mr. Khalil made continuous requests to contact his attorney, including when agents asked him to sign several documents, but he was repeatedly denied.

55. The next morning, around 8:30 a.m. on Sunday, March 9, the ICE locator indicated that Mr. Khalil was still in New York. Sometime after 9 a.m. on Sunday, the ICE locator changed to say that Mahmoud was detained in Elizabeth, New Jersey, at the Elizabeth Contract Detention Facility, a detention center privately owned and operated by the corporation CoreCivic. At 9:29 am, Mr. Khalil's immigration attorney attempted to call the Elizabeth facility twice, but no one answered. Around 11:20 a.m., Mahmoud's wife went to the Elizabeth Detention Center to see him, but she was told that Mahmoud was not showing up in the system.

56. At 1:47 p.m. on Sunday, March 9, after counsel had submitted a G-28 and sent a 1:22 p.m. email to ICE asking to be connected with him immediately, ICE responded by email informing that Mr. Khalil was in the process of being transferred to a detention facility within the New Orleans ERO Field Office, over 1,000 miles away.[18] Counsel emailed the U.S. Attorney's Office for the Southern District of New York, which confirmed that Mr. Khalil was en route to Louisiana. Counsel requested Mr. Khalil's immediate return, but was told that ICE would not consent to his return absent a court order. When Mr. Khalil's counsel attempted to schedule a telephone call with Mr. Khalil—a process that typically occurs the same day or the next day in New York—authorities in the Louisiana ICE detention facility offered a date ten days away.

57. Mr. Khalil's wife, who is 8-months pregnant, is unable to travel to Louisiana to see

[18] According to the copy of the NTA that Mr. Khalil's Counsel received on March 11, ICE was already preparing to transfer Mr. Khalil to the Central Louisiana ICE Processing Center while he was still detained at 26 Federal Plaza a few hours after his arrest.

Mr. Khalil.

Mr. Khalil's Experience being Transferred Repeatedly and in Detention in Louisiana

58. While at 26 Federal Plaza on the night of March 8, the ICE agents took Mr. Khalil's biometrics. As they did so, Mr. Khalil saw an agent approach Agent Hernandez and say, "the White House is requesting an update."

59. Mr. Khalil was subsequently presented with several documents and asked to sign them, including a Notice to Appear ("NTA") for removal proceedings and a Custody Determination document. Mr. Khalil reviewed the NTA and Custody Determination and, because he did not fully understand the implications of signing them, he requested to speak with his lawyer before doing so. The ICE agent denied his request, prompting Mr. Khalil to refuse to sign.

60. The copy of the NTA states "YOU ARE ORDERED to appear before the immigration judge of the United States Department of Justice at: 830 Pinehill Rd, Jena, LA, 71342, LASALLE DETENTION FACILITY on March 27, 2025 at 8:30 AM to show why you should not be removed from the United States based on the charges set forth above." The copy is dated March 9, 2025, timestamped at 12:40 a.m., and signed by Supervisory Special Agent Timothy Moran at 26 Federal Plaza, New York, NY.

61. At some point in the night, Mr. Khalil was transported in handcuffs and shackles to Elizabeth Detention Center in New Jersey ("Elizabeth") but was not allowed to take his belongings—his shoes, jacket, and belt—with him. When Mr. Khalil asked about his belongings, he was told that he would be coming back to 26 Federal Plaza tomorrow, but that he could not spend the night there.

62. While at Elizabeth, Mr. Khalil again requested to speak with his lawyer, to which the officers responded that he would be allowed to do so after he was processed. Mr. Khalil spent the night in the cold waiting room for processing. Mr. Khalil requested a blanket but was denied.

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The next morning, as Mr. Khalil reached the front of the line to be processed, he was informed that processing would not be completed because ICE was coming from New York to transport him.

63. Around 12 p.m., ICE officers—one of whom Mr. Khalil believes he recognized from the night before at 26 Federal Plaza—handcuffed and shackled Mr. Khalil and placed him in a van. The van had Mr. Khalil's belongings inside that were kept in 26 Federal Plaza. Mr. Khalil was told he was then going to JFK without further clarification.

64. At JFK, he was transferred to other government agents. None of the agents identified themselves or provided their badge information. At one point, Mr. Khalil noticed one of the agents received a text message instructing not to let his escort, Mr. Khalil, use his phone.

65. Mr. Khalil took an American Airlines flight from JFK around 2:45 p.m. to Dallas, Texas. During that flight, Mr. Khalil saw one of the officers receive a text message that instructed him not to let Mr. Khalil have a phone call.

66. Mr. Khalil arrived in Dallas, Texas around 5:30 p.m. and remained there until 9:30 p.m., at which time he was placed on another American Airlines flight—this time to Alexandria, Louisiana.

67. Mr. Khalil arrived in in Alexandria, Louisiana around 1:00 a.m. on Monday March 10. Upon his arrival, he saw between about four to five agents waiting for him. He was again shackled and placed in handcuffs. He was then placed in an ICE car, driven for about a minute, and then placed in a police car. The agents drove him to Jena, Louisiana.

68. Throughout this process, Mr. Khalil felt as though he was being kidnapped. He was reminded of prior experience fleeing arbitrary detention in Syria and forced disappearance of his friends in Syria in 2013. It was shortly after this that Mr. Khalil left Syria.

69. At no time throughout this process did any of the agents identify themselves.

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70. Mr. Khalil then arrived at the Louisiana Detention Facility, where he was processed again. During his initial medical examination in Elizabeth, Mr. Khalil notified agents that he has an ulcer and needs to take his medication for it every day. Despite this, he was not given access to his medication until Tuesday evening. He sleeps in a bunker without a pillow or blanket. He continues to worry about the wellbeing of 8-month pregnant wife and what will happen to them. He's also very concerned about missing the birth of his first child. In fact, Mr. Khalil turned down job offers that would have required him to miss the birth of his child. Throughout his wife's pregnancy, Mr. Khalil has been present for her doctor appointments.

71. Mr. Khalil also recently secured a coveted job position after four months of searching, and was scheduled to start this role in April of this year. In addition to fearing the loss of his expected salary, Mr. Khalil and his wife planned to obtain medical insurance through this role in order to cover health care costs, including for the birth and care of their expected child. Mr. Khalil continues to worry about the loss of income and health care, especially so close to the expected birth of his child.

72. It is very important to Mr. Khalil to be able to continue his protected political speech, advocating and protesting for the rights of Palestinians—both domestically and abroad. Indeed, Mr. Khalil was recently invited to go to Copenhagen to attend the premiere of a documentary in which he is featured and to speak on the panel after the premiere.

The Government Confirms that Mr. Khalil was Targeted for Deportation Because of His Protected Political Speech, in the First Implementation of their Policy

73. On March 9, President Trump issued a statement on Truth Social applauding ICE for arresting Mr. Khalil, whom he described as a "Radical Foreign Pro-Hamas Student on the campus of Columbia University." The President warned that Mr. Khalil's arrest was "the first of many to come," declaring that his administration would not tolerate "students at Columbia and

other universities across the country who have engaged in pro-terrorist, anti-Semitic, anti-American activity," while promising to "find, apprehend, and deport these terrorist sympathizers from our country."[19]

74. The White House reposted President Trump's statement on the social media platform X, accompanied by a mug-style graphic featuring an image of Mr. Khalil. Surrounding the photo were the words "ARRESTED BY ICE ON MARCH 9, 2025" and "LED ACTIVITIES ALIGNED TO HAMAS." The White House caption included the phrase "SHALOM, MAHMOUD" before quoting the President's statement.[20]

75. Secretary of State Marco Rubio stated, "We will be revoking the visas and/or green cards of Hamas supporters in America so they can be deported."[21]

76. The following day, the Department of Homeland Security issued a statement through its social media account, X, confirming Mr. Khalil's arrest by ICE was carried out "in support of President Trump's executive orders prohibiting anti-Semitism, and in coordination with the Department of State." The statement also accused Mr. Khalil of having "led activities aligned to Hamas, a designated terrorist organization" and asserted that both "ICE and the Department of State are committed to enforcing President Trump's executive orders and to protecting U.S. national security."[22]

77. In a statement to The Free Press on March 10, a White House official stated that Mr. Khalil was a 'threat to the foreign policy and national security interests of the United States' and that the federal government's "basis" for targeting Mr. Khalil was being used "as a blueprint

[19] https://truthsocial.com/@realDonaldTrump/posts/114139222625284782
[20] https://x.com/WhiteHouse/status/1899151926777749618
[21] https://x.com/marcorubio/status/1898858967532441945
[22] https://x.com/DHSgov/status/1898908955675357314; https://www.columbiaspectator.com/news/2025/03/10/department-of-homeland-security-confirms-arrest-of-palestinian-activist-mahmoud-khalil-sipa-24/

for investigations against other students."[23]

78. On March 11, in response to an inquiry from the NY Times regarding Mr. Khalil's arrest, a spokesperson for the administration reportedly stated that "United States' foreign policy includes combating antisemitism across the globe and that Mr. Khalil's residency in the nation undermines that policy objective."[24]

79. At a White House Press Briefing on March 11, Press Secretary Karoline Leavitt responded to questions about the arrest, asserting that the Secretary of State has "the right to revoke a green card or a visa for individuals who serve or are adversarial to the foreign policy and national security interest" and accusing Mr. Khalil of "siding with terrorists."[25]

80. In a press conference regarding this case on March 12, 2025, Secretary of State Rubio stated, "if you tell us that you are in favor of a group like this [Hamas], and if you tell us . . . I intend to come to your country as a student, and rile up all kinds of anti-Jewish . . . anti-Semitic activities," and "if you end up having a green card . . . we're going to kick you out."[26]

81. On March 13, 2025, when asked to justify the government's actions, Troy Edgar, the Deputy Secretary of DHS, did not dispute that Mr. Khalil had not broken any laws and instead asserted that he was "agitating and supporting Hamas" by "put[ting] himself in the middle of the process of basically pro-Palestinian activity." When asked directly if "any criticism of the Israeli government [is] a deportable offense," if "any criticism of the United States [is] a deportable offense," if "any criticism of the government [is] a deportable offense," and if "protesting [is] a

[23] https://www.thefp.com/p/the-ice-detention-of-a-columbia-student
[24] https://archive.ph/rD4sk#selection-1147.0-1159.428
[25] https://www.c-span.org/program/white-house-event/white-house-daily-briefing/657022 (timestamp 10:16)
[26] http://state.gov/secretary-of-state-marco-rubio-remarks-to-press/

deportable offense," Deputy Secretary Edgar did not dispute any of those statements.[27]

DHS Invokes the INA's Foreign Policy Ground against Mr. Khalil, in violation of the INA and the Constitution

82. Mr. Khalil's counsel did not receive DHS's asserted legal basis for his arrest and detention until the afternoon of Tuesday, March 11, pursuant to an agreement with counsel for the government. His NTA states "the Secretary of State has determined that your presence or activities in the United States would have serious adverse foreign policy consequences for the United States." Citing Section 237(a)(4)(C)(i) of the Immigration and Nationality Act (the Foreign Policy Ground), the NTA further states "the Secretary of State has reasonable ground to believe that your presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States."

83. The Rubio Determination was exclusively motivated by Mr. Khalil's lawful, constitutionally-protected past, current, or expected beliefs, statements, or associations. Public statements by government officials, up to and including the President and Secretary of State, establish that Respondents are punishing, detaining, and attempting to silence Mr. Khalil because of his constitutionally-protected past, current, or expected beliefs, statements, or associations.

84. The Foreign Policy Bar expressly prohibits the Secretary of State from issuing a policy to exclude or condition entry based on a noncitizen's "past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States," unless the Secretary personally certifies to Congress that admitting the individual would compromise a compelling U.S. foreign policy interest. *See id.* (citing INA § 212(a)(3)(C)(iii)). Upon information and belief, Secretary Marco Rubio has not provided any

[27] NPR, *Morning Edition* (March 13, 2025), *available at* https://www.npr.org/2025/03/13/nx-s1-5326015/mahmoud-khalil-deportation-arrests-trump.

certifications regarding a determination under the Foreign Policy Ground concerning Mr. Khalil to the chairs of the House Foreign Affairs, Senate Foreign Relations, and House and Senate Judiciary Committees, as required by 8 U.S.C. § 1182(a)(3)(C)(iv).

85. Nor could he. Legislative history reveals that Congress intended to limit the Executive's authority to exclude noncitizens based on their speech or beliefs. When the Moynihan Amendment was passed in 1987, the Senate Committee warned that "[f]or many years, the United States has embarrassed itself by excluding prominent foreigners from visiting the United States solely because of their political beliefs." The amendment was intended "to take away the executive branch's authority to deny visas to foreigners solely because of the foreigner's political beliefs or because of his anticipated speech in the United States," while affirming "the principles of the First Amendment." (S. Rep. No. 100–75 at 11, 100th Cong., 1st Sess. (1987), reprinted in 133 Cong. Rec. S2326 (1987)).

86. Congress further evinced its intent to restrict the Executive's ability to exclude foreign speakers by asserting that such exclusions should not be based solely on "the possible content of an alien's speech in this country," that the Secretary's authority to determine that entry would compromise foreign policy interests should be used "sparingly and not merely because there is a likelihood that an alien will make critical remarks about the United States or its policies," and that the "compelling foreign policy interest" standard should be applied strictly. (H.R. Conf. Rep. No. 101-955, 101st Cong., 2nd Sess. (1990), reprinted in 1990 U.S.C.C.A.N. 6784, 6794).

87. In the decades since the Foreign Policy Ground was enacted, it appears to have been rarely invoked and reserved for cases involving high-ranking government officials or an alleged terrorist removable on other grounds and subject to high-profile prosecutions in their country of origin. It does not appear to have ever been applied to any person for engaging in First Amendment

protected speech.

CLAIMS FOR RELIEF

FIRST CLAIM
Violation of the First Amendment to the United States Constitution

88. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein. The First Amendment to the United States Constitution provides in part that "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances." U.S. Const. Amend. I. The First Amendment protects past, present, and future speech, including speech by noncitizens.

89. The Rubio Determination and Policy Mr. Khalil's targeting, arrest, transfer, and ongoing detention violate the First Amendment because they:

- retaliate against and punish Mr. Khalil for his past protected speech;
- prevent him from speaking now (through detention);
- attempt to chill (through past punishment and ongoing threat) or prevent (through eventual removal) his future speech in the United States;
- deprive audiences of his present and future speech on matters of public concern; and
- chill other individuals from expressing views sympathetic to Palestinians.

90. These speech-related consequences are not side effects of an action with some other purpose; they are, instead, the point of the Determination and the government's subsequent actions against Mr. Khalil and are, in government officials' own telling, the result of their disagreement with his protected speech and the viewpoint it expresses.

SECOND CLAIM
Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

91. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

92. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

93. The government's detention of Mr. Khalil is wholly unjustified. *See Black*, F.4th at 157 (collecting cases stating that "[w]here an individual's liberty is at stake, the Supreme Court has consistently required the government to justify continued detention by clear and convincing evidence."). The government has not demonstrated that Mr. Khalil—a husband to a U.S. citizen, soon-to-be father to a U.S. citizen, and lawful permanent resident with no criminal history—needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Mr. Khalil cannot be safely released back to his family.

94. Moreover, Mr. Khalil's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Zadvydas*, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). The sole basis of his detention—the Foreign Policy Ground and the Rubio Determination—are unlawful for the reasons discussed *supra*. Here, there is every indication that his "detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore v. Kim*, 538

U.S. 510, 532-33 (2003) (Kennedy, J., concurring).

95. The Policy and the Rubio Determination also violate Mr. Khalil's right to due process. The government's policy of Foreign Policy Ground making such determinations concerning people like Mr. Khalil—lawful permanent residents, living peacefully in the country who engage in speech advocating for Palestinian rights—is unconstitutionally vague.

THIRD CLAIM
Violation of the Administrative Procedure Act and the *Accardi* Doctrine

96. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein. The government has adopted a policy of targeting noncitizens for removal based on First Amendment protected speech advocating for Palestinian rights. This policy is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C.A. § 706 (2)(A), (B), (C), and violates the *Accardi* doctrine and federal agencies' own rules, *see Accardi v. Shaughnessy*, 347 U.S. 260 (1954). In addition, the Secretary of State's determination that Mr. Khalil's "presence or activities would potentially have serious adverse foreign policy consequences for the United States" and "would compromise a compelling United States foreign policy interest" is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C.A. § 706 (2)(A), (B), (C).

FOURTH CLAIM
Release on Bail Pending Adjudication

97. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

98. This Court has the "inherent authority" to grant bail to habeas petitioners like Mr.

Khalil. *See Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001) (holding that federal courts have inherent authority to set bail pending the adjudication of a habeas petition when the petition has raised substantial claims and extraordinary circumstances "make the grant of bail necessary to make the habeas remedy effective"). In considering a petitioner's fitness for bail, courts assess (1) "whether the petition raises substantial claims" and (2) "whether extraordinary circumstances exist that make the grant of bail necessary to make the remedy effective." *Elkimya v. Dep't of Homeland Sec.*, 484 F.3d 151, 154 (2d Cir. 2007) (cleaned up).

99. This petition raises numerous substantial constitutional and statutory claims challenging Mr. Khalil's retaliatory detention. As for the second factor, extraordinary circumstances exist here that make Mr. Khalil's release necessary to make the remedy effective. As long as Mr. Khalil remains in ICE custody, he will be prevented from speaking freely and openly—instead, his speech is severely curtailed and controlled by DHS. And it is effectively impossible for him to speak to the broader public at all. His detention is also preventing him from adequately litigating his removal proceedings, which the government has chosen to justify only in the press. Moreover, Mr. Khalil's wife is eight months pregnant with their first child. Not only is she unable to visit him where ICE has chosen to detain him, in Louisiana, but his continued detention prevents him from caring for her at a critical time and will cause him to miss the birth of his first child. *See, e.g.*, *S.N.C. v. Sessions*, No. 18-CV-7680, 2018 WL 6175902, at *6 (S.D.N.Y. Nov. 26, 2018) (ordering immediate release of petitioner pending consideration of her claim that her abrupt deportation would violate her due process right to an opportunity to be heard on her application and in order to care for her children).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Vacate and set aside Respondents' unlawful Policy of targeting noncitizens for removal based on First Amendment protected speech advocating for Palestinian rights;

3) Vacate and set aside the Rubio Determination;

4) Enjoin Respondents from transferring the Petitioner from the jurisdiction of this District pending these proceedings;

5) Order the immediate release of Petitioner pending these proceedings;

6) Order the release of Petitioner;

7) Declare that Respondents' actions to arrest and detain Petitioner violate the First Amendment and the Due Process Clause of the Fifth Amendment;

8) Award reasonable attorneys' fees and costs for this action; and

9) Grant such further relief as the Court deems just and proper.

Dated: April 3, 2025
Newark, NJ

Respectfully submitted,
*/s/*Jeanne LoCicero

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Nos. 25-2162 & 25-2357

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MAHMOUD KHALIL,

Petitioner-Appellee,

v.

PRESIDENT UNITED STATES OF AMERICA; DIRECTOR NEW YORK FIELD OFFICE IMMIGRATION AND CUSTOMS ENFORCEMENT; WARDEN ELIZABETH CONTRACT DETENTION FACILITY; DIRECTOR UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; SECRETARY UNITED STATES DEPARTMENT OF HOMELAND SECURITY; SECRETARY UNITED STATES DEPARTMENT OF STATE; ATTORNEY GENERAL UNITED STATES OF AMERICA,

Respondents-Appellants.

On Appeal from the United States District Court
for the District of New Jersey, No. 25-1963 (MEF) (MAH)

APPENDIX: VOLUME III (679-1091)

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963
(MEF-MAH)

DECLARATION OF IRA J. KURZBAN

1. My name is Ira J. Kurzban. I submit this declaration to explain how removal proceedings under 8 U.S.C. § 1229a and subsequent judicial review under 8 U.S.C. § 1252 function in practice, as well as the limitations on record development, timely adjudication, and review of constitutional claims in such proceedings.

Qualifications

2. I am an immigration practitioner and have been a partner in the law firm of Kurzban, Kurzban, Tetzeli, & Pratt P.A. of Coral Gables, Florida for over four decades, and serve as chair of the firm's immigration department.

3. Since 1977, I have been active in all aspects of immigration law. I and the attorneys I supervise regularly practice in immigration courts across the country, as well as in federal courts in immigration-related matters.

4. I am the author of *Kurzban's Immigration Law Sourcebook*, one of the most widely used immigration-law secondary sources in the United States. The book is in its Nineteenth Edition (2024) and is regularly cited by federal courts. *See, e.g.*, *Al Otro Lado v. EOIR*, 120 F.4th 606, 627 n.16 (9th Cir. 2024); *Gonzalez Hernandez v. Garland*, 9 F.4th 278, 289 (5th Cir. 2021) (Costa, J., dissenting); *De La Paz v. Coy*, 786 F.3d 367, 376 (5th Cir. 2015); *Gonzalez v. Holder*, 771 F.3d 238, 243 (5th Cir. 2014); *United States v. Juarez*, 672 F.3d 381, 389 (5th Cir. 2012); *Gonzalez v. Reno*, 212 F.3d 1338, 1355 (11th Cir. 2000); *Viveiros v. Holder*, 692 F.3d 1, 3 (1st Cir. 2012); *Patel v. Ashcroft*, 378 F.3d 610, 612 (7th Cir. 2004); *Socop-Gonzalez v. INS*, 208 F.3d 838, 842 n.3 (9th Cir. 2000).

5. As a practicing attorney, I am actively involved in the immigration bar. I am the Past President of the South Florida Chapter of the American Immigration Lawyers Association. I was the national president of the American Immigration Lawyers Association in 1987-88, and I thereafter served as its General Counsel. The American Immigration Lawyers Association is an affiliate organization of the American Bar Association. It has over 14,000 members in 35 chapters in the United States and four international chapters. I am also certified by the Florida Bar as a specialist in immigration law and served on the first committee to draft and grade the certification exam for Florida lawyers.

6. Since 1977, I have litigated a variety of immigration-related cases and over 75 published decisions in the federal courts. Among other cases, I have been counsel of record in the United States Supreme Court in *Patel v. Garland*, 596 U.S. 328 (2022); *McNary v. Haitian Refugee Center, Inc.*, 495 U.S. 479 (1991); *Commissioner v. Jean*, 496 U.S. 154 (1990); and *Jean v. Nelson*, 472 U.S. 846 (1985).

7. Through my over four decades of experience as a practitioner in both the federal courts and immigration courts, I am well qualified to opine on how the

immigration-court system differs from the federal courts and the other matters addressed below.

Background on Removal Proceedings and Judicial Review of Final Orders of Removal

8. A person charged as deportable under 8 U.S.C. § 1227 is generally placed in removal proceedings before an immigration judge. Such proceedings are governed by the provisions of 8 U.S.C. § 1229a, and implementing regulations at 8 C.F.R. §§ 1239, *et seq.*, and 1240, *et seq.* Immigration judges are employees of the Department of Justice, housed under the Executive Office for Immigration Review.

9. After an immigration judge renders a final decision on removability (and any applicable relief from removal), the losing party may appeal the decision to the Board of Immigration Appeals ("Board") within 30 days of the immigration judge's order.

10. After the appeal is taken, the Board will prepare a transcript of the proceedings before the immigration judge, and issue a briefing schedule.

11. In cases where an individual is detained, both parties must generally file their briefs with the Board within 21 days of the issuance of the briefing schedule.

12. On review of decisions by immigration judges, the Board of Immigration Appeals reviews legal issues de novo, and factual issues for clear error.

13. Judicial review of final administrative orders of removal occurs through a petition for review filed with the court of appeals with jurisdiction over the place where the immigration judge completed the removal proceedings. *See* 8 U.S.C. § 1252(a)(1), (b)(1)-(2).

Timing of Removal Proceedings and the Petition for Review Process

14. Complex cases like Mr. Khalil's can take upwards of a year to resolve. Given that Mr. Khalil is detained and has only recently had his first immigration hearing, it will most likely be at least several months before he receives a decision from the immigration judge, another several months for any appeal to the Board, and at least six months for any circuit court review—and could be significantly longer if there is a need for continuances in the case or if a decision is reversed by the Board.

15. Further contributing to such delays is the fact that when there are serious issues related to a noncitizen's threshold removability, the issues of removability and any relief from removal are frequently bifurcated into separate hearings before the immigration judge.

16. When a case involves contested issues of fact, the Board of Immigration Appeals will frequently remand cases to the immigration judge for further proceedings. Such remands are necessary because the Board lacks authority under governing regulations to conduct fact-finding in the first instance. Thus, anytime the Board finds a need for further fact-finding to decide an issue in the case, the Board will remand the matter back to the immigration judge for further proceedings.

17. It is thus not uncommon for a case to "ping pong" back-and-forth from the immigration judge and the Board of Immigration Appeals several times before a final administrative order on removability is entered. This is particularly apt to occur in cases raising difficult or novel legal issues, as the Board may clarify legal standards and remand to the immigration judge for further fact-finding to apply the legal standards in the first instance.

18. Until any such ping-ponging ends, and the Board of Immigration Appeals issues a final order of removal, a noncitizen cannot obtain judicial review via the petition-for-review process; such review is available only after the issuance of an administratively final order of removal.

Limitations on Record Development in Removal Proceedings

19. A noncitizen's ability to develop a factual record in removal proceedings is far more limited than in proceedings in federal district court.

20. Except where claims to U.S.-citizenship are at issue, the federal courts of appeals review a final order of removal based exclusively on the administrative record developed before the immigration judge.

21. The Immigration and Nationality Act gives immigration judges limited authority to allow the parties discovery in removal proceedings. Immigration judges, for example, "may" issue "subpoenas for the attendance of witnesses and presentation of evidence." 8 U.S.C. § 1229a(b)(1). But, as a matter of practice, immigration judges use this authority rarely, if at all. Depositions, moreover, are permitted only if the immigration judge "is satisfied that a witness is not reasonably available at the place of hearing and that said witness' testimony or other evidence

is essential" to the case. 8 C.F.R. § 1003.35. As a result, depositions are infrequently permitted.

22. In the context of petitions for review of final removal orders, therefore, federal courts lack any capacity to engage in fact-finding. If a circuit court on petition for review determines that further fact-finding is required, the only available remedy is to remand proceedings back to the Board of Immigration Appeals, which must in turn further remand the matter back to the immigration judge for further proceedings.

23. While these procedures afford noncitizens some ability to develop a factual record on individualized issues that arise in removal proceedings (for example, affording a noncitizen the ability to confront government witnesses who allege marriage fraud), they are wholly inadequate to develop a factual record when claims involve questions of government policy and practice.

24. Based on these limitations, therefore, it is unlikely that an immigration judge would facilitate meaningful factual development on key questions at issue in Mr. Khalil's case, including whether the government maintains a policy of targeting noncitizens who engage in expressive activity in support of Palestinian rights, or critical of Israeli policies.

Limitations on the Review of Constitutional Claims

25. The Board of Immigration Appeals has disavowed authority to rule on core constitutional claims. *See Matter of Valdovinos*, 18 I. & N. Dec. 343, 345 (BIA 1982) ("claims as to the unconstitutionality of the statutes and regulations administered by this Board are outside the scope of our jurisdiction"); *Hadayat v. Gonzales*, 458 F.3d 659, 665 (7th Cir. 2006) (noting that the Board of Immigration Appeals has held itself "powerless to address . . . fundamental constitutional claims") (cleaned up). The Board has invoked this limitation to avoid ruling on claims arising under the First Amendment. *See, e.g., In re Mehndy*, 2006 WL 2427850, at *2 (BIA July 17, 2006) (unpub.).

26. Because the immigration judge and Board may be unable to review constitutional claims arising under the First Amendment, it is unlikely that an immigration judge would permit a noncitizen in removal proceedings to seek subpoenas or depositions for factual material related to such a claim.

27. If a final order of removal is ultimately entered, it is therefore unlikely that the court of appeals reviewing the order of removal on petition for review would have before it a factual record sufficient to enable meaningful judicial review.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Dated: April 5, 2025

Ira J. Kurzban

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF MOLLY K.C. LINHORST

I, Molly K.C. Linhorst, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. I am an attorney at the American Civil Liberties Union of New Jersey Foundation, and co-counsel for Petitioner.

2. Attached hereto, at the exhibits listed below, are true and correct copies of the following materials:

   A. Attached as **Exhibit A** is The Complaint and Petition for Writ of Habeas Corpus, filed as ECF 1 in *Yunseo Chung v. Trump et al.*, No. 1:25-cv-02412-NRB, before the Southern District of New York.

   B. Attached as **Exhibit B** is the Declaration of attorney Nayantara Bhushan,

dated March 23, 2025, filed as ECF 9-13 in *Yunseo Chung v. Trump et al.*, No. 1:25-cv-02412-NRB, before the Southern District of New York.

C. Attached as **Exhibit C** is the First Amended Petition for Writ of Habeas Corpus and Complaint, dated March 28, 2025, filed as ECF 12 in *Rümeysa Öztürk v. Trump et al.*, No. 1:25-cv-10695-DJC, before the District of Massachusetts.

D. Attached as **Exhibit D** is a transcript of Secretary of State Marco Rubio's remarks during a joint news conference with Guyanese President Irfaan Ali on March 27, 2025. The transcript is also available at https://perma.cc/EDN2-RYFP. The transcript at pages 6–8, which reflects a back-and-forth exchange between a reporter and the Secretary of State, where he is asked about the arrest of Rümeysa Öztürk as well as the administration's recent revocation of visas, is excerpted below:

- QUESTION: Hello, Mr. President. Thank you for taking questions from us. We appreciate it. Humeyra Pamuk from Reuters. Mr. Secretary, a Turkish student in Boston was detained and handcuffed on the street by plainclothes agents. A year ago she wrote an opinion piece about the Gaza war. Could you help us understand what the specific action she took led to her visa being revoked? And what was your State Department's role in that process?

- SECRETARY RUBIO: We revoked her visa. It's an F1 visa, I believe. We revoked it, and here's why – and I'll say it again; I've said it everywhere. Let me be abundantly clear, okay. If you go apply for a visa right now anywhere in the world – let me just send this message out – if you apply for a visa to enter the United States and be a student and you tell us that the reason why you're coming to the United States is not just because you want to write op-eds, but because you want to participate in movements that are involved in doing things like vandalizing universities, harassing students, taking over buildings, creating a ruckus, we're not going to give you a visa. If you lie to us and get a visa and then enter the United States and with that visa participate in that sort of activity, we're going to take away your visa. Now, once you've lost your visa, you're no longer legally in the United States, and we have a right, like every country in the world has a right, to remove you from our country. So it's just that simple. …

- QUESTION: Could you confirm – there's new reporting that 300 visas

– State Department has revoked 300 (inaudible).

- SECRETARY RUBIO: Maybe more. It might be more than 300 at this point. We do it every day. Every time I find one of these lunatics, I take away their visa.

- QUESTION: It could – you're saying it could be more than 300 visas?

- SECRETARY RUBIO: Sure. I hope – I mean, at some point I hope we run out because we've gotten rid of all of them. But we're looking every day for these lunatics that are tearing things up. And by the way, we want to get rid of gang members, too….

E. Attached as **Exhibit E** is the Petition for Writ of Habeas Corpus and Complaint, dated March 18, 2025, filed as ECF 1 in *Badar Khan Suri v. Trump et al.*, No. 1:25-cv-480, before the Eastern District of Virginia, Alexandria Division.

F. Attached as **Exhibit F** is the Complaint, dated March 15, 2025, filed as ECF 1 in *Momodou Taal et al., v. Trump et al.*, No. 3:25-cv-00335-ECC-ML, before the Northern District of New York.

G. Attached as **Exhibit G** is the Complaint, dated March 25, 2025, filed as ECF 1 in *American Association of University Professors, et al., v. Rubio et al.*, No. 1:25-cv-10685-WGY, before the District of Massachusetts.

H. Attached as **Exhibit H** is an article by Marc Caputo published by *Axios* on March 6, 2025, entitled "Scoop: State Dept. to use AI to revoke visas of foreign students who appear 'pro-Hamas.'" The article is also available at https://perma.cc/N5XX-3UVD. Citing an unnamed Senior State Department official, the article reports, "if officials find a social media post from a foreign national that appears to endorse the attack on Israel and looks 'pro-Hamas,' the official said, that could be grounds for visa revocation."

I. Attached as **Exhibit I** is an article by Marc Caputo published by *Axios* on March 27, 2025, entitled "Trump's 'pro-Hamas' purge could block foreign students from colleges." The article is available at https://perma.cc/Q687-6GC4. The article quotes a Senior Justice Department official as saying:

- What you're going to see in the not-too-distant future is the universities that we can show that were not doing anything to stop these demonstrations in support of Hamas — or encouraged enrollment by

activists — ... we can stop approving student visas for them, and they can no longer admit foreign students.

- The way that this looks ... is a grand jury subpoena goes to a university, a very broad subpoena" which would include "any information that they know about students who have actively participated in violent protests.

J. Attached as **Exhibit J** is an article by Prem Thakker published by *Zeteo* on March 29, 2025, entitled "SCOOP: ICE Revoking Students' Immigration Statuses Without Their or the University's Knowledge." The article is available at https://perma.cc/WCR3-BB7J. Excerpts from the article are provided below:

- According to documentation seen by Zeteo and interviews with university officials, the administration is deploying the rarely-used risk-to-foreign-policy immigration provision they used to detain Mahmoud Khalil to now target students across the country.

- University officials say that targeted students hail from the Middle East and Muslim-majority countries. They've also reported inconsistent notification patterns: some students have been informed about the revocations by the government, some have not; some only found out after officials manually checked internal visa status databases – while universities and officials themselves have mostly seemed to not be informed by the government.

- Three university officials, who were given anonymity so they could speak freely, across the country report that, in recent days, student residency statuses in the Student and Exchange Visitor Information System – SEVIS, a database where residency statuses of foreign students are managed – are being changed without their knowledge.

K. Attached as **Exhibit K** is an article by Sanya Mansoor published by *The Cut* on March 26, 2025, entitled "Will ICE Come to My Dorm Today? International students who protested Israel's war in Gaza Grapple with Trump's crackdown." The article is also available at https://perma.cc/7SB2-LALD. The reporter interviewed noncitizens who are "wrestling with how to criticize the U.S.'s continued military support of Israel without jeopardizing their visa status." Some reported they are "pull[ing] back from sharing personal political opinions on social media," while others reported that they no longer attend demonstrations in person.

L. Attached as **Exhibit L** is an article Alina Das published by the Knight First Amendment Institute at Columbia University on February 12, 2025, titled "Protecting Immigrant Activists From U.S. Government Retaliation: Lessons From First Amendment Litigation." The article is also available at https://perma.cc/WB7S-QL6B.

M. Attached as **Exhibit M** is a transcript of Secretary of State Marco Rubio's remarks to the press while en route to Miami, Florida, on March 28, 2025. This transcript is also available at https://perma.cc/JUU8-GDQK.

N. Attached as **Exhibit N** is a transcript of Secretary of State Marco Rubio's remarks to the press on March 12, 2025, from Shannon, Ireland. This transcript is also available at https://perma.cc/3Q5E-WB6C.

O. Attached as **Exhibit O** is a tweet by Secretary of State Marco Rubio on X (formerly Twitter) dated March 15, 2025, 11:02 a.m. The tweet is also available at https://perma.cc/84SC-S387. Secretary Rubio states: "Very simple. President Trump isn't Biden. If you are coming to U.S. to join pro-terror riots we will deny you a visa. And if you do that after lying your way into our country we will cancel your visa & send you home."

P. Attached as **Exhibit P** is a transcript of an interview of Secretary of State Marco Rubio on "Face the Nation with Margaret Brennan" dated March 16, 2025. This transcript is also available at https://perma.cc/2DY7-SRC4.

Q. Attached as **Exhibit Q** is a transcript of an interview of Secretary of State Marco Rubio by Hugh Hewitt conducted via teleconference and dated March 19, 2025. This transcript is also available at https://perma.cc/D52U-8K9K.

R. Attached as **Exhibit R** is a transcript of Secretary of State Marco Rubio's remarks during a joint press availability with Jamaican Prime Minister Andrew Holness on March 26, 2025. The transcript is also available at https://perma.cc/5X4E-JX3U. At page 16 of this transcript, Secretary Rubio is quoted saying:

- If you had told us that was – if you told us, I'm going to America not just to study at your university but to tear up your campus, we would have never let you in. And if you do that once you come into the United States, we're going to kick you out. We're going to do that. And I don't care – I don't care what terrorist organization you're supporting, we're going to kick you out. If you're a gang member, we're going to kick you out, okay? If you're one of these violent gang members that's coming to the United

States, then we're going to kick you out. That we're going to do. There's no doubt about it. But that, the President's very committed to that. And – but if you're a green card holder and you're not any of these things, you're going to be fine.

S. Attached as **Exhibit S** is a transcript of Secretary of State Marco Rubio's remarks during a joint press availability with Surinamese President Chandrikapersad Santokhi on March 27, 2025. The transcript is also available at https://perma.cc/FRK6-9ZAE.

3. In addition to the above-referenced exhibits, I am providing links to the following recordings, which do not have readily available transcripts that can be attached as physical exhibits, but are provided herein for ease of reference:

A. A recording of an interview with Leo Terrell – Senior Counsel to the Assistant Attorney General for Civil Rights and head of the "Task Force to Combat Anti-Semitism" – appearing on Fox News on March 10, 2025. The full recording is available at https://perma.cc/9UNS-CVVP. In this interview, responding to a question about Mahmoud Khalil's arrest and other related questions, Terrell states:

- It's the beginning of a series of big victories.
- This arrest of this individual is an indication and should serve as a deterrent. The Trump Administration is not going to allow individuals on a student visa, with a green card, to commit antisemitic behavior on our college campuses.
- I want these individuals who are practicing antisemitic behavior, if you are an individual on a student visa, you're not an American citizen, you're a foreign national, and you can expect deportation proceedings or revocation of your right to attend a prestigious university…

B. A recording dated March 13, 2025, of Vice President J.D. Vance interviewed by Laura Ingraham in The Ingraham Angle on Fox News. The recording is available at https://perma.cc/8F7H-V6BR.https://perma.cc/8F7H-V6BRhttps://perma.cc/8F7H-V6BR. Between 2:50 and 4:10 timestamp in this video, the following exchange takes place:

- Vice President JD Vance: Well, if it was an American citizen, it would be a different conversation …but Laura, a green card holder, even if I might like that green card holder, doesn't have an indefinite right to be in the

United States of America . . . . my attitude on this is, this is not fundamentally about free speech, and to me, yes it's about national security, but it's also more importantly about who do we, as an American public, decide gets to join our national community, and if the Secretary of State and the President decide that this person shouldn't be in America and they have no legal right to stay here, it's as simple as that.

- Laura Ingraham: Do you see more such deportations happening?

- JD Vance: I think we'll certainly see some people who get deported on student visas if we determine that they don't–it's not in the best interests of the United States to have them in our country so yeah, I don't know how high that number's gonna be, but you're gonna see more people.

Dated: April 6, 2025
New York, NY

Respectfully submitted,

/s/ Molly K.C. Linhorst

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Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Yunseo CHUNG,

Plaintiff-Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States of America; Marco RUBIO, in his official capacity as Secretary of State, U.S. Department of State; Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice; Kristi NOEM, in her official capacity as Secretary of Homeland Security, U.S. Department of Homeland Security; Todd M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; and William P. JOYCE, in his official capacity as Acting Field Office Director of the New York Immigration and Customs Enforcement Office,

Defendants-Respondents.

Case No. 25-cv-_____

COMPLAINT AND PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This action challenges the government's shocking overreach in seeking to deport a college student, Plaintiff-Petitioner Yunseo Chung, who is a lawful permanent resident of this country, because of her protected speech. The government's actions are an unprecedented and unjustifiable assault on First Amendment and other rights, one that cannot stand basic legal scrutiny. Simply put, immigration enforcement—here, immigration detention and threatened deportation—may not be used as a tool to punish noncitizen speakers who express political views disfavored by the current administration.

2. Yunseo Chung is a twenty-one-year-old permanent resident of the United States—the only home she has known since coming here at the age of seven with her family from South

Korea—and a promising junior at Columbia University. She was the valedictorian of her high school class and has since thrived at college, academically and otherwise, participating in a campus literary magazine, an undergraduate law journal, and other student activities.

3. Since 2023, along with hundreds of her peers, Ms. Chung has also participated in some student protests and demonstrations on Columbia University's campus related to Israel's military campaign in Gaza and the devastating toll it has taken on Palestinian civilians. Ms. Chung has not made public statements to the press or otherwise assumed a high-profile role in these protests. She was, rather, one of a large group of college students raising, expressing, and discussing shared concerns.

4. On March 5, 2025, a student sit-in and protest was held at Columbia which garnered significant public attention.[1] Media reports identified Ms. Chung, along with other students, as among the protesters arrested outside of an academic building on campus. Ms. Chung was outside the building on that day to protest what she believed to be the excessive punishments meted out by the Columbia administration to student protesters facing campus disciplinary proceedings. She herself had previously faced a university disciplinary process (which resulted in a finding that Ms. Chung was not in violation of any university policy) and wanted to support her fellow students by attending the protest. Ms. Chung was arrested and given a Desk Appearance Ticket by the New York City Police Department for "obstruction of governmental administration," a common citation issued by the police at protests. That ticket will be adjudicated by the New York City court system in the normal course.

[1] Spencer Davis & Tulasi Cherukuri, *Columbia suspends four students who were arrested following Milstein sit-in*, Colum. Spectator (Mar. 7, 2025), *available at* https://www.columbiaspectator.com/news/2025/03/07/columbia-suspends-four-students-who-were-arrested-following-milstein-sit-in/.

5. Mere days later, however, the federal government began a series of unlawful efforts to arrest, detain, and remove Ms. Chung from the country because of her protected speech. It now appears that an ICE official signed an administrative arrest warrant for Ms. Chung on March 8, 2025. On March 9, 2025, Immigration and Customs Enforcement (ICE) showed up at Ms. Chung's parents' residence seeking her. On March 10, 2025, a federal law enforcement official advised Ms. Chung's counsel that her lawful permanent resident status is being "revoked." On Thursday, March 13, 2025, federal law enforcement agents executed a judicial search warrant at two Columbia-owned residences, including Ms. Chung's dormitory, seeking documents, including any occupancy or lease agreements, travel records, and immigration records—even though the warrant ostensibly targeted Columbia itself, not Ms. Chung.

6. ICE's shocking actions against Ms. Chung form part of a larger pattern of attempted U.S. government repression of constitutionally protected protest activity and other forms of speech. The government's repression has focused specifically on university students who speak out in solidarity with Palestinians and who are critical of the Israeli government's ongoing military campaign in Gaza or the pro-Israeli policies of the U.S. government and other U.S. institutions.[2]

7. Now, officials at the highest echelons of government are attempting to use immigration enforcement as a bludgeon to suppress speech that they dislike, including Ms. Chung's speech. To this end, Defendants-Respondents have adopted a policy ("the Policy") to retaliate against and punish noncitizens like Ms. Chung for their participation in protests. Under

[2] *See, e.g.*, Bianca Quilantan, Madine Touré, *'They need to see the institutions experiencing pain': The Trump administration wants Columbia University to change its admissions and disciplinary rules before research money gets turned back on.*, Politico (Mar. 15, 2025), *available at* https://www.politico.com/news/2025/03/15/colleges-federal-funding-shock-trump-antisemitism-00231160; Kate Bellows, *Can Trump Force Columbia U. to Expel Student Protesters?*, Chronicle of Higher Education (Mar. 14, 2025), *available at* https://www.chronicle.com/article/can-trump-force-columbia-u-to-expel-student-protesters; Kanishka Singh, Jonathan Allen, *Trump Threatens Funding Cut to Colleges Allowing 'Illegal Protests'*, Reuters (Mar. 4, 2025), *available at* https://www.reuters.com/world/us/trump-says-federal-funding-will-stop-colleges-schools-allowing-illegal-protests-2025-03-04/.

the Policy, if Defendant-Respondent Marco Rubio, the Secretary of State, claims reasonable ground to believe that a noncitizen protester's presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States, or personally determines that their protected views, speech, or associations would compromise a compelling U.S. foreign policy interest, then such determinations—according to the government—permit the U.S. Department of Homeland Security (DHS) to seek to detain and deport the noncitizen protester.

8. Pursuant to the Policy, and consistent with remarks made by Secretary Rubio and by law enforcement agents who recently arrested another student at Columbia University,[3] Secretary Rubio purportedly made such a determination as to Ms. Chung ("the Rubio Determination"). This determination was based on Ms. Chung's actual and perceived lawful activity protected by the First Amendment: participation in protests and statements regarding Palestine, Israel, and discipline of student protestors on campus. Pursuant to the Rubio Determination, ICE, a component of DHS, seeks to arrest Ms. Chung, detain her, and place her in removal proceedings, presumably to South Korea. Ms. Chung is now at active risk of being put in immigration detention and deported from the only country she has ever known.

9. Defendants-Respondents' actions violate Plaintiff-Petitioner's rights under the First Amendment and Fifth Amendment of the U.S. Constitution, the Administrative Procedure Act, the Immigration and Nationality Act, and its own policies. This Court should vacate and set aside Defendants-Respondents' Policy and the Rubio Determination, declare Defendants-

[3] Armando Garcia, Mariama Jalloh, Aaron Katersky, and Meredith Deliso, *Judge blocks removal of Palestinian activist who was detained at Columbia University*, ABC News (Mar. 10, 2025), *available at* https://abcnews.go.com/US/ice-arrests-palestinian-activist-green-card-columbia-university/story?utm_source=facebook&utm_medium=social&utm_campaign=dhfacebook&utm_content=null&id=119616144 (quoting tweet by Secretary Rubio stating: "We will be revoking the visas and/or green cards of Hamas supporters in America so they can be deported.").

Respondents' actions unlawful, and enjoin Defendants-Respondents from detaining, transferring, or deporting Ms. Chung unless Defendants-Respondents establish that their actions are untainted by impermissible First Amendment retaliation and discrimination, and are otherwise lawful.

PARTIES

10. Plaintiff-Petitioner Yunseo CHUNG is a longtime resident of the United States. Since 2022, she has been a student at Columbia University, residing in New York, New York. Ms. Chung became a lawful permanent resident of the United States in 2021. Upon information and belief, Ms. Chung has always resided pursuant to lawful immigration status in the United States since her arrival, with her family, as a seven-year-old child from South Korea.

11. Defendant-Respondent Donald J. TRUMP is named in his official capacity as the President of the United States of America. In this capacity, he is responsible for the policies and actions of the executive branch, including the U.S. Department of State and U.S. Department of Homeland Security. Defendant-Respondent Trump's address is the White House, 1600 Pennsylvania Ave. NW, Washington, D.C. 20500.

12. Defendant-Respondent Marco RUBIO is named in his official capacity as the Secretary of State of the United States. In this capacity, he is responsible for determinations made pursuant to certain provisions of the immigration laws. Among other things, he has the authority to determine, as he purportedly did here, based on "reasonable" grounds, that the "presence or activities" of a noncitizen "would have potentially serious adverse foreign policy consequences for the United States," or to "personally" determine that a noncitizen's protected expressive activity "would compromise a compelling United States foreign policy interest." Following such a determination, the government may initiate removal proceedings under 8 U.S.C. §§ 1227(a)(4)(C)(i), 1182(a)(3)(C)(iii) (the "Foreign Policy Ground"). In addition to his legal

responsibilities, he routinely transacts business in the Southern District of New York. His address is United States Department of State, 2201 C Street, NW, Washington, D.C. 20520.

13. Defendant-Respondent Pamela BONDI is named in her official capacity as the Attorney General of the United States. In this capacity, she routinely transacts business in this District and is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g). Defendant-Respondent BONDI's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

14. Defendant-Respondent Kristi NOEM is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a), and routinely transacts business in this District. Defendant-Respondent NOEM's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

15. Defendant-Respondent Todd M. LYONS is named in his official capacity as the Acting Director of Immigration and Customs Enforcement. As the Acting Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States and routinely transacts business in this District. He supervises Defendant-Respondent William P. JOYCE. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

16. Defendant-Respondent William P. JOYCE is named in his official capacity as the Acting Field Office Director of the New York Field Office for ICE within the United States Department of Homeland Security. In this capacity, he is responsible for the enforcement of the immigration laws in New York City and surrounding counties within New York, including against

Ms. Chung. Defendant-Respondent JOYCE's address is New York ICE Field Office Director, 26 Federal Plaza, New York, New York 10278.

JURISDICTION

17. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 2241; and U.S. Constitution, Article I, § 9, cl. 2 (the Suspension Clause).

18. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has authority under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–06, and additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.

19. Ms. Chung does not challenge an underlying order of removal or actions committed to unreviewable agency discretion. Ms. Chung is challenging Defendants-Respondents' pattern and practice of targeting individuals associated with protests for Palestinian rights for immigration enforcement in retaliation for their core protected political speech. This includes Defendants-Respondents' actions targeting Ms. Chung. No other forum exists to address these claims. Applying any statutory provision to curb jurisdiction in this case therefore would deprive Ms. Chung of any effective judicial review of her claims and a "serious constitutional question . . . would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim." *Webster v. Doe,* 486 U.S. 592, 603 (1988).

VENUE

20. Venue is proper in this Court under 28 U.S.C. §§ 2241(a), 1391(b)(2), and 1391(e)(1) because a substantial part of the events giving rise to Plaintiff-Petitioner's claims occurred in this district; Plaintiff-Petitioner resides in this District; Respondent Joyce resides in

this District; and the New York ICE Field Office, located in this District, is the office seeking Plaintiff-Petitioner's detention.

BACKGROUND

Ms. Chung's History in the United States and at Columbia

21. Ms. Chung is twenty-one years old and a junior at Columbia University.

22. Ms. Chung moved to the United States from South Korea with her parents and sibling at the age of seven. At the time, her father was pursuing graduate education in the United States.

23. In 2021, Ms. Chung adjusted her status to that of a lawful permanent resident.

24. The United States is Ms. Chung's one and only home. Her immediate family lives here, her friends are here, and her plans for the future all include living in the United States.

25. In fall 2022, Ms. Chung began her studies at Columbia University. Ms. Chung was ecstatic when she arrived on Columbia's campus. Her freshman fall semester went beyond her wildest expectations for her college experience.

26. Since arriving at Columbia, Ms. Chung has joined various student activities and organizations, including social organizations and student-run publications, such as the Columbia Undergraduate Law Review and Quarto, a literary magazine.

27. Ms. Chung has also pursued internships in the legal field, at The Urban Justice Center, The Innocence Project, and the Federal Defenders of New York.

28. Ms. Chung has excelled academically as well, maintaining a 3.99 GPA and making it onto the Dean's List every semester since she enrolled at Columbia.

Ms. Chung's Exercise of Free Speech Rights in Support of Palestinians

29. In addition to these other activities, over the past year and a half, Ms. Chung has felt moved to join efforts to advocate for Palestinian human rights.

30. Ms. Chung has also felt compelled to criticize Columbia for its handling of student protests supporting Palestinian human rights, including the punitive measures imposed on certain students.

31. In April 2024, like hundreds of her peers at Columbia, Ms. Chung visited the Gaza Solidarity Encampment on numerous occasions for discussions, events, community, and protest.[4] She did not make public statements to the press, liaise between student protesters and Columbia, or otherwise assume a high-profile role in any of the aforementioned activities. She was, rather, one of a large group of college students raising, expressing, and discussing shared concerns. Ms. Chung was not arrested or disciplined in relation to any events that took place during the Gaza Solidarity Encampment at Columbia.

32. In May 2024, Columbia commenced disciplinary proceedings against Ms. Chung in relation to an incident involving posting flyers on campus. The university accused Ms. Chung and other students of vandalism for attaching posters to Columbia buildings. The posters included photos of members of the Board of Trustees with the words: "Wanted for Complicity in Genocide."

33. Ms. Chung appeared at a disciplinary hearing to ask for an adjournment so she could obtain legal counsel. Columbia agreed to postpone the hearing that day but then did not reschedule. Columbia reviewed these allegations, and did not find Ms. Chung had violated any

[4] *See* Isha Banerjee, *Timeline of the Gaza Solidarity Encampment*, Colum. Spectator (May 2, 2024), *available at* https://www.columbiaspectator.com/news/2024/05/02/timeline-the-gaza-solidarity-encampment/.

applicable policies. By all appearances, her tenure at Columbia continued normally, and she had enjoyed her junior year of college up until the recent events detailed here.

34. Because of her experience with the disciplinary process, Ms. Chung had an interest in monitoring and speaking out about the university's response to pro-Palestine protests on campus, particularly insofar as the response was at times arbitrary and lacking in transparency.

35. In early 2025, Barnard College, which is affiliated with Columbia University, instituted disciplinary measures against multiple students for their involvement in events associated with advocacy for Palestinian rights.

36. First, on or before February 23, 2025, Barnard College expelled two students for their alleged participation in the disruption of a class on January 21, 2025.[5]

37. Then, on or before March 3, 2025, Barnard College expelled a third student, allegedly over the student's involvement in the student occupation of Hamilton Hall in April 2024.[6]

Ms. Chung Protests Columbia's Disciplinary Measures

38. By virtue of her experience with the disciplinary process and her discussions with other students, Ms. Chung was concerned about how Columbia was expelling and otherwise disciplining students, particularly for speech-related activities regarding Palestinian human rights, the very topic which had moved Ms. Chung to engage in speech-related activities, along with hundreds of other Columbia students.

39. To Ms. Chung, the university's actions towards her fellow students were unnecessarily punitive. Given this and Ms. Chung's prior experience facing disciplinary

[5] Isha Banerjee & Apurva Chakravarty, *Barnard student expelled for occupation of Hamilton Hall, CUAD says*, Colum. Spectator (Mar. 3, 2025), *available at* https://www.columbiaspectator.com/news/2025/03/03/barnard-student-expelled-for-occupation-of-hamilton-hall-cuad-says/.

[6] *Id.*

proceedings, she felt it was important to speak up publicly about the issue of discipline. Ms. Chung knew one of the students who had been expelled and felt personally invested in attending the protest.

40. Students and other protesters staged a sit-in inside and a demonstration outside an academic building (Milstein) at Barnard College on March 5, 2025, to demand that Barnard reverse the expulsions of the three students.[7] Ms. Chung did not organize the protest, speak to the media about it, or otherwise play a leading role. Rather, she was one participant among many protesting the university's handling of student discipline over Palestine-related speech.

41. At some point during the protest, in response to an apparent white supremacist bomb threat called in specifically to Milstein, New York City Police Department (NYPD) officers entered the Barnard campus.[8] The NYPD instructed protesters to exit the building and the courtyard. Ms. Chung happened to be at the front of the group of protesters outside of the Milstein building. Because she was at the front of the group while the NYPD was directing protesters to exit, she was pushed from both sides and was unable to follow police directives to move. The bomb threat was later determined to be fake.[9]

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[7] Sarah Huddleston, *Pro-Palestinian protesters stage sit in in Milstein lobby*, Colum. Spectator (Mar. 5, 2025), *available at* https://www.columbiaspectator.com/news/2025/03/05/pro-palestinian-protesters-stage-sit-in-in-milstein-lobby/.

[8] Jack Morphet, Amanda Woods, & Chris Nesi, *Anti-Israel protesters arrested at Barnard were mostly privileged youths, including woman whose family started Hamptons Jitney*, N.Y. Post (Mar. 6, 2025), *available at* https://nypost.com/2025/03/06/us-news/arrested-anti-israel-protesters-at-barnard-include-repeat-offender-woman-whose-family-started-hampton-jitney-bus-service/ (reporting that unknown individual emailed Barnard through anonymous dark web messaging service claiming to have placed pipe bomb inside college library targeting what sender referred to as "anti-white f—-t terrorist communist (sic)").

[9] Philip Marcelo, *Police responding to bomb threat clear pro-Palestinian protesters occupying Barnard College library*, Associated Press (Mar. 5, 2025), *available at* https://apnews.com/article/palestinian-protest-barnard-college-e16286f14d1265470c862b9f8b41c471.

42. Ms. Chung and others like her who were caught between the crowd behind them and the police in front of them were arrested and charged with obstruction of governmental administration.

43. During protests in New York City, it is common for police to arrest many protesters against whom charges are eventually dropped or dismissed.

44. The NYPD frequently uses the charge of obstructing governmental administration, a misdemeanor, during large protests.[10]

45. Ms. Chung had never been arrested before this event and has not been arrested since then. She did not participate in any unlawful activity on the day of her arrest or on any other day. The NYPD issued her a desk appearance ticket and released her that day.

46. On Friday, March 7, 2025, Columbia University placed Ms. Chung on interim suspension due to the arrest and restricted her campus access.

47. Ms. Chung's speech regarding the obligations that Columbia has under international law, the human rights of the Palestinian people, and university restrictions on speech is all protected by the First Amendment, including because it relates to matters of public concern. It is political speech at the core of the protection of the First Amendment.

The Government's Adverse Actions Against Ms. Chung

48. On Sunday, March 9, 2025, in the early evening, law enforcement officers describing themselves as Department of Homeland Security agents visited Ms. Chung's parents'

[10] *See* Department of Investigation, Investigation into NYPD's Response to George Floyd Protests (Dec. 2020), 9, 10, *available at* https://www.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf.

home outside of this District. These agents told Ms. Chung's parents that they were looking for her.

49. Nearly simultaneously, at approximately 7:02 p.m., Ms. Chung received a text message from a number previously unknown to her, saying: "Hi, Yunseo. This is Audrey from the police. My job is to reach out to you and see if you have any questions about your recent arrest and the process going forward. When are [sic] available for a phone call?"

50. Shortly thereafter, before 8:00 p.m., an attorney, Nayantara Bhushan, called the number from which the text had been sent and spoke with an individual who identified herself as "Audrey," an agent with Homeland Security Investigations (HSI), a sub-component of ICE. She advised Attorney Bhushan that, "due to the situation with the protesting, the State Department was at liberty to revoke [Ms. Chung's] LPR status." The agent stated that there was an administrative warrant for Ms. Chung's arrest.

51. At approximately 9:15 p.m. the same evening, Columbia Public Safety sent Ms. Chung an anonymous, unsigned email:

> "Dear [Ms. Chung], The U.S. Attorney's Office for the Southern District of New York has asked us to inform you that Homeland Security Investigations agents are seeking to make contact with you in connection with an administrative warrant for your arrest. Consistent with the University's practice, we wanted to share this information and their request with you. If you are represented by counsel, it may make sense for your lawyer to speak directly with DHS."

52. After 9:30 p.m., Attorney Bhushan received a call and a text message from Perry Carbone, who identified himself as an Assistant United States Attorney (AUSA) in the U.S. Attorney's Office for the Southern District of New York.

53. A different attorney for Ms. Chung, Naz Ahmad, then called AUSA Carbone at approximately 10:00 p.m. that evening, and left a voicemail, referencing Ms. Chung.

54. The next day, Monday, March 10, 2025, between 11:00 a.m. and 12:00 p.m., Attorney Ahmad spoke with AUSA Carbone concerning Ms. Chung.

55. AUSA Carbone explained that his office had been asked to assist HSI in "these matters." When asked, AUSA Carbone explained that his outreach was primarily in service of HSI's efforts rather than because of any contemplated prosecution against Ms. Chung. AUSA Carbone did not mention the existence of any judicial arrest warrant.

56. AUSA Carbone stated that the Secretary of State had revoked Ms. Chung's visa. Attorney Ahmad explained that Ms. Chung is a U.S. permanent resident, and that she is not present in the United States on a visa.

57. AUSA Carbone then stated that "the Secretary of State has revoked that," too.[11] Counsel for Ms. Chung offered that the Secretary of State does not have the unilateral authority to revoke permanent resident status. When Attorney Ahmad inquired further, AUSA Carbone could not explain the justification for the government's purported action.

58. Later that same day, AUSA Carbone texted Attorney Ahmad a copy of an administrative arrest warrant naming Ms. Chung. The administrative arrest warrant did not specify under which provision of the immigration law Ms. Chung would be subject to deportation.

59. The administrative warrant indicated that it was issued based upon a records check of databases and possibly other information.

60. On Thursday, March 13, 2025, between 9:00 p.m. and 10:00 p.m., law enforcement agents executed search warrants at two residences on Columbia University's campus, including Ms. Chung's dormitory.

[11] This set of facts resembles what HSI agents told Mahmoud Khalil, a lawful permanent resident and student at Columbia University's School of International and Public Affairs. HSI agents arrested him on March 8, 2025. *See* Am. Pet. ¶¶ 47-52, ECF No. 38, *M.K. v. Joyce*, No. 25-1935 (S.D.N.Y. Mar. 13, 2025).

61. The search warrants sought documents relating to Ms. Chung's affiliation with Columbia University, including any occupancy or lease agreements, travel records, and immigration records.[12]

62. The search warrant cited 8 U.S.C. § 1324, commonly known as the "harboring" statute. Based on its citation to this statute and the records sought, the warrant ostensibly stemmed from an investigation targeting Columbia University for "harboring" two noncitizen students that ICE was looking to arrest. Public statements by a Department of Justice official confirmed as much.[13]

63. Upon information and belief, these warrants were sought and obtained on false pretenses. The agents did not recover any documents from either search. The manner of execution suggests that the agents were searching for the two named students, including Ms. Chung, and needed a lawful basis to enter the residences in the hope of arresting the students on encounter.

The Government's Bid to Silence Advocacy in Support of Palestinian Rights

64. The government's retaliation against Ms. Chung comes in a broader context of retaliation against other noncitizens who have exercised their First Amendment rights. Officials at the highest levels of the federal government have made clear that they intend to use immigration enforcement to punish noncitizens who speak out in support of Palestinians and Palestinian rights, or who are perceived to have engaged in such speech.

[12] Another apartment was also searched that evening by law enforcement agents. A copy of the warrant left at this other apartment named Ms. Chung.

[13] Joseph Zuloaga, Daksha Pillai & Elliot Heath, *Department of Homeland Security agents search two University-owned residences, no arrests made*, Colum. Spectator (Mar. 14, 2025), *available at* https://www.columbiaspectator.com/news/2025/03/14/department-of-homeland-security-agents-search-two-university-owned-residences-no-arrests-made/ (reporting Deputy Attorney General Todd Blanche's statement "that the warrants were executed as part of a separate probe into whether the University was 'harboring and concealing illegal aliens' on campus").

65. Since fall 2023, communities across the United States began to mobilize in support of Palestinian human rights, including students on college campuses. Student demands have reflected criticism of U.S. government support for Israel's policies and military campaign in Gaza, and concern about the civilian death toll among Palestinians, particularly children and women. Many students also criticized their universities' involvement in the same, pushing for divestment from financial products or other investments associated with Israel.

66. Some opponents of these protest activities, including President Donald J. Trump, frequently mischaracterize peaceful protest and any speech in favor of Palestinian rights as inherently supportive of Hamas or terrorism and anti-Semitic.

67. When running for president in 2023 and 2024, then-candidate Trump repeatedly told his supporters that he would use immigration enforcement measures against noncitizen students engaged in protests supportive of Palestinians or critical of Israel's actions.

68. For example, at a rally in Las Vegas on October 28, 2023, then-candidate Trump pledged to "terminate the visas of all of those Hamas sympathizers, and we'll get them off our college campuses, out of our cities, and get them the hell out of our country."[14]

69. After the student movement to bring attention to atrocities in Gaza ramped up in spring 2024, then-candidate Trump promised campaign donors that he would deport student demonstrators supportive of Palestinian human rights. In response to the Gaza Solidarity Encampments, Trump spoke at an event in New York, stating: "One thing I do is, any student that

[14] Andrea Shalal and Susan Heavey, *Trump administration to cancel student visas of pro- Palestinian protesters*, Reuters (Jan. 29, 2025), *available at* https://www.reuters.com/world/us/trump-administration-cancel-student-visas-all-hamas-sympathizers-white-house-2025-01-29/.

protests, I throw them out of the country. You know, there are a lot of foreign students. As soon as they hear that, they're going to behave."[15]

70. Candidate Trump made clear that he intended to stifle advocacy for Palestinian rights, stating: "If you get me reelected, we're going to set that movement back 25 or 30 years."[16]

71. At least one cabinet level official currently in the Trump Administration expressed similar views during this time. On October 15, 2023, then-Senator Marco Rubio, referring to ongoing student protests in support of Palestinians, stated the U.S. government should "cancel the visa of every foreign national out there supporting Hamas and get them out of America."[17]

72. President Trump made clear his intent to deliver on these campaign promises within days of assuming office on January 20, 2025.

73. On the day he assumed office, President Trump signed Executive Order 14161, titled, "Protecting the United States from Foreign Terrorists and other National Security and Public Safety Threats."

74. The Executive Order declares the Trump Administration's intent to target noncitizens who hold "hateful" views and noncitizens who "bear hostile attitudes toward [America's] citizens, culture, government, institutions, or founding principles." The Executive Order does not define "hateful." Moreover, the broad term "hostile attitudes" towards the U.S. government could encompass any form of political dissent, including opposing the U.S.

[15] Josh Dawsey, Karen DeYoung & Marianne LeVine, *Trump told donors he will crush pro-Palestinian protestors*, Washington Post, (May 27, 2024), *available at* https://www.washingtonpost.com/politics/2024/05/27/trump-israel-gaza-policy-donors/.

[16] *Id.*

[17] Marco Rubio, *X* (Oct. 15, 2023, 4:24 p.m.), *available at* https://x.com/marcorubio/status/1713652113098539120. In the CNN interview he included as part of the same post, then-Senator Rubio stated that "people marching at universities" were "supporters of Hamas" and "need to go."

government's diplomatic, financial, military, and other forms of support for Israel's actions in Gaza, the West Bank, and beyond.

75. On January 29, 2025, President Trump signed Executive Order 14188. This Executive Order signaled clearly that the Administration would prioritize investigating "post-October 7, 2023 campus anti-Semitism." The order adopted a definition of antisemitism that includes constitutionally protected criticism of the Israeli government and its policies.[18] In a separate release accompanying Executive Order 14188, the White House described the measures it would undertake as specifically targeting "leftist, anti-American colleges and universities."[19] The White House stated that this Executive Order was a "promise" to "deport Hamas sympathizers and revoke student visas," sending a clear message to all "resident aliens who participated in pro-jihadist protests" that the federal government "will find you . . . and deport you."

76. Relying on these executive orders, groups and organizations opposed to Palestinian rights protests began publicizing names of individuals they wanted the U.S. government to deport. The groups compiled lists of students who were publicly identifiable as having organized Palestine-related protests, engaged in Palestine-related advocacy, or otherwise appeared to voice opinions supportive of Palestinians, and upon information and belief, submitted these tips to ICE's tip line.[20]

[18] This Executive Order reaffirms the definition of antisemitism adopted by Executive Order 13899, signed by President Trump on December 11, 2019. *See* 84. Fed. Reg. 68779 (Dec. 11, 2019) (including as example of antisemitism "claiming that the existence of a State of Israel is a racist endeavor").

[19] *Fact Sheet: President Donald J. Trump Takes Forceful and Unprecedented Steps to Combat Anti-Semitism*, The White House (Jan. 30, 2025), *available at* https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-forceful-and-unprecedented-steps-to-combat-anti-semitism/.

[20] Natasha Lennard & Akela Lacy, *The Columbia Network Pushing Behind the Scenes to Deport and Arrest Student Protestors*, The Intercept (Feb. 15, 2025), *available at* https://theintercept.com/2025/02/15/columbia-alumni-israel-whatsapp-deport-gaza-protesters/.

77. For example, Betar USA,[21] an extremist group that has openly embraced Islamophobia and indicated a desire to work with the far-right extremist group the Proud Boys, has published lists of individuals, including Columbia students and faculty, urging ICE to deport them under the executive orders. In a statement to a media outlet, Betar stated that it had "already submitted names of hundreds of terror supporters to the Trump Administration."[22] Betar USA's Executive Director has met with prominent lawmakers and claims credit for providing information that led to the arrest of another Columbia student who also held lawful permanent resident status.[23]

78. Canary Mission, an organization dedicated to targeting students, student organizations, and faculty who advocate for Palestinian rights, has similarly proclaimed it has identified "suspected foreign nationals" at Columbia University that it would like to see deported.[24]

79. Other organizations, such as the Middle East Forum, have indicated they are proactively sharing information with the U.S. government about noncitizens, without publicly identifying the specific individuals.[25]

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[21] Betar is a self-described "Zionist" movement. *See* https://betarus.org/. The Anti-Defamation League has labeled Betar USA an extremist group.

[22] Nicholas Liu, *A pro-Israel group says it gave the Trump administration a list of students to deport*, Salon.com (Jan. 31, 2025), *available at* https://www.salon.com/2025/01/31/pledged-to-deport-pro-palestine--and-a-pro-israel-group-has-already-made-a-list/.

[23] Anna Betts, *Pro-Israel group says it has 'deportation list' and has sent 'thousands' of names to Trump officials*, The Guardian (March 14, 2025), *available at* https://www.theguardian.com/us-news/2025/mar/14/israel-betar-deportation-list-trump.

[24] *Id.*

[25] Zolan Kanno-Youngs, Tyler Pager & Hamed Aleaziz, *As Trump Broadens Crackdown, Focus Expands to Legal Immigrants and Tourists*, N.Y. Times (Mar. 21, 2025), *available at* https://www.nytimes.com/2025/03/21/us/politics/trump-immigration-visa-crackdown.html.

80. Predictably, this resulted in widespread fear of retaliation for pro-Palestine speech among noncitizen students. Reporting has shown that the executive orders "already appear to be chilling political activism."[26]

81. On or before Wednesday March 5, 2025, Respondents adopted the Policy by which they would retaliate against and punish noncitizens, including Ms. Chung, for their actual or perceived advocacy for Palestinian rights.

82. Under the Policy, Respondent Rubio, the Secretary of State, and the Department of Homeland Security would seek to identify any noncitizen associated with protests supportive of Palestinian human rights. One way to target individuals would be to identify any noncitizen who had been arrested during protests associated with Palestinian rights advocacy on campuses, regardless of whether they had participated in the protest, their actual activity during any protest, the nature of any of the conduct charged, or the ultimate outcome or disposition of any of these arrests.[27]

83. Under the Policy, the Secretary of State would also identify noncitizen students or faculty generally associated with pro-Palestine protests on campuses, or who espoused views supportive of Palestinian human rights.

84. Under the Policy, Respondent Rubio is empowered to determine that a noncitizen's presence or activities in the United States would have potentially serious foreign policy

[26] Tovia Smith, *Foreign students say the threat of Trump's executive orders is getting real*, NPR (Mar. 3, 2025), *available at* https://www.npr.org/2025/03/03/nx-s1-5307187/trump-executive-order-visa-pro-palestinian-foreign-students-protests-hamas-hezbollah-israel.

[27] *See, e.g.,* Esther Wang, *A New Yorker and His Dog Were Swept Up in the Violent Arrests at the City College Protest*, Hell Gate (May 9, 2024), *available at* https://hellgatenyc.com/omar-neptune-dog-swept-up-city-college-arrests/ (describing how individual who resides near City College campus was arrested while walking dog near City College on same night NYPD entered City College campus in response to encampment, and reporting that a friend from neighborhood dog walking group was also arrested that evening).

consequences for the United States or to "personally" determine that a noncitizen's protected expressive activity would compromise a compelling U.S. foreign policy interest. These determinations would then permit the Department of Homeland Security to seek to detain and deport the protester.

85. On March 6, 2025, the Department of State confirmed the commencement of this Policy to the press.

86. Specifically, on March 6, 2025, the Department of State informed Fox News that it had revoked the student visa of a noncitizen who was "cited for criminal behavior in connection with Hamas-supporting disruptions. This individual was a university student. ICE will proceed with removing this person from the country."[28]

87. The Department of State confirmed it was planning to review internal databases to see whether any visa holders were arrested and had not been subjected to immigration enforcement.[29]

88. Additionally, on March 6, 2025, the Department of State announced a program called "Catch and Revoke," an artificial intelligence driven effort to "cancel the visas of foreign nationals who appear to support Hamas or other designated terror groups."[30]

89. Government officials confirmed that they would conduct an AI-assisted review of "tens of thousands of student visa holders' social media accounts," to look for evidence of "alleged

[28] Louis Casiano, Bill Melugin, *State Department revokes first visa of foreign student linked to "Hamas-supporting disruptions,"* Fox News (Mar. 6, 2025), *available at* https://www.foxnews.com/politics/state-department-revokes-first-visa-foreign-student-linked-hamas-supporting-disruptions.

[29] Marc Caputo, *Scoop: State Dept. to use AI to revoke visas of foreign students who appear "pro-Hamas,"* Axios (Mar. 6, 2025), *available at* https://www.axios.com/2025/03/06/state-department-ai-revoke-foreign-student-visas-hamas.

[30] *Id.*

terrorist sympathies."[31] The announcement did not clarify how the government would determine someone held "terrorist sympathies."

90. Government officials also said they would be reviewing civil lawsuits brought against organizations and individuals engaged in or perceived to be engaged in advocacy for Palestinian human rights that purport to "highlight foreign nationals allegedly engaged in antisemitic activity without consequence."[32]

History of the Foreign Policy Ground

91. Under the immigration laws, the Secretary of State has been granted wide latitude to refuse entry or deport noncitizens if he has "reasonable grounds to believe" that their presence or activities "would have potentially serious adverse foreign policy consequences for the United States." *See* 8 U.S.C. § 1227(a)(4)(C)(i) (referencing 8 U.S.C. § 1182(a)(4)(C)(i)).

92. The statute expressly forbids the Secretary of State from issuing a policy or decision to deny entry or initiate deportation based on a noncitizen's "past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States," unless the Secretary "personally determines" that admitting the individual or allowing them to remain in the United States would compromise a compelling U.S. foreign policy interest, 8 U.S.C. § 1182(a)(3)(C)(iii), and then notifies certain leaders in Congress of the person's identity and the reasons for the determination, 8 U.S.C. § 1182(a)(3)(C)(iv).

93. Legislative history confirms that Congress intended to limit the Executive's authority to exclude noncitizens based on their speech or beliefs. A Senate Committee report provides that for years "the United States has embarrassed itself by excluding prominent foreigners

[31] *Id.*

[32] *Id.*

from visiting the United States solely because of their political beliefs." The amendments which resulted in the current version of the law were intended "to take away the executive branch's authority to deny visas to foreigners solely because of the foreigner's political beliefs or because of his anticipated speech in the United States."[33]

94. In a separate House Conference report, Congress made clear that the authority to use this provision should be used "sparingly and not merely because there is a likelihood that an alien will make critical remarks about the United States or its policies," and that "the 'compelling foreign policy interest' standard [should] be interpreted as a significantly higher standard than the general 'potentially serious adverse foreign policy consequences standard.'"[34]

95. As an example, the same House Report on the amendment shared the case of the Shah of Iran as an example where his "mere entry into the United States could [have resulted] in imminent harm to the lives or property of United States persons abroad or to property of the United States government abroad."[35]

Existing DHS Guidance Concerning First Amendment Activity

96. In 2019, during the first Trump Administration, DHS Acting Secretary Kevin McAleenan issued guidance to all DHS employees specifically concerning First Amendment protected activities.[36] Per that memorandum, the prior Trump Administration directed that "DHS

[33] S. Rep. No. 100-75 at 11, 100th Cong., 1st Sess. (1987) (reprinted in 1990 U.S.C.C.A.N. 6784, 6794).

[34] H.R. Conf. Rep. 101-955, at 6793-94, 101st Cong., 2nd Sess. (1990) (reprinted in 1990 U.S.C.C.A.N. 6784).

[35] *Id.* at 6793.

[36] See Memorandum from Kevin McAleenan, Sec'y, U.S. Dep't of Homeland Sec., to all DHS Employees (May 17, 2019), *available at* https://www.dhs.gov/sites/default/files/publications/info_regarding_first_amendment_protected_activities_as1_signed_05.17.2019.pdf.

does not profile, target, or discriminate against any individual for exercising his or her First Amendment rights."[37]

97. In 2021, then-Secretary of Homeland Security Alejandro Mayorkas issued guidance to ICE providing that "[a] noncitizen's exercise of their First Amendment rights . . . should never be a factor in deciding to take enforcement action."[38]

98. As of the date of filing, DHS has yet to rescind the Mayorkas 2021 Guidance, or issue new guidance that addresses consideration of First Amendment rights as a factor in enforcement actions.

The Pattern of Government Retaliation Against Other Noncitizens

99. Since March 6, 2025, the Trump Administration has engaged in retaliatory immigration enforcement against individuals who, like Ms. Chung, engaged in protected First Amendment activity—more specifically, those engaged or perceived to have engaged in Palestinian rights advocacy or any criticism of Israel or of U.S. support for Israel's military campaign in Gaza.

Mahmoud Khalil

100. On March 8, 2025, HSI agents arrested Mahmoud Khalil in the vestibule of his apartment building near Columbia University, at approximately 8:30 p.m.[39] Mr. Khalil is a U.S.

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[37] *Id.*

[38] *See* Memorandum from Alejandro N. Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., to Tae D. Johnson, Acting Dir., U.S. Immigr. & Customs Enf't 5 (Sept. 30, 2021), *available at* https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf.

[39] McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15, 2025), *available at* https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html.

lawful permanent resident and master's student at Columbia's School of International and Public Affairs.[40]

101. During the arrest, HSI agents told Mr. Khalil's attorney that his student visa had been revoked.[41] His attorney informed the agents that he held a permanent resident card, and his wife showed the agents his permanent resident card.[42] The agents arrested Mr. Khalil anyway.

102. Mahmoud Khalil has been an outspoken advocate for Palestinian human rights.[43]

103. Mr. Khalil served as an advocate and negotiator on behalf of his fellow students at Columbia. Specifically, Mr. Khalil facilitated negotiations between members of the Gaza Solidarity Encampment and the Columbia University administration.[44] Mr. Khalil's role as a student negotiator was widely reported.[45]

104. After his arrest, multiple government officials made statements confirming that Mr. Khalil had been targeted for arrest for his speech and protest activity.

105. On March 9, President Trump issued a statement on Truth Social applauding ICE for arresting Mr. Khalil, whom he described as a "Radical Foreign Pro-Hamas Student on the campus of Columbia University." The President emphasized that Mr. Khalil's arrest was "the first of many to come," declaring that his Administration would not tolerate "students at Columbia and other universities across the country who have engaged in pro-terrorist, anti-Semitic, anti-

[40] *See* Am. Pet. ¶¶ 9, 20-21, ECF No. 38, *Khalil v. Joyce*, No. 25-cv-1935 (S.D.N.Y. Mar. 13, 2025).

[41] *Id.* ¶¶ 49, 51.

[42] *Id.* ¶¶ 22-28.

[43] *Id.*

[44] *Id.*

[45] Isa Irfan, *International students risk immigration status to engage in in Gaza protests*, Al Jazeera (May 17, 2024), *available at* https://www.aljazeera.com/news/2024/5/17/international-students-risk-immigration-status-to-engage-in-gaza-protests.

American activity," while promising to "find, apprehend, and deport these terrorist sympathizers from our country."[46]

106. The White House reposted President Trump's statement on the social media platform X, accompanied by a mugshot-style graphic featuring an image of Mr. Khalil. Surrounding the photo were the words "ARRESTED BY ICE ON MARCH 9, 2025" and "LED ACTIVITIES ALIGNED TO HAMAS."[47] The White House caption included the phrase "SHALOM, MAHMOUD" before quoting the President's statement.

107. Defendant-Respondent Rubio stated: "We will be revoking the visas and/or green cards of Hamas supporters in America so they can be deported."[48]

108. The same day, DHS issued a statement through its social media account on X, confirming Mr. Khalil's arrest by ICE was carried out "in support of President Trump's executive orders prohibiting anti-Semitism, and in coordination with the Department of State." The statement also accused Mr. Khalil of having "led activities aligned to [sic] Hamas, a designated terrorist organization," and asserted that both "ICE and the Department of State are committed to enforcing President Trump's executive orders and to protecting U.S. national security."[49]

109. On March 11, 2025, in response to an inquiry from The New York Times regarding Mr. Khalil's arrest, a spokesperson for the Administration reportedly stated that "United States'

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[46] Donald J. Trump, Truth Social (Mar. 10, 2025, 1:05 p.m.), *available at* https://truthsocial.com/@realDonaldTrump/posts/114139222625284782.

[47] The White House, *X* (Mar. 10, 2025, 1:34 p.m.), *available at* https://x.com/WhiteHouse/status/1899151926777749618.

[48] Marco Rubio, *X* (Mar. 9, 2025, 6:10 p.m.), *available at* https://x.com/marcorubio/status/1898858967532441945.

[49] Dep't of Homeland Sec., *X* (Mar. 9, 2025, 9:29 p.m.), *available at* https://x.com/DHSgov/status/1898908955675357314; *see* Surina Venkat, *Department of Homeland Security confirms arrest of Palestinian activist Mahmoud Khalil, SIPA '24*, Colum. Spectator (Mar. 10, 2025), *available at* https://www.columbiaspectator.com/news/2025/03/10/department-of-homeland-security-confirms-arrest-of-palestinian-activist-mahmoud-khalil-sipa-24/.

foreign policy includes combating antisemitism across the globe and that Mr. Khalil's residency in the nation undermines that policy objective."[50]

110. At a White House Press Briefing on March 11, Press Secretary Karoline Leavitt responded to questions about the arrest, asserting that the Secretary of State has "the right to revoke a green card or a visa for individuals who serve or are adversarial to the foreign policy and national security interest" and accusing Mr. Khalil of "siding with terrorists."[51]

111. In a press conference regarding Mr. Khalil on March 12, 2025, Secretary of State Rubio stated, "if you tell us that you are in favor of a group like this [Hamas], and if you tell us . . . I intend to come to your country as a student, and rile up all kinds of anti-Jewish . . . antisemitic activities," and "if you end up having a green card . . . we're gonna kick you out."[52]

112. On March 13, 2025, when asked to justify the government's actions, Troy Edgar, the Deputy Secretary of DHS, did not claim Mr. Khalil had broken any laws and instead asserted that Mr. Khalil was "agitating and supporting Hamas" by "put[ting] himself in the middle of the process of basically pro-Palestinian activity." When asked directly if "any criticism of the Israeli government [is] a deportable offense," if "any criticism of the United States [is] a deportable offense," if "any criticism of the government [is] a deportable offense," or if "protesting [is] a deportable offense," Edgar did not dispute those statements.[53] Edgar stated that had Mr. Khalil

[50] Minho Kim, *The U.S. Is Trying to Deport Mahmoud Khalil, a Legal Resident. Here's What to Know.*, N.Y. Times (Mar. 11, 2025, updated 11:09 a.m.), *available at* https://archive.ph/rD4sk#selection-1147.0-1159.428.

[51] *White House Daily Briefing*, C-SPAN (Mar. 11, 2025), *available at* https://www.c-span.org/program/white-house-event/white-house-daily-briefing/657022 (timestamp 10:16).

[52] *Secretary of State Marco Rubio Remarks to Press*, U.S. Dep't of State (Mar. 12, 2025), *available at* http://state.gov/secretary-of-state-marco-rubio-remarks-to-press/.

[53] Michel Martin & Destinee Adams, *DHS official defends Mahmoud Khalil arrest, but offers few details on why it happened*, NPR (Mar. 13, 2025), *available at* https://www.npr.org/2025/03/13/nx-s1-5326015/mahmoud-khalil-deportation-arrests-trump.

reported during his visa application process that he was "going to protest" after entering the United States, "We would never have let him in the country."[54]

113. Defendants-Respondents, including Secretary Rubio and ICE, are using the Foreign Policy Ground for removability against Mr. Khalil because of his beliefs, speech, or associations.[55]

114. Public statements by government officials, up to and including the President and Secretary of State, establish that Respondents are punishing, detaining, and attempting to silence Mr. Khalil because of his constitutionally protected past, current, or expected beliefs, statements, or associations.

115. Within hours of Mr. Khalil's arrest, ICE was arranging to move him to Jena, Louisiana, more than a thousand miles away from his home, his eight-months-pregnant U.S. citizen wife, his community, his lawyers, and the federal district court where he had promptly filed a habeas corpus petition challenging the constitutionality of his detention.

116. Federal government officials also made clear that Mr. Khalil was not the only noncitizen they had acted against.

Ranjani Srinivasan

117. On March 5, 2025, the Department of State informed a graduate student at Columbia University, Ranjani Srinivasan, that her F-1 student visa had been cancelled. The U.S. Consulate in Chennai did not explain why her visa had been cancelled.[56]

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[54] *Id.*

[55] *See* Ex. A, Renewed Motion to Dismiss or Transfer the Case, *Khalil v. Joyce*, No. 25-cv- 01963 (D.N.J.), ECF No. 90.

[56] Luis Ferre-Sadurni & Hamed Aleaziz, *How a Columbia Student Fled to Canada After ICE Came Looking for Her*, N.Y. Times (Mar. 15, 2025), *available at* https://www.nytimes.com/2025/03/15/nyregion/columbia-student-kristi-noem-video.html.

118. As noted above, on March 6, 2025, the Department of State confirmed to a news outlet that it had revoked the student visa of an individual who had been criminally cited in connection with a campus protest.[57] Upon information and belief, Ms. Srinivasan is that individual.

119. ICE agents visited Ms. Srinivasan's apartment the morning of March 7, 2025 and the evening of March 8, 2025.[58] Both times, Ms. Srinivasan's roommate refused the agents entry, as they did not have a valid judicial search warrant.[59] During the second visit, the agents emphasized that they would be back and that Ms. Srinivasan was "amenable to deportation."[60]

120. On March 9, 2025, Columbia informed Ms. Srinivasan that DHS had terminated her student status.[61]

121. On March 14, 2025, Secretary of Homeland Security Kristi Noem issued a post on X, accompanied by a video of Ranjani Srinivasan: "I'm glad to see one of the Columbia University terrorist sympathizers use the CBP Home app to self deport."[62]

122. That same day, the Department of Homeland Security issued a press release, discussing Ms. Srinivasan and another individual ICE had arrested.

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[57] *See supra* n.28.

[58] Luis Ferre-Sadurni & Hamed Aleaziz, *How a Columbia Student Fled to Canada After ICE Came Looking for Her*, N.Y. Times (Mar. 15, 2025), *available at* https://www.nytimes.com/2025/03/15/nyregion/columbia-student-kristi-noem-video.html.

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] Kristi Noem, *X* (Mar. 14, 2025, 11:01 a.m.), *available at* https://x.com/Sec_Noem/status/1900562928849326488.

123. The DHS press release described Ms. Srinivasan as having "advocat[ed] for violence and terrorism" and as being "involved in activities supporting Hamas, a terrorist organization," without providing any description or information to support such a claim.[63]

124. Later reporting confirmed that DHS's primary motivation for identifying and targeting Ms. Srinivasan was the agency's perception of her involvement in student protests at Columbia University, and critically that this perception was due to her arrest in April 2024, the same day that protesters who had taken over Hamilton Hall at Columbia were arrested, notwithstanding that she was not involved in the protest.[64] Ms. Srinivasan has since stated repeatedly that she was trying to return home after a departmental picnic that day, when she was caught between protesters and the police barricades.[65]

Leqaa Kordea

125. The March 14, 2025 DHS press release noted that the Newark ICE Field Office had detained another noncitizen, Leqaa Kordea. According to the press release, Ms. Kordea is from the West Bank, her student visa was terminated for lack of attendance at a university, and she had overstayed her expired visa.[66]

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[63] *VIDEO: Columbia University Student Whose Visa Was Revoked for Supporting Hamas and Terrorist Activities Used CBP Home App to Self-Deport*, Dep't of Homeland Sec. (Mar. 14, 2025), *available at* https://www.dhs.gov/news/2025/03/14/video-columbia-university-student-whose-visa-was-revoked-supporting-hamas-and.

[64] Luis Ferre-Sadurni & Hamed Aleaziz, *How a Columbia Student Fled to Canada After ICE Came Looking for Her*, N.Y. Times (Mar. 15, 2025), *available at* https://www.nytimes.com/2025/03/15/nyregion/columbia-student-kristi-noem-video.html ("The department did not state how the two summonses made her a terrorist sympathizer.").

[65] *Id.*

[66] *VIDEO: Columbia University Student Whose Visa Was Revoked for Supporting Hamas and Terrorist Activities Used CBP Home App to Self-Deport*, Dep't of Homeland Sec. (Mar. 14, 2025), *available at* https://www.dhs.gov/news/2025/03/14/video-columbia-university-student-whose-visa-was-revoked-supporting-hamas-and.

126. DHS made clear in its statement that they had detained Ms. Kordea because of her presence at protests at Columbia University in April 2024.[67]

127. While alluding to Ms. Kordea's arrest during the April 2024 protests, DHS did not address which criminal charges Ms. Kordea faced, the outcome of any charges, or whether she was meaningfully involved in the protest at all.

128. The press release notes that Ms. Kordea was detained by the ICE Newark Field Office. Upon information and belief, like Mr. Khalil, Ms. Kordea was also sent far away from any family residing on the East Coast—to Prairieland, Texas.

129. No government official has explained why Ms. Kordea, who presumably overstayed a student visa, must be detained and held hundreds of miles away from any family in the New Jersey area.

Dr. Badar Khan Suri

130. On March 17, 2025, ICE arrested a third individual, Dr. Badar Khan Suri, a post-doctoral fellow at Georgetown University. Agents arrested him outside his home in Arlington, Virginia, where he lives with his U.S. citizen wife and their three children.[68]

131. Later, DHS Spokesperson Tricia McLaughlin claimed, without substantiation, that Dr. Suri, an Indian national, "was spreading Hamas propaganda and promoting antisemitism on social media."[69]

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[67] *Id.*

[68] Kyle Cheney & Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico (Mar. 19, 2025), *available at* https://www.politico.com/news/2025/03/19/trump-deportation-georgetown-graduate-student-00239754.

[69] *Id.*

132. ICE has also reportedly invoked the Foreign Policy Ground for removal against Dr. Suri. However, no U.S. government official has explained how the presence or activities in the United States of a researcher on peacebuilding activities, who is married to a U.S. citizen with three children, and who has not engaged in any illegal activity, would have potentially serious adverse foreign policy consequences.

133. Within twenty-four hours of his arrest, ICE moved Dr. Suri to a "staging" center at the Alexandria, Louisiana airport.[70] Reporting suggests that Dr. Suri will be sent to Prairieland, Texas. No government official has explained why Dr. Suri must be held in detention, nor why he should be detained hundreds of miles away from his wife and their young children.

Momodou Taal

134. The government's retaliatory campaign has impelled noncitizen students who may otherwise be exposed to the Policy to seek protection from the courts. These defensive efforts have themselves only given rise to further government retaliation.

135. Momodou Taal, a doctoral student in Africana Studies at Cornell University came to the United States as an F-1 student visa holder. Beyond his academic work and other service at Cornell, Mr. Taal was active in student protests of U.S. foreign policy, particularly its military and financial support for Israel.[71]

136. As Mr. Taal became more prominent in his advocacy, groups and organizations opposed to Palestinian rights began calling on ICE to target, arrest, and deport Mr. Taal for his

[70] *Id.*

[71] *See* Pet. ¶ 32, ECF No. 1, *Taal et al. v. Trump et al*, No. 3:25-00335 (N.D.N.Y. Mar. 13, 2025).

participation in protest. On March 13, 2025, for example, Betar USA posted on X a "Deport Alert" that specifically named Mr. Taal as a target.[72]

137. In response to these impending threats, on March 15, Mr. Taal and two others filed a Complaint and Motion for Temporary Restraining Order in the Northern District of New York seeking an injunction against implementation of Executive Order 14188 and Executive Order 14188, and the application of the aforementioned Policy with respect to himself.[73] The court issued an order setting an in-person hearing on March 25, 2025 to address the merits of the Complaint and Motion.[74]

138. On the morning of March 19, as part of Defendants-Respondents' ongoing effort to enforce the Policy, and in response to Mr. Taal's efforts to seek the court's protection, two undercover law enforcement officers appeared in the parking lot of Mr. Taal's residence.[75] The same day, Mr. Taal filed an emergency motion, again seeking the court's protection via injunction.[76]

139. In response to Mr. Taal's effort at self-protection against retaliation, the government doubled down. In the early hours of March 21, attorneys from the U.S. Department of

[72] Betar USA (@Betar_USA), *X* (March 13, 2025, 10:38 a.m.), *available at* https://x.com/Betar_USA/status/1900194755050434943 ("Deport alert: Momodou Taal Affiliation: Cornell University Role: Graduate student Countries of Origin: Gambia and the United Kingdom"); *see also* Pet. ¶¶ 36-38, ECF No. 1, *Taal et al. v. Trump et al*, No. 3:25-00335 (N.D.N.Y. Mar. 13, 2025) (describing concerted campaign targeting Mr. Taal for deportation under the Policy).

[73] *See* Pet., ECF No. 1, *Taal et al. v. Trump et al*, No. 3:25-00335 (N.D.N.Y. Mar. 13, 2025).

[74] *See* ECF No. 19, *Taal et al. v. Trump et al*, No. 3:25-00335 (N.D.N.Y. Mar. 19, 2025).

[75] Malcolm Ferguson, *The Sinister Way Trump's DOJ Tried to Deport Cornell Student Protester*, New Republic (Mar. 21, 2025), *available at* https://newrepublic.com/post/193038/justice-department-deport-cornell-palestine-student-protester-momodou-taal.

[76] *Id.*

Justice emailed counsel for Mr. Taal, informing counsel that ICE intended to arrest and detain Mr. Taal, and inviting Mr. Taal to surrender to HSI.[77]

140. Later, government officials conceded in filings to the Northern District of New York that DHS agents had identified Mr. Taal by conducting a review of publicly available information in line with the directives of Executive Order 14188 on antisemitism. An HSI official confirmed to the Court that it had referenced this Executive Order when communicating with the State Department concerning Mr. Taal.[78]

University Response to Protests in Support of Palestinian Human Rights

141. Since 2023, communities across the country have mobilized in response to events in Gaza. Students have formed an important part of that movement, as they have in other social movements in U.S. history.

142. In April and May 2024, several Gaza Solidarity Encampments went up on dozens of campuses around the world. The encampments, and the students demands, often tied to divestment from financial products or other instruments connected to Israeli military actions in Gaza, received widespread news coverage.

143. Additionally, campus responses to the encampments, including any discipline imposed on students, also received widespread news coverage.

144. Federal government officials have made clear that they intend to punish colleges and universities for their handling of student protests.

145. As noted above, Executive Order 14188, issued on January 29, 2025, signaled very clearly that the Trump Administration would prioritize investigating "post-October 7, 2023

[77] *See* Letter Br., ECF No. 25, *Taal et al. v. Trump et al*, No. 3:25-00335 (N.D.N.Y. Mar. 19, 2025).

[78] *See* Dec. of Roy Stanley, Defendants' Opp'n to Motion for Preliminary Injunction and Temporary Restraining Order, ECF No. 30-2, *Taal et al. v. Trump et al.*, No. 3:25-00335 (N.D.N.Y. Mar. 19, 2025).

campus anti-Semitism." A specific target would be "leftist, anti-American colleges and universities."

146. On March 7, 2025, hours after ICE agents attempted to arrest Ms. Srinivasan, the Trump Administration announced it was cutting $400 million in grants to Columbia University, primarily in response to its handling of student protests.[79]

147. On March 13, 2025, high level Trump Administration officials sent a letter to Columbia University, issuing a list of demands in order for Columbia to continue to receive federal funding. The demands primarily concern discipline of students, and student activities on campus.[80]

148. On March 13, 2025, Columbia announced it had taken a wide range of disciplinary actions against students who had taken over Hamilton Hall in spring 2024.

149. On March 21, 2025, Columbia announced it was acquiescing to the Trump Administration's demands.[81]

Unlawful Use of the Foreign Policy Ground Against Ms. Chung

150. Upon information and belief, DHS and Respondent Rubio have invoked the Foreign Policy Ground for deportation against Ms. Chung.

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[79] This specific amount, $400 million, may carry special significance to President Trump regarding a prior real estate transaction in that amount that Columbia University declined to pursue with him. *See* Matthew Haag & Katherine Rosman, *Decades Ago, Columbia Refused to Pay Trump $400 Million*, N.Y. Times (Mar. 21, 2025), *available at* https://www.nytimes.com/2025/03/21/nyregion/trump-columbia-university-400-million.html.

[80] Letter from Josh Gruenbaum, Comm'r of Fed. Acquisition Serv. for the Gen. Servs. Admin., Sean R. Keveney, Acting General Counsel for the U.S. Dep't of Health & Hum. Servs., & Thomas E. Wheeler, Acting General Counsel for the U.S. Dep't of Education, to Dr. Katrina Armstrong, Interim President of Columbia University (Mar. 13, 2025), *available at* https://static01.nyt.com/newsgraphics/documenttools/6d3c124d8e20212d/85dec154-full.pdf.

[81] Advancing Our Work to Combat Discrimination, Harassment, and Antisemitism at Columbia, Colum. Univ. (Mar. 21, 2025), *available at* https://president.columbia.edu/sites/default/files/content/03.21.2025%20Columbia%20-%20FINAL.pdf.

151. HSI Agent "Audrey" told Ms. Bhushan that the Secretary of State had revoked Ms. Chung's LPR status.

152. AUSA Carbone also told counsel that the Secretary of State had revoked Ms. Chung's LPR status.

153. Additionally, other reporting indicates that the Secretary of State identified a second lawful permanent resident (aside from Mahmoud Khalil) to be deported pursuant to the same Foreign Policy Ground.[82]

154. Upon information and belief, Ms. Chung is the second lawful permanent resident identified in this reporting.

155. The Notice to Appear (NTA) initially issued to Mr. Khalil states that "the Secretary of State has determined that your presence or activities in the United States would have serious adverse foreign policy consequences for the United States," citing to 8 U.S.C. § 1227(a)(4)(C)(i) of the Immigration and Nationality Act (part of the Foreign Policy Ground). The NTA further states that "the Secretary of State has reasonable ground to believe that your presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States." And the I-261 form, which supplements the NTA, states that the Secretary of State "has determined that your activities and presence . . . would compromise a compelling US foreign policy interest."[83]

156. As applied to Ms. Chung, the Rubio Determination is motivated by Ms. Chung's constitutionally protected past, current, or expected beliefs, statements, or associations. Public

[82] Nick Miroff, *There Was a Second Name on Rubio's Target List*, The Atlantic (Mar. 13, 2025), *available at* https://www.theatlantic.com/politics/archive/2025/03/trump-deportation-green-card-holder-mahmoud-khalil/682037/.

[83] *See* Ex. A, Renewed Motion to Dismiss or Transfer the Case, *Khalil v. Joyce*, ECF No. 90, No. 25-cv- 01963 (D.N.J.).

statements by government officials, up to and including the Secretary of State, establish that Respondents-Defendants seek to punish, detain, and silence Ms. Chung because of her constitutionally protected past, current, or expected beliefs, statements, or associations.

157. The applicable statutes expressly prohibit removal based on a noncitizen's "past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States," unless the Secretary "personally determines" that not removing the noncitizen would compromise a compelling U.S. foreign policy interest. *See* 8 U.S.C. § 1227(a)(4)(C)(ii) (incorporating 8 U.S.C. § 1182(a)(3)(C)(iii)). Upon information and belief, Secretary Mario Rubio has not provided any notification regarding a determination under the Foreign Policy Ground concerning Ms. Chung, or anyone else, to the chairs of the House Foreign Affairs, Senate Foreign Relations, and House and Senate Judiciary Committees, as required by 8 U.S.C. § 1182(a)(3)(C)(iv).

158. The issuance of the administrative arrest warrant, pursuant to the Rubio Determination, is motivated by Ms. Chung's constitutionally protected past, current, or expected beliefs, statements, or associations.

Injury to Ms. Chung

159. Defendants-Respondents' actions have inflicted harm on Ms. Chung. The prospect of imminent detention, to be followed by deportation proceedings, has chilled her speech. Ms. Chung is now concerned about speaking up about the ongoing ordeal of Palestinians in Gaza as well as what is happening on her own campus: the targeting of her fellow students by the federal

government, the arbitrary disciplinary process she and others are undergoing, and the failure of the university to protect noncitizen students.[84]

160. Ms. Chung's immediate family resides in the United States. Ms. Chung has not lived in her birth country, South Korea, since the age of seven.

161. If Ms. Chung is detained and deported, she will be indefinitely separated from her family and community. Ms. Chung's parents reside in the continental United States, and her sister is set to start college in the United States in the fall.

162. Ms. Chung's life is centered in the United States. She is engaged on campus in various social and academic endeavors. She associates directly with other students who speak out on campus on a variety of topics of public import. If Ms. Chung is further detained, transferred far from family or friends, or deported, her ability to advocate for other students, or support Palestinian rights advocacy, will be greatly harmed.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
Retaliation, Discrimination, and Prior Restraint
(U.S. Constitution, First Amendment)

163. Plaintiff-Petitioner incorporates the preceding paragraphs as if fully set forth herein.

164. The Foreign Policy Ground laid out in 8 U.S.C. §§ 1227(a)(4)(C) and 1182(a)(3)(C)(iii) is unconstitutional as a facial matter, and also unconstitutional as applied to Yunseo Chung under the First Amendment.

[84] Murtaza Hussain, *Columbia University's Secret Disciplinary Process for Students Critical of Israel*, Drop Site News (Mar. 4, 2025), *available at* https://www.dropsitenews.com/p/columbia-university-gaza-student-disclinary-office.

165. The First Amendment to the U.S. Constitution provides in part that "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances." U.S. Const. Amend. I.

166. The First Amendment protects past and future speech. *Fairley v. Andrews*, 578 F.3d 518, 525 (7th Cir. 2009) ("The first amendment protects speakers from threats of punishment that are designed to discourage future speech."); *Saleh v. City of New York*, No. 06 Civ. 1007(SHS), 2007 WL 4437167, at *3 (S.D.N.Y Dec. 17, 2007) (noting that First Amendment retaliation claims can be brought "alleging punishment for past speech and those complaining of suppression of future speech"). The First Amendment protects "[t]he rights to complain to public officials and to seek administrative and judicial relief." *Gagliardi v. Village of Pawling*, 18 F.3d 188, 194 (2d Cir. 1994). The First Amendment applies to actions taken against people in custody, *Gill v. Pidlypchak*, 389 F.3d 379 (2d Cir. 2004), and those threatened with deportation, *Ragbir v. Homan*, 923 F.3d 53, 66 (2d Cir. 2019) (internal citations omitted*), cert. granted, remanded, and vacated sub nom. on other grounds*, *Pham v. Ragbir*, 141 S. Ct. 227 (2020).

167. It is well-settled that the First Amendment protects against retaliation even where the government "mistakenly *thought* that the [individual] had engaged in protected speech" because "the government's reason . . . is what counts[.]" *Hefferman v. City of Paterson*, 578 U.S. 266, 272 (2016). This rule applies where the government's factual mistake pertains to participation in protest activity, *Hughes v. City of New York*, 680 F. App'x 8, 9–10 (2d Cir. 2017) (applying *Hefferman* to protected association claim arising from protest); *see also Zehner v. Jordan-Elbridge Bd. of Educ.*, 666 F. App'x 29, 30 (2d Cir. 2016) (applying *Hefferman* to associational activity), and even where that individual did not actually engage in protected conduct. *See McNichol v. Falco*, No. 16-cv-2119, 2020 WL 5802492, at *11 (S.D.N.Y. Sept. 28, 2020) ("[A] perceived

protected activity, in the absence of an actual protected activity, can nevertheless give rise to an actionable First Amendment [] claim."); *Burgess v. Banasike*, 636 F. Supp. 3d 351, 359 (W.D.N.Y. 2022) ("[A] plaintiff need not actually engage in protected conduct[.]").

168. Speech on matters of public concern is entitled to the highest level of protection under the First Amendment. *See, e.g., Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1034 (1991) ("[S]peech critical of the exercise of the State's power lies at the very center of the First Amendment."). Moreover, government action that targets private speech based on the viewpoint taken by the speaker is an egregious form of content discrimination and presumptively unconstitutional. *See Matal v. Tam*, 582 U.S. 218, 234 (2017).

169. "To state a First Amendment retaliation claim, a plaintiff must show that: '(1) he has a right protected by the First Amendment; (2) the defendant's actions were motivated or substantially caused by [the plaintiff's] exercise of that right; and (3) the defendant's actions caused [the plaintiff] some injury.'" *Ragbir*, 923 F.3d at 66 (internal citations omitted).

170. In addition, "the Constitution prevents governmental actors from forbidding, or penalizing, speech that is protected under the first amendment . . . . Threatening penalties for future speech goes by the name 'prior restraint,' and a prior restraint is the quintessential first-amendment violation." *Fairley*, 578 F.3d at 525. To establish a claim of an unconstitutional "prior restraint" on future testimony, a plaintiff must show (1) that defendants presented "threats of punishment that are designed to discourage" the future testimony, (2) "that [plaintiff's] potential testimony . . . caused the . . .threats," and (3) that the defendants actions caused some injury. *Id.*

171. Ms. Chung's speech is protected by the First Amendment. Ms. Chung's past speech pertains to matters of prominent public concern, including the ongoing Israeli military campaign

in Gaza, U.S. government support therefor, U.S. academic institutions' financial investments associated with Israel, and campus responses to advocacy for the rights of Palestinians.

172. Defendants-Respondents are aware of Ms. Chung's speech and viewpoints. Defendants-Respondents are aware that Ms. Chung was arrested at a protest outside of a building at Barnard College relating to disciplinary proceedings for students involved in pro-Palestine protests. The arrests were covered in the press, and Ms. Chung was fingerprinted after the arrest, which would have alerted ICE to the arrest. Defendants-Respondents' actions come days after this protest and arrest.

173. There is a substantial causal connection between Ms. Chung's protected speech and Defendants-Respondents' adverse actions and threats. Defendants-Respondents have taken adverse actions against Ms. Chung that are motivated by her past and future exercise, and perceived exercise, of First Amendment-protected speech, and have taken action to silence and discourage Ms. Chung from speaking out in the future.

174. The Rubio Determination, the Policy, and the targeting of Ms. Chung violate the First Amendment because they:

a. Retaliate against and punish Ms. Chung for her past protected actual and perceived speech;

b. Prevent her from speaking now (through threat of detention and deportation);

c. Attempt to chill (through ongoing threat) or prevent (through eventual removal) her future speech in the United States;

d. Chill others from expressing views sympathetic to Palestinians or advocate for Palestinian rights.

175. These speech-related consequences are the point of the Policy, the Rubio Determination, and the government's subsequent actions against Ms. Chung, and are, in their own telling, the result of their disagreement with her protected speech and the viewpoint it expresses.

176. Defendants-Respondents' actions against Ms. Chung on the basis of Ms. Chung's protected speech do not serve a compelling state interest, and are not narrowly tailored to any legitimate government interest. Defendants-Respondents' actions operate as a prior restraint that will prevent Ms. Chung from engaging in protected speech.

SECOND CLAIM FOR RELIEF
Violation of the Due Process Clause
(U.S. Constitution, Fifth Amendment)

177. Plaintiff-Petitioner incorporates the preceding paragraphs as if fully set forth herein.

178. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

179. The Foreign Policy Ground and its implementation through the Policy, the Rubio Determination, and Defendants-Respondents' attempts to detain Ms. Chung violate her due process rights under the Fifth Amendment as unconstitutionally vague and violative of Ms. Chung's substantive and procedural due process rights.

180. The Fifth Amendment to the U.S. Constitution requires the government to provide individuals with fair notice of conduct that is prohibited to prevent arbitrary or discriminatory enforcement by government officials.

181. The Foreign Policy Ground in the INA is unconstitutionally vague, both as a facial

matter and as applied specifically to Ms. Chung—a lawful permanent resident, living peacefully in the country, who has engaged and may engage in speech advocating for Palestinian rights, and speech relating to university discipline of protesters advocating for Palestinian rights.

182. The arbitrary and wrongful Policy and Rubio Determination also violate Ms. Chung's substantive due process rights because they are so egregious and outrageous that they may be fairly said to shock the contemporary conscience. *County of Sacramento v. Lewis*, 523 U.S. 833, 848 n.8 (1998). Ms. Chung has no national or international profile; has not published material advancing her views; has not made public speeches; has not given interviews to the press; and has not taken actions that attracted national much less international attention. She has engaged alongside hundreds of her peers in local activism perceptible only to those in her immediate physical surroundings. There is no conceivable foreign policy impact from her speech acts whatsoever, unless the Policy and Rubio Determination are predicated on a theory of collective punishment under which noncitizen members of campus-based protests are punished for the Secretary's view of the aggregate adverse effect of the entire Palestine solidarity campus protest movement. Such a collective punishment theory cannot comport with due process.

183. The Fifth Amendment also requires fair, pre-deprivation process when a person's liberty hangs in the balance, another right Respondents-Defendants have so far denied Ms. Chung by attempting to detain her unlawfully.

184. The government's attempts to detain Ms. Chung are wholly unjustified. The government has not demonstrated that Ms. Chung—a long-term permanent resident of the United States, with no criminal convictions, and with parents and a sibling who also are permanent residents—needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further twin goals of (1) ensuring noncitizen's appearance during removal proceedings and

(2) preventing danger to the community). There is no credible argument for Ms. Chung's immigration detention, away from her friends and family.

THIRD CLAIM FOR RELIEF
Violation of the Immigration and Nationality Act, Administrative Procedure Act, and *Accardi* Doctrine
(5 U.S.C. § 706; 8 U.S.C. §§ 1227, 1182)

185. Plaintiff-Petitioner incorporates the preceding paragraphs as if fully set forth herein.

186. The government has adopted a policy of targeting noncitizens for removal based on First Amendment protected speech advocating for Palestinian rights. This policy is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction, 5 U.S.C. § 706(2)(A)-(B), and violates the *Accardi* doctrine and federal agencies' own rules, *see Accardi v. Shaughnessy*, 347 U.S. 260 (1954). In addition, the Secretary of State's determination that Ms. Chung's "presence or activities" would carry "potentially serious adverse foreign policy consequences for the United States" is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C. § 706(2)(A), (B), (C). The Secretary of State's personal determination that Ms. Chung's protected past, current, or expected speech, beliefs, statements, or associations may form a basis to deport her because her presence "would compromise a compelling United States foreign policy interest" is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C. § 706(2)(A), (B), (C).

FOURTH CLAIM FOR RELIEF
Violation of the Non-Delegation Doctrine

187. Plaintiff-Petitioner incorporates the preceding paragraphs as if fully set forth herein.

188. Congress has not provided the Executive Branch with intelligible principles from

which the Executive can implement 8 U.S.C. § 1227(a)(4)(C)(i)-(ii) or § 1182(a)(3)(C)(iii).

189. Congress has delegated discretionary authority that is standardless and unreviewable.

190. Congress has failed to provide standards or procedures to allow for judicial review of an agency's discretionary deprivation of a noncitizen's liberty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Vacate and set aside Defendants-Respondents' unlawful Policy of targeting noncitizens for removal based on First Amendment protected speech and advocacy for Palestinian rights;

3) Vacate and set aside the Rubio Determination as applied to Ms. Chung;

4) Enjoin Defendants-Respondents from taking any enforcement action against Ms. Chung arising directly or indirectly from an investigation into the applicability of the Foreign Policy Ground;

5) Enjoin Defendants-Respondents from detaining Ms. Chung pending these proceedings;

6) Enjoin Defendants-Respondents from transferring Ms. Chung away from the jurisdiction of this District pending these proceedings;

7) Enjoin Defendants-Respondents from removing Ms. Chung from the United States pending these proceedings;

8) Declare that Defendants-Respondents' actions to arrest, detain, or transfer Ms. Chung violate the First Amendment, the Due Process Clause of the Fifth Amendment, the INA, the APA, the *Accardi* doctrine, and the non-delegation doctrine.

9) Award reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and

10) Grant such further relief as the Court deems just and proper.

Dated: March 24, 2025
New York, NY

Respectfully submitted,

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**Admitted to practice in the Eastern District of New York; application to waive into the Southern District of New York pending.*

HUMAN RIGHTS FIRST
/s/
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I submit this verification on behalf of Plaintiff-Petitioner Yunseo Chung because I am one of her attorneys at the CLEAR Project and have communicated with the other attorneys on her case. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 24, 2025

/s Naz Ahmad

Naz Ahmad
CLEAR Project, Main Street Legal Services, Inc.
CUNY School of Law
2 Court Square West, 5th Floor
Long Island City, NY 11101

Exhibit B

Exhibit M

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Yunseo CHUNG,

Plaintiff-Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States of America; Marco RUBIO, in his official capacity as Secretary of State, U.S. Department of State; Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice; Kristi NOEM, in her official capacity as Secretary of Homeland Security, U.S. Department of Homeland Security; Todd M. LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; and William P. JOYCE, in his official capacity as Acting Field Office Director of the New York Immigration and Customs Enforcement Office,

Defendants-Respondents.

Case No. _____

DECLARATION OF NAYANTARA BHUSHAN

I, Nayantara Bhushan, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. My name is Nayantara Bhushan. I am a licensed attorney in good standing in the state of New York. I work at the Legal Aid Society.
2. I was connected to Yunseo Chung after her arrest on March 5, 2025.
3. On March 9, 2025, Ms. Chung received a text message from someone purporting to be from the police, asking to speak to her about her arrest. I have personally reviewed a screenshot of the text message.

4. I learned that simultaneously, Ms. Chung's parents had been visited by law enforcement agents at their home outside of New York City.
5. I called the number that had texted Ms. Chung in the evening on March 9, 2025.
6. This individual identified herself as Audrey, and as working with Homeland Security Investigations. I do not recall her last name.
7. She stated that HSI was looking for Ms. Chung and that they had an administrative warrant for her arrest.
8. When asked why there was an administrative warrant, the agent stated: "Due to the situation with the protesting, the State Department is at liberty to revoke her LPR status."
9. Later that same evening, I received a call and voicemail from someone identifying himself as an Assistant United States Attorney, Perry Carbone.
10. I passed his information along to Naz Ahmad, another attorney advising Ms. Chung.

Executed on: March 23, 2025

Respectfully submitted,

Nayantara Bhushan

Exhibit C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

RÜMEYSA ÖZTÜRK,

Petitioner,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; PATRICIA HYDE, in her official capacity as the New England Field Office Director for U.S. Immigration and Customs Enforcement; MICHAEL KROL, in his official capacity as HSI New England Special Agent in Charge, U.S. Immigration and Customs Enforcement; TODD LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; and MARCO RUBIO, in his official capacity as Secretary of State,

Respondents.

Case No. 1:25-cv-10695-DJC

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT

INTRODUCTION

1. Rümeysa Öztürk is an international PhD student who was arrested on March 25, 2025 when six plain-clothes federal officers surrounded her on the street just outside her home in Somerville, MA. Rümeysa screamed as a man in a hooded sweatshirt grabbed her. Several other officers encircled her and soon covered their faces with masks. Rümeysa was handcuffed and escorted with an officer holding each arm into an unmarked vehicle. For more than 20 hours, her friends, family and legal counsel could not locate or contact her. After an exhaustive search, they learned that she had ultimately been removed from Massachusetts and sent more than 1,300 miles away to an ICE detention facility in Louisiana.

2. Rümeysa has not been charged with any crime. Nor has there been any allegation that she is dangerous or a flight risk. Her arrest and detention appear to be based solely on her co-authorship of an op-ed in her school newspaper, *The Tufts Daily*, in March 2024. The piece criticized the University's dismissal of several resolutions that had been adopted by the undergraduate student Senate as "a sincere effort to hold Israel accountable for clear violations of international law." It articulated the goals of the resolutions and the disappointment of the authors before concluding with a request that the administration "trust in the Senate's rigorous and democratic process" and "meaningfully engage with and actualize the resolutions passed by the Senate."[1]

3. Rümeysa's arrest and detention are designed to punish her speech and chill the speech of others. Indeed, her arrest and detention are part of a concerted and systemic effort by Trump administration officials to punish students and others identified with pro-Palestine activism. When asked about Rümeysa's case, Secretary of State Marco Rubio confirmed revoking her visa, adding, "we gave you a visa to come and study and get a degree, not to become a social activist that tears up our university campuses."[2]

4. The Department of Homeland Security's website informs international students and the schools that host them that the termination of student status may result in a requirement to immediately depart the United States and may lead ICE agents to investigate whether a student has in fact departed. It makes no mention of arresting or detaining students based solely

[1] Rümeysa Öztürk, et al., *Op-ed: Try again, President Kumar: Renewing calls for Tufts to adopt March 4 TCU Senate resolutions*, THE TUFTS DAILY (Mar. 26, 2024), www.tuftsdaily.com/article/2024/03/4ftk27sm6jkj.

[2] *Secretary Rubio Defends Revoking Turkish Student's Visa*, C-SPAN (Mar. 27, 2025), https://www.c-span.org/clip/news-conference/secretary-rubio-defends-revoking-turkish-students-visa/5158479.

on the loss of status. In this case, however, DHS grabbed, arrested, and detained Rümeysa before she had received any notice of the revocation of her student visa or her student status.

5. Rümeysa's arrest and detention are not a necessary or usual consequence of the revocation of a visa. But like the revocation of her visa, her arrest and detention are designed to silence her, punish her for her speech, and ensure that other students will be chilled from expressing pro-Palestinian viewpoints. Her continued detention is therefore unlawful. Because the government's arrest and detention violate the First and Fifth Amendments to the United States Constitution and the Administrative Procedure Act, Rümeysa should be released.

JURISDICTION

6. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause); and 28 U.S.C. § 2201 (declaratory judgment).

7. Venue is proper because Petitioner had been detained in the District of Massachusetts by Immigration and Customs Enforcement (ICE) in Massachusetts and under the custody and control of ICE officials in Massachusetts at the time of the filing of this petition. Defendant Patricia Hyde is the Director of the Boston Field Office of ICE Enforcement and Removal Operations (ICE ERO), with authority over ICE ERO's operations and detainees in New England. Additionally, Defendant Michael Krol is the Special Agent in Charge for the Boston office of ICE Homeland Security Investigations (HSI), with authority over HSI operations and detainees in New England. At the time this petition was filed, and when the Court issued an order requiring notice prior to any transfer of the petitioner out of Massachusetts, ECF No. 3, Rümeysa had only recently been arrested in Massachusetts and had not left the custody

and control of Defendants Hyde and/or Krol in Massachusetts.[3] Sometime after receiving that order, ICE officials transferred Rümeysa to Louisiana without notifying the Court, her counsel, or Department of Justice counsel on this case. Meanwhile, Respondents withheld information about Rümeysa's location from Petitioner's counsel (and apparently, from Department of Justice attorneys on this case) until nearly 24 hours after she had been detained. On information and belief, the movement of Petitioner to other states is consistent with, and part of, ICE's pattern and practice of moving people detained for their speech to distant locations incommunicado and in secret to frustrate the ability of counsel to file habeas petitions on their behalf.

PARTIES

8. Petitioner Rümeysa Öztürk is a PhD student at Tufts University. She resides in Somerville, Massachusetts. Rümeysa entered the United States on an F-1 nonimmigrant student visa.

9. Respondent Donald J. Trump is named in his official capacity as the President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of State and Department of Homeland Security.

10. Respondent Patricia Hyde is named in her official capacity as the New England Field Office Director for U.S. Immigration and Customs Enforcement.

11. Respondent Michael Krol is named in his official capacity as the New England Special Agent in Charge for Homeland Security Investigations for U.S. Immigration and Customs Enforcement.

[3] Counsel for the government has stated that he "has been informed that Petitioner was detained outside of Massachusetts at the time the Petition was filed," but has not provided evidence of Rümeysa's location at the time the petition was filed, or suggested that she was not in the custody and control of ICE officials in Massachusetts, ECF No. 9 at 1 n.1.

12. Respondent Todd Lyons is named in his official capacity as the Acting Director for U.S. Immigration and Customs Enforcement. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States and is legally responsible for pursuing any effort to remove the Petitioner; and as such is a custodian of the Petitioner.

13. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner.

14. Respondent Marco Rubio is named in his official capacity as the United States Secretary of State. In this capacity, among other things, he has the authority to determine, based on "reasonable" grounds, that the "presence or activities" of a noncitizen "would have serious adverse foreign policy consequences for the United States." Following such a determination, DHS may initiate removal proceedings under 8 U.S.C. § 1227(a)(4)(C)(i).

FACTS

Rümeysa Öztürk

15. Rümeysa is a doctoral candidate in Child Study and Human Development at Tufts University. Rümeysa received a master's degree from Columbia University on a Fulbright scholarship.

16. On March 26, 2024, almost exactly one year before her arrest, Rümeysa co-authored an op-ed in *The Tufts Daily*. The piece criticized Tufts University's response to several student Senate resolutions concerning human rights violations in Gaza. The authors urged

meaningful engagement by the University administration with the Senate resolutions.

17. In February 2025, the website Canary Mission published a profile on Rümeysa, including her photograph, claiming she "engaged in anti-Israel activism in March 2024 . . . ." The profile describes Rümeysa as "a supporter of the Boycott, Divestment, Sanctions (BDS) movement." Its sole support for the contention that Rümeysa "engaged in anti-Israel activism" was a link and screenshots of the March 2024 opinion piece.

18. Canary Mission's publication caused Rümeysa to fear for her safety.

Rümeysa's Arrest Near Her Home and Continued Detention in Louisiana

19. On March 25, 2025 at approximately 5:15 p.m., a hooded, plainclothes officer approached Rümeysa near her Somerville apartment.[4]

20. The hooded officer grabbed Rümeysa by her wrists as she screamed. Additional officers surrounded Rümeysa as she pleaded with them. The officers placed Rümeysa in handcuffs and took her away in an unmarked vehicle.

21. Rümeysa's friends frantically tried to find out more information about what had happened to her. At approximately 10:02 p.m., counsel for Rümeysa filed a petition for writ of habeas corpus in this Court.

22. At approximately 10:55 p.m., the Court ordered that Rümeysa not be moved outside the District of Massachusetts without 48 hours' notice.

23. For more than 24 hours after her arrest, Rümeysa's friends, family and legal counsel did not hear from her and could not speak to her.

24. Because Rümeysa suffers from asthma, her family and friends worried that she

[4] WCVB Channel 5 Boston, *Surveillance shows Tufts graduate student detained*, YouTube (Mar. 26, 2025), https://www.youtube.com/watch?v=PuFIs7OkzYY.

could become ill without access to her medication.

25. On the evening of her arrest, and on the following day, counsel made numerous attempts to locate Rümeysa.

26. These efforts included contacting the offices of ICE ERO and ICE HSI. Counsel received no response to these inquiries. Counsel also called all major known ICE detention facilities in New England but were informed that Rümeysa was not there. Counsel attempted to locate her whereabouts through ICE's Online Detainee Locator System. Although the Detainee Locator indicated that Rümeysa was in ICE custody, the field for "Current Detention Facility" remained blank.

27. A representative of the Turkish consulate went personally to ICE offices in Burlington, Massachusetts and was reportedly informed that Rümeysa was not in that office and that ICE could not provide further information about her whereabouts. Department of Justice counsel on this matter also informed counsel for Rümeysa that they could not locate her.

28. Fearing Rümeysa could have had a medical episode, counsel contacted numerous area hospitals.

29. At around 3 p.m. on March 26, counsel moved this Court for an order requiring Respondents to report on Rümeysa's whereabouts and permit her counsel to speak with her.

30. Shortly thereafter, Department of Justice counsel informed Rümeysa's counsel that she had been moved to a staging facility in Alexandria, Louisiana to be transferred to South Louisiana.

31. Counsel was finally able to speak to Rümeysa late in the evening of March 26. Counsel learned that she had suffered an asthma attack while en route to Louisiana.

Rümeysa's Visa Revocation and Removal Proceedings

32. ICE uses the Student and Exchange Visitor Information System ("SEVIS") to maintain information on students who attend designated educational programs.

33. A letter dated March 25, 2025, and addressed but not provided to Rümeysa stated that her SEVIS designation "has been terminated pursuant to 237(a)(1)(C)(i) and/or 237(a)(4)(C)(i) of the Immigration and Nationality Act."[5] *See* **Exhibit A**. On information and belief, a copy of the letter was provided to Tufts University.

34. A Notice to Appear ("NTA") functions as a charging document for removal proceedings. *See* 8 U.S.C. § 1229(a).

35. On March 25 ICE provided Rümeysa with an NTA. *See* **Exhibit B**. The NTA alleges, in part, that Rümeysa's visa "was revoked by the United States Department of State" on March 21, 2025. The NTA charges Rümeysa as deportable under INA § 237(a)(1)(B).[6] The NTA provides no other basis for Rümeysa's removal.

36. On information and belief, Rümeysa received no notice that her visa had been revoked prior to her arrest or the service of the NTA.

37. The NTA indicates that Rümeysa is scheduled for an initial hearing on April 7, 2025 at 8:30 a.m.

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[5] Section 237(a)(1)(C)(i) provides: "Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted . . . or to comply with the conditions of any such status, is deportable." 8 U.S.C. § 1227(a)(1)(C)(i). Section 237(a)(4)(C)(i) provides: "An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable." 8 U.S.C. § 1227(A)(4)(c)(i).

[6] Section 237(a)(1)(B) provides: "Any alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is deportable." 8 U.S.C. § 1227(a)(1)(B).

Rümeysa's Arrest and Detention are Part of the Trump Administration's Policy of Retaliating Against Noncitizens Who Advocate for Palestinian Rights

38. Rümeysa's arrest and detention reflect and are a part of the Trump administration's concerted effort to silence protected political speech.

39. In the fall of 2023, thousands of students across the U.S. from a wide range of racial, ethnic, religious, and socioeconomic backgrounds began organizing on their campuses, many criticizing what they saw as the steadfast support of their universities and the United States government for Israel's policies. Opponents of these students' messages—including President Trump—have characterized their message in favor of Palestinian rights as inherently supportive of Hamas and antisemitic.

40. During his campaign for re-election, President Trump repeatedly vowed to use visa revocations as a tactic to pursue his policy of silencing pro-Palestinian activities on university campuses.

41. For example, at a rally in Las Vegas on October 28, 2023, Trump pledged to "terminate the visas of all of those Hamas sympathizers, and we'll get them off our college campuses, out of our cities, and get them the hell out of our country."

42. In the spring of 2024, Trump promised campaign donors that he would deport pro-Palestinian student demonstrators to get them to "behave." Upon information and belief, at a round table event in New York, he stated, "One thing I do is, any student that protests, I throw them out of the country. You know, there are a lot of foreign students. As soon as they hear that, they're going to behave."

43. Similarly, in a social media post on his official X account on October 15, 2023, then-Senator Marco Rubio, referring to ongoing student protests in support of Palestinians, stated

the U.S. should "cancel the visa of every foreign national out there supporting Hamas and get them out of America."

The Trump Administration Announces its Policy to Target Speech of Noncitizens

44. Shortly after assuming office on January 20, 2025, President Trump signed two executive orders aimed at fulfilling the above campaign promises: Executive Order 14161, titled "Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats," signed on January 20, 2025, and Executive Order 14188, titled "Additional Measures to Combat Anti-Semitism," signed on January 29, 2025.

45. Executive Order 14161 states that it is the United States' policy to "protect its citizens" from noncitizens who "espouse hateful ideology." It further articulates the administration's desire to target noncitizens who "advocate for, aid, or support designated foreign terrorists and other threats to our national security," those who hold "hateful" views, and those who "bear hostile attitudes toward [America's] citizens, culture, government, institutions, or founding principles." The order's overly broad framing of "hostile attitudes" towards the American government could encompass any form of political dissent, including advocacy for Palestinian human rights.

46. Executive Order 14188 states that, in order to "combat campus anti-Semitism," the administration will target for investigation "post-October 7, 2023, campus anti-Semitism." The order adopts a definition of antisemitism that, applied to speech, would punish constitutionally protected criticism of the Israeli government and its policies. In a fact sheet accompanying Executive Order 14188, the White House described the measure as "forceful and unprecedented," specifically targeting "leftist, anti-American colleges and universities." It framed the order as a "promise" to "deport Hamas sympathizers and revoke student visas,"

sending a clear message to all "resident aliens [sic] who participated in pro-jihadist protests" that the federal government "will find you… and deport you."

47. In or around February 2025, Respondents began implementing a policy by which they would retaliate against and punish noncitizens like Rümeysa for their constitutionally protected speech (the Policy). Under the Policy, Secretary of State Marco Rubio would revoke the visas or green cards of individuals who expressed support for Palestinian rights. These revocations would then permit the Department of Homeland Security to arrest, detain and deport such individuals.

48. On March 6, 2025, Secretary Rubio posted to X: "Those who support designated terrorist organizations, including Hamas, threaten our national security. The United States has zero tolerance for foreign visitors who support terrorists. Violators of U.S. law—including international students—face visa denial or revocation, and deportation."

49. Additionally, certain groups began publicizing the names of pro-Palestinian activists they wanted the government to deport. Specifically, these groups compiled lists of students and faculty who had engaged in Palestine-related advocacy and, upon information and belief, submitted these lists to ICE's tip line, or publicly flagged names to U.S. Government official accounts.

50. As illustrated *infra*, one way that Secretary Rubio is implementing the Policy is by wrongly invoking 8 U.S.C. § 1227(a)(4)(C)(i) (hereinafter "the Foreign Policy Ground"), which provides that "An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable." This Provision expressly prohibits the Secretary of State from excluding or conditioning entry based on a noncitizen's "past, current, or

expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States," unless the Secretary personally certifies to Congress that admitting the individual would compromise a compelling U.S. foreign policy interest. *See* 8 U.S.C. § 1227(a)(4)(C)(ii) (citing 8 U.S.C. § 1182(a)(3)(C)(iii)).

51. Legislative history makes clear that Congress intended to limit the Executive's authority to exclude noncitizens based on their speech or beliefs. When the Moynihan Amendment was passed in 1987, the Senate Committee warned that "[f]or many years, the United States has embarrassed itself by excluding prominent foreigners from visiting the United States solely because of their political beliefs." The amendment was intended "to take away the executive branch's authority to deny visas to foreigners solely because of the foreigner's political beliefs or because of his anticipated speech in the United States," while affirming "the principles of the First Amendment." (S. Rep. No. 100–75 at 11, 100th Cong., 1st Sess. (1987), reprinted in 133 Cong. Rec. S2326 (1987)).

52. Congress further evinced its intent to restrict the Executive's ability to exclude foreign speakers by asserting that such exclusions should not be based solely on "the possible content of an alien's speech in this country," that the Secretary's authority to determine that entry would compromise foreign policy interests should be used "sparingly and not merely because there is a likelihood that an alien will make critical remarks about the United States or its policies," and that the "compelling foreign policy interest" standard should be applied strictly. (H.R. Conf. Rep. No. 101-955, 101st Cong., 2nd Sess. (1990), reprinted in 1990 U.S.C.C.A.N. 6784, 6794).

The Government Begins to Implement its Policy of Intimidation and Retaliation

53. On March 5, 2025, the State Department revoked the student visa of Ranjani Srinivasan, an Indian national and doctoral student at Columbia, under the Foreign Policy Ground. Srinivasan had previously expressed support for the rights of Palestinians. Two days later, federal immigration agents showed up at her apartment looking for her, but she did not open the door. They showed up again the following night, but she was not home. On March 13, 2025, agents returned to her home with a judicial warrant. DHS released a statement characterizing Srinivasan as a terrorist sympathizer and accused her of advocating violence and being "involved in activities supporting Hamas," but the agency has not provided any evidence for its allegations, and Srinivasan disputes them.

54. On March 8, 2025, ICE agents in plain clothes arrested Mahmoud Khalil, a legal permanent resident and recent Columbia University graduate, at his Columbia University student housing. Khalil had previously expressed support for the rights of Palestinians. The agents initially told Khalil that they were detaining him because his student visa had been revoked by the State Department, but when Khalil's attorney informed the agents that he was a green card holder, the agents responded that the State Department had revoked Khalil's green card, too. The Notice to Appear later issued by the government to Khalil cites the Foreign Policy Ground as the basis for his arrest and removal. The agents handcuffed Khalil and placed him in an unmarked vehicle. Over the course of that evening and into the early hours of the following morning, Khalil would first be taken to an ICE field office in Manhattan and then to a detention facility in New Jersey, returning to New York to board a flight to Texas and finally to Louisiana. To date, Khalil remains detained in Louisiana.

55. On March 8, 2025, ICE signed an administrative arrest warrant for Yunseo Chung, a legal permanent resident and Columbia University student who has lived in the United States since she was seven. Chung had previously expressed support for the rights of Palestinians. On March 10, a federal law enforcement official advised Chung's attorney that her legal permanent resident status had been revoked. On March 13, federal law enforcement agents executed a judicial search warrant at Chung's dormitory. Chung filed a complaint and petition for habeas corpus in the United States District Court for the Southern District of New York, and sought, among other things, a temporary restraining order preventing immigration enforcement officials from taking her into custody or transferring her out of the district. On March 25, 2025, the court issued such an order. *Chung v. Trump et al.*, Case No. 25-cv-02412, ECF 19 (S.D.N.Y.).

56. On March 17, 2025, ICE arrested Badar Khan Suri, an Indian national and postdoctoral fellow at Georgetown University's School of Foreign Service. Suri's student visa was revoked pursuant to the Foreign Policy Ground. In a statement given to Fox News, DHS asserted that Suri had "spread[] Hamas propaganda," "promot[ed] antisemitism on social media," and had "close connections to a known or suspected terrorist, who is a senior advisor to Hamas." Suri has no criminal record and has not been charged with a crime. DHS's allegations appear to reference the fact that Suri's father-in-law, Ahmed Yousef, is a former advisor to Ismael Haniyeh, the Hamas leader assassinated by Israel last year in Iran. But Yousef left his position in the Hamas-run government in Gaza more than a decade ago and has publicly criticized Hamas's decision to attack Israel on October 7, 2023. DHS has not alleged that Suri himself has taken any action on behalf of Hamas. To date, Suri remains in immigration detention.

57. On March 21, 2025, the Justice Department wrote to counsel for Momodou Taal, a student visa holder and doctoral candidate at Cornell University, to convey ICE's intention to serve a deportation notice on Taal and request that Taal voluntarily surrender to ICE custody. Taal had previously expressed support for the rights of Palestinians. The Justice Department wrote to Taal's lawyers after Taal sought a temporary restraining order to enjoin DHS from attempting to detain, remove, or otherwise enforce the Executive Orders against him. In response to that application, the government informed the court that the State Department had revoked Taal's student visa.

High-Level Government Officials Confirm Rümeysa Was Targeted Because of Her Speech

58. Multiple government officials, including Secretary of State Marco Rubio, have confirmed that Rümeysa was targeted for arrest and detention solely because of her actual or perceived First Amendment activity.

59. On March 21, 2025, the day Rümeysa's visa was revoked according to her NTA, Secretary Rubio announced on X.com: "We will continue to cancel the visas of those whose presence or activities have potentially serious adverse foreign policy consequences for our country . . . And we will continue to use every legal means available to remove alien enemies."

60. After Rümeysa's arrest, a DHS spokesperson stated, "DHS and ICE investigations found Öztürk engaged in activities in support of Hamas, a foreign terrorist organization that relishes the killing of Americans . . . . A visa is a privilege, not a right. Glorifying and supporting terrorists who kill Americans is grounds for visa issuance to be terminated. This is commonsense security."[7]

[7] Mike Toole & Beth Germano, *Tufts University student taken into immigration custody by federal agents in Massachusetts* (Mar. 27, 2025), https://www.cbsnews.com/boston/news/tufts-university-graduate-student-somerville-ice/.

61. In a March 27 news conference, Secretary Rubio reaffirmed that the reason for Rümeysa's arrest and detention washer actual and perceived pro-Palestinian speech and political activity.[8] At the conference, a member of the media asked Secretary Rubio to explain the specific actions that led to Rümeysa's visa being revoked. The Secretary responded "oh, we revoked her visa," and continued:

> We gave you a visa to come and study and get a degree not to become a social activist that tears up our university campuses. And if we've given you a visa and then you decide to do that we're going to take it away. [. . .] We don't want it. We don't want it in our country. Go back and do it in your country. But you're not going to do it in our country."

62. Secretary Rubio added: "Every time I find one of these lunatics I take away their visa," suggesting that hundreds of visas have been revoked in furtherance of the administration's Policy of targeting noncitizens for their pro-Palestinian speech.[9]

DHS Did Not Follow Ordinary Procedure

63. DHS maintains a website, titled "Study in the States," which "explains the student visa process, enhances coordination among government agencies, and keeps international students and the U.S. academic community better informed about pertinent rules and regulations." *About*, Study in the States, U.S. Dep't of Homeland Sec'y (last accessed Mar. 27, 2025), https://studyinthestates.dhs.gov/footer/about.

64. According to Study in the States, student visa holders must maintain their status, which means "Fulfilling the purpose for why the Department of State issued you your visa" and

[8] *Secretary Rubio Defends Revoking Turkish Student's Visa*, C-SPAN (Mar. 27, 2025), https://www.c-span.org/clip/news-conference/secretary-rubio-defends-revoking-turkish-students-visa/5158479.

[9] *See* Madeline Halpert, *Marco Rubio says US revoked at least 300 foreign students' visas*, BBC (Mar. 27, 2025), https://www.bbc.com/news/articles/c75720q9d7lo; *see also Secretary of State Marco Rubio Remarks to the Press*, U.S. Dep't of State (March 28, 2025), https://www.state.gov/secretary-of-state-marco-rubio-remarks-to-the-press-3/.

"Following the regulations associated with that purpose." *Maintaining Status*, Study in the States, U.S. Dep't of Homeland Sec'y (last accessed Mar. 27, 2025), https://studyinthestates.dhs.gov/students/maintaining-status. For F-1 student visa holders, that purpose is "to study." *Id.*

65. The Study in the States website lists consequences that can occur "[w]hen an F-1/M-1 SEVIS record is terminated," including, the student "loses all on-and/or off-campus employment authorization," the student "cannot re-enter the United States on the terminated SEVIS record," and ICE agents "may investigate to confirm the departure of the student." *Terminate a Student*, Study in the States, U.S. Dep't of Homeland Sec'y (last accessed Mar. 27, 2025), https://studyinthestates.dhs.gov/sevis-help-hub/student-records/completions-and-terminations/terminate-a-student. Termination may require an F-1 visa holder to immediately depart the United States. *Id.*

66. DHS does not indicate on its Study in the States website that loss of student status may result in immediate arrest and detention. DHS departed from these expected procedures in arresting Rümeysa without warning or notice about the change in her student status.

CLAIMS FOR RELIEF

FIRST CLAIM
Violation of the First Amendment to the United States Constitution

67. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

68. The First Amendment to the United States Constitution provides in part that "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances." U.S. Const. Amend. I. The First

Amendment protects past, present, and future speech, including speech by noncitizens.

69. The Policy, and the government's implementation of the Policy as to Rümeysa—specifically, the government's targeting, arrest, transfer, and ongoing detention of Rümeysa—violate the First Amendment because they:

a. retaliate against and punish Rümeysa's past protected speech;

b. prevent her from speaking now (through detention);

c. attempt to chill (through past punishment and ongoing threat) or prevent (through eventual removal) her future speech in the United States;

d. deprive those with whom she would speak of her present and future speech on matters of public concern; and

e. chill other individuals who express support for Palestinian rights.

70. These speech-related consequences are not side effects of an action with some other purpose; they are, instead, the purpose of the Policy and the government's actions implementing the Policy as to Rümeysa and those similarly situated. In government officials' own telling, the Policy is intended to silence viewpoints with which the Trump administration disagrees.

SECOND CLAIM
Violation of Fifth Amendment Right to Due Process

71. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

72. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

73. The government's detention of Rümeysa is unjustified. The government has not

demonstrated that Rümeysa—who has no criminal history, has close ties in the Tufts community, and wishes to complete her doctoral degree at Tufts—needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Rümeysa cannot be safely released back to her community.

74. Rümeysa's detention is also punitive and bears no "reasonable relation" to any legitimate purpose for detaining her. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("nature and duration" of civil confinement must "bear some reasonable relation to the purpose for which the individuals is committed"); *Zadvydas*, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Her "detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring).

75. Rümeysa's arrest and detention under the Policy violate due process limitations on civil detention because they are designed to punish and silence her speech with which the government disagrees, and to chill others from expressing these viewpoints—impermissible bases for taking away individual liberty.

76. The Policy and its implementation as to Rümeysa violate her right to due process for additional reasons as well. The government's policy of applying the Foreign Policy Ground to make such determinations concerning people like Rümeysa—who was in valid F-1 status, living peacefully in the country—is unconstitutionally vague where it is due to constitutionally protected speech.

THIRD CLAIM
Violation of the Administrative Procedure Act and the *Accardi* Doctrine

77. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

78. The government has adopted a policy of targeting noncitizens for arrest, detention and removal based on First Amendment-protected speech advocating for Palestinian rights. This policy is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C. § 706 (2)(A), (B), (C), and violates the *Accardi* doctrine and federal agencies' own rules, *see Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

79. In addition, Rümeysa's SEVIS termination notice invoked the Foreign Policy Ground.

80. In order to be invoked in an instance involving a noncitizen's past statements, the Foreign Policy Ground requires the Secretary of State to determine that a person's "presence or activities would potentially have serious adverse foreign policy consequences for the United States" and "would compromise a compelling United States foreign policy interest."

81. Here, there is no indication that the Secretary of State ever made such a determination.

82. To the extent the Secretary of State failed to make such a determination, the invocation of the Foreign Policy Ground is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C § 706 (2)(A), (B), (C).

83. To the extent the Secretary of State purported to make such a determination, it is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C § 706 (2)(A), (B), (C).

FOURTH CLAIM
Release on Bail Pending Adjudication

84. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

85. Federal courts sitting in habeas possess the "inherent power to release the petitioner pending determination of the merits." *Savino v. Souza*, 453 F. Supp. 3d 441, 454 (D. Mass. 2020) (quoting *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972) (per curiam)); *see also Da Graca v. Souza*, 991 F.3d 60 (1st Cir. 2021). Federal courts "have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in the criminal habeas case." *Id.* (quoting *Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001)). "A court considering bail for a habeas petitioner must inquire into whether the habeas petition raise[s] substantial claims and [whether] extraordinary circumstances exist[ ] that make the grant of bail necessary to make the habeas remedy effective." *Id.* (quoting *Mapp*, 241 F.3d at 230) (cleaned up).

86. This petition raises substantial constitutional and statutory claims challenging Rümeysa's retaliatory detention. Furthermore, extraordinary circumstances exist that make Rümeysa's release essential for the remedy to be effective. Even if she is ultimately freed, as long as Rümeysa remains in ICE's physical custody, she will be prevented from speaking freely and openly and her unlawful detention will serve to chill others. In addition, Rümeysa has asthma and has already suffered an asthma attack while in ICE custody, raising concerns about future asthma attacks. Finally, Rümeysa's confinement in Louisiana prevents her from

adequately litigating her removal proceedings by impeding her access to counsel and evidence located within the District of Massachusetts.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1) Assume jurisdiction over this matter;

1) Require Respondents to return Petitioner to this District pending these proceedings;

2) Order the immediate release of Petitioner pending these proceedings;

3) Declare that Respondents' actions to arrest and detain Petitioner violate the First Amendment and the Due Process Clause of the Fifth Amendment;

4) Vacate and set aside Respondents' unlawful Policy of targeting noncitizens for arrest, detention and removal based on First Amendment-protected speech advocating for Palestinian rights;

5) Restore Petitioner's SEVIS record;

6) Enjoin Respondents from taking any enforcement action against Petitioner arising directly or indirectly from an investigation into the applicability of the Foreign Policy Ground;

7) Award reasonable attorneys' fees and costs for this action; and

8) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

[signature block on next page]

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Counsel for Petitioner

**Pro hac vice application forthcoming*

Dated: March 28, 2025

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2025, a true copy of the above document was filed via the Court's CM/ECF system and that a copy will be sent automatically to all counsel of record.

March 28, 2025

/s/ Jessie J.Rossman
Jessie J.Rossman

Exhibit D

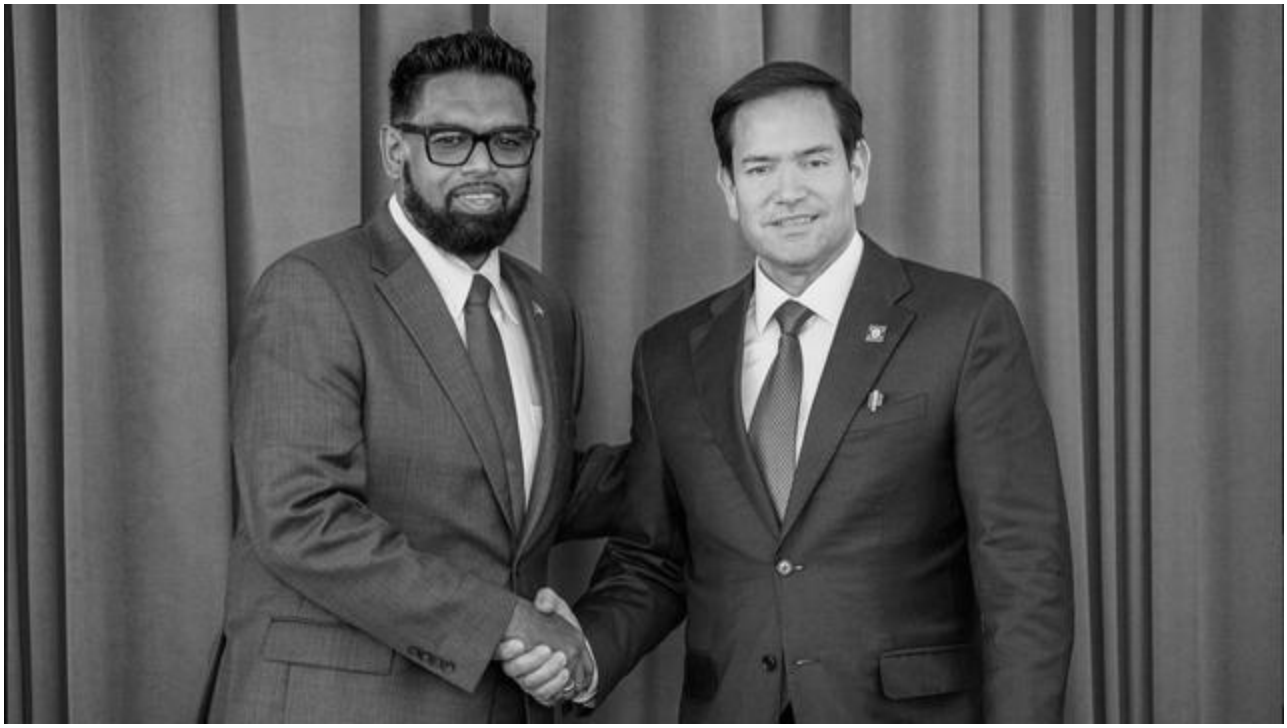
An official website of the United States Government Here's how you know

Secretary of State Marco Rubio and Guyanese President Irfaan Ali at a Joint Press Availability

REMARKS

MARCO RUBIO, SECRETARY OF STATE
STATE HOUSE
GEORGETOWN, GUYANA

MARCH 27, 2025



MODERATOR: Please remain standing. You may be seated. You will be witnessing the signing of the MOU between Guyana and the United States this morning. I now invite [illegible] Foreign Affairs representative, Mrs. Peggy McLennan, to give an overview.

Cookie Settings

MS MCLENNAN: Thank you, Marcia. Your Excellency Mr. President, members of cabinet, ladies and gentlemen, today, Minister of Foreign Affairs and International Cooperation Hugh Hilton Todd and Secretary of State Marco Rubio are signing a Memorandum of Understanding between our two countries to deepen security cooperation and address regional challenges, including countering narcotics trafficking and transnational organized crime. Under this mechanism, Guyana and the United States will strengthen information sharing, synthetic drug detection, transnational organized crime investigations and prosecutions, and military-to-military cooperation.

MODERATOR: Thank you very much. We now have the signing between the two nations.

(The Memorandum of Understanding was signed.)

(Applause.)

MODERATOR: Thank you very much, and now I invite his excellency to address us.

PRESIDENT ALI: Good afternoon, all. Secretary Rubio, you are no stranger to Guyana. Secretary Rubio has been and continues to be a strong advocate for Guyana's development, democracy, and peace. He has consistently demonstrated his personal commitment to the national rule of law, democracy, and security.

Guyana and the United States share a long bond of friendship and partnership. Indeed, the best of partnerships are those built on shared values, neutral trust, and a commitment to the rule of law and international order. This is what underpins our bilateral relationship and friendship. The United States is our trusted partner as we continue to build a stable, secure, and democratic society here.

This visit has allowed us to consolidate our bilateral agenda – defining policies and outlining clear intentions in areas of security, trade, energy, investments, infrastructure, democracy, regional peace and stability, human capital deployment, and development. I am very pleased at the reassurance of the U.S. in ensuring the safeguard of our territorial integrity and sovereignty. Our partnership and joint commitment to the safeguard of this region from every disruptive force is key to the maintenance of democracy and adherence to the rule of law.

The threats from Venezuela were specifically discussed. Their blatant violation of the ICJ order and Argyle Declaration were noted. Our joint commitment in enhanced partnership in combating transnational crime – inclusive of narcotrafficking, human trafficking, money laundering, and all forms of smuggling – is reflected in an enhanced MOU signed today.

We have reassured our partner that we'll continue to ensure all international and local labor laws are adhered to in the hiring of regional and international labor. Further, with our expanding healthcare system and critical shortage of human capital, we'll explore areas of collaboration, filling existing gaps.

We were able to identify key infrastructure that are also critical to regional development as possible areas for investment and development. We have committed to working closely together on the deployment of our energy potential, ensuring greater integration, value creation, and regional energy security, food security, and enhanced trade through joint initiatives to remove hurdles and expand existing areas of interest is key for both countries. I am confident that the outcome of this visit has further aligned our policy agendas, shared commitment, and partnership that will see enormous benefits for our two countries and the region.

Let me once again thank Secretary Rubio for his personal commitment and that of the U.S. government to Guyana and this region in general. I thank you.

(Applause.)

SECRETARY RUBIO: Thank you. Thank you, Mr. President. And we have been working together and interacting for some time during my time in the Senate, but I told him I wanted to wait until I was Secretary of State to visit, and so here I am. And I didn't know that was going to happen, but I'm grateful for your – for this visit and for the warm welcome we've received, and it's an exciting time to be here.

I think – and to the people of Guyana, thank you for welcoming us. I hope you fully appreciate and understand this is one of the most exciting places in the world to be right now, because you have the opportunity, at this moment, to transform this country for generations, and we want to be your partner. We want to be your partner in making that possible. We think it's of mutual benefit to see that happen.

I get to visit in this job – already have – a number of countries in the nine weeks. I've only been on the job for nine weeks, so let the record reflect after nine weeks this was one of my first visits here that I've taken abroad. But we get to visit a lot of counties and when you visit you have some countries, unfortunately, are facing tremendous challenges and they're just looking to stabilize. Other countries are looking to improve and make progress. This country has an opportunity to transform. And that's rare in the history of nations, to have an opportunity for transformative change. And what I mean by transformative change is not simply oil and gas fields. And that's very important – natural resources are critical – but that is just the basic ingredient that allows prosperity to happen.

One of the topics that's talked about all over the world today is data centers and the digitization of the economies, artificial intelligence. Do you know what you need in order to do that? You need to have really good scientists, and engineers, and technicians that know how to run it. But the most important thing you need to be a dominant presence in the world in data centers and artificial intelligence is reliable and affordable energy. That's just one example, among many others.

You have an opportunity to expand, in a responsible way, agriculture production, not just for the needs of your population but for the region, and to do it in a way that safeguards the beauty and the natural environment, that's pristine. You have an opportunity to expand in issues of ecotourism. I'm not a big fan of ecotourism – not – I'm not against ecotourism; I'm not an ecotourist. I like staying at hotels. I'll do it; maybe I'll go somewhere. But there are people that love this stuff. They love it. And you have an opportunity to do that in an incredibly responsible way.

I'm just touching on a few things, but – that are opportunities before you. And that shared prosperity for your country that will come as a result of that is transformative. The lives of your children, the lives of your grandchildren, your lives are going to look very different in five to ten years under this leadership and under this vision as it continues, and we just want to be a partner.

Why do we want to be a partner? Let's – just to be frank, why does the United States care about it? Number one, we care about it because we think it creates a level of stability in the region which we share – which we share. Not just stability here, stability for your neighbors, because we believe prosperity can become contagious. Just like instability can become contagious, stability

and prosperity can become contagious. It won't just help you, it will help all of your neighboring partners in the Caribbean Basin and the region writ large, and we think that ultimately makes life in America safer and more prosperous as well. And so we wanted to look for every opportunity possible to partner with you.

But the basic element of any of this, the basic element of progress and transformation and prosperity, is always security. So number one, we want to make sure that some of the tragic regional problems that exist with crime, transnational crime – we have a huge problem in the world right now with organized gangs and narcotraffickers that destabilize societies – we want to make sure that never reaches here. And that's why today's MOU and the work we'll do together will – is designed not to stop it, but to prevent it from ever taking root, from ever finding its way here. Because unfortunately, sometimes crime is attracted by prosperity and targets prosperity.

And the other are regional threats – the regional threats based on illegitimate territorial claims by a narcotrafficking regime. And I want to be frank, and I've said this during my time as a senator, and I have full confidence in saying now as the Secretary of State: There will be consequences for adventurism. There will be consequences for aggressive actions. And that's why our partnership in that regard will be important. That is not what we want to be a feature of our relationship, but it is a necessity of our relationship, because you have a very difficult challenge on your hands with a dictator that's making illegitimate territorial claims.

And so you have our full commitment and support – today we're demonstrating it – both in tangible ways, and we're going to look for ways to make it long-term and sustainable ways, to make abundantly clear that we are invested both as a nation and from our people in being your partner in transformation and in prosperity. And we will not allow illegitimate territorial claims to be an impediment to your dreams and to your right to develop this country into a symbol that I hope will inspire others to follow the example you set, Mr. President.

So thank you. Thank you for the chance to be with you. (Applause.)

MODERATOR: Thank you very much, Excellency, and Secretary Rubio. Members of the media, in the interests of time, we will accommodate four questions. We will feed two questions from the local media, and two from our visiting media. I recognize Stabroek News from the local media, as well as Mr. Campbell from the local media. From the visiting media – okay, you represent? Good. Great. And – all right, we'll start with Marcelle from Stabroek News.

SECRETARY RUBIO: Hi.

QUESTION: Good afternoon, sir.

SECRETARY RUBIO: Good afternoon.

QUESTION: Marcelle Thomas from the Stabroek News. You just spoke of consequences for aggressive actions, and that the U.S. is Guyana's partner. Given Venezuela's unprovoked aggression towards Guyana, I want to know if your country would stand by Guyana militarily if Venezuela were to attack this country. And what would be the U.S.'s response should Venezuela attack U.S. oil major ExxonMobil, which is operating in Guyana's waters?

SECRETARY RUBIO: It will be a very bad day for the Venezuelan regime if they were to attack Guyana or attack ExxonMobil or anything like – it would be a very bad day, a very bad week for them. And it would not end well for them. (Applause.) I'm not going to get into details of what we'll do; we're not big on those kinds of threats. I think everybody understands, and I want it to be clear – we've made this clear repeatedly – I think the U.S. Navy today is making it clear and demonstrating our ability to – we have a big navy and it can get almost anywhere in the – it can get anywhere in the world. And we have commitments that exist today with Guyana. We want to build on those and expand on those. And we'll leave it for the appropriate time, but suffice it to say that if that regime were to do something such as that, it would be a very bad move. It would be a big mistake for them.

MODERATOR: We now invite from our visiting media. Please remember to identify yourself and the media house you represent.

QUESTION: Hi, thank you. Hello, Mr. Secretary.

SECRETARY RUBIO: Hi.

QUESTION: Hello, Mr. President. Thank you for taking questions from us. We appreciate it. Humeyra Pamuk from Reuters. Mr. Secretary, a Turkish student in Boston was detained and handcuffed on the street by plainclothes agents. A year ago she wrote an opinion piece about the Gaza war. Could you help us understand what the specific action she took led to her visa being revoked? And what was your State Department's role in that process?

SECRETARY RUBIO: We revoked her visa. It's an F1 visa, I believe. We revoked it, and here's why – and I'll say it again; I've said it everywhere. Let me be abundantly clear, okay. If you go apply for a visa right now anywhere in the world – let me just send this message out – if you apply for a visa to enter the United States and be a student and you tell us that the reason why you're coming to the United States is not just because you want to write op-eds, but because you want to participate in movements that are involved in doing things like vandalizing universities, harassing students, taking over buildings, creating a ruckus, we're not going to give you a visa. If you lie to us and get a visa and then enter the United States and with that visa participate in that sort of activity, we're going to take away your visa.

Now, once you've lost your visa, you're no longer legally in the United States, and we have a right, like every country in the world has a right, to remove you from our country. So it's just that simple.

I think it's crazy – I think it's stupid for any country in the world to welcome people into their country that are going to go to their universities as visitors – they're visitors – and say I'm going to your universities to start a riot, I'm going to your universities to take over a library and harass people. I don't care what movement you're involved in. Why would any country in the world allow people to come and disrupt? We gave you a visa to come and study and get a degree, not to become a social activist that tears up our university campuses. And if we've given you a visa and then you decide to do that, we're going to take it away.

I encourage every country to do that, by the way, because I think it's crazy to invite students into your country that are coming onto your campus and destabilizing it. We're just not going to have it. So we'll revoke your visa; and once your visa is revoked, you're illegally in the country and you have to leave. Every country in the world has a right to decide who comes in as a visitor and who doesn't.

If you invite me into your home because you say, "I want to come to your house for dinner," and I go to your house and I start putting mud on your couch and spray-painting your kitchen, I bet you you're going to kick me out. Well, we're going to do the same thing if you come into the United States as a visitor and create a ruckus for us. We don't want it. We don't want it in our country. Go back and do it in your country, but you're not going to do it in our country.

QUESTION: A follow-up?

SECRETARY RUBIO: Sure. Just tell me your follow-up and I'll tell every – and depending on your question, I'll answer it or not.

MODERATOR: No follow-up questions. All right. I now invite our Guyanese –

SECRETARY RUBIO: No, no. She had – can I get her follow-up real quick? Go ahead.

QUESTION: Could you confirm – there's new reporting that 300 visas – State Department has revoked 300 (inaudible).

SECRETARY RUBIO: Maybe more. It might be more than 300 at this point. We do it every day. Every time I find one of these lunatics, I take away their visa.

QUESTION: It could – you're saying it could be more than 300 visas?

SECRETARY RUBIO: Sure. I hope – I mean, at some point I hope we run out because we've gotten rid of all of them. But we're looking every day for these lunatics that are tearing things up. And by the way, we want to get rid of gang members, too.

So Venezuela sent us a bunch of gang members. I'm sure you've heard of Tren de Aragua, Mr. President – a terrible gang, vicious gang. They flooded in our – yesterday – just so everybody knows, yesterday one of these gang members who was involved in New York City in attacking a police officer was deported back to Venezuela, because they're now taking flights again because of some strong measures we've taken. And this guy lands – this guy's a guy that attacked a police officer in New York City and laughed about it in court with a smirk on his face. When he gets off the plane in Venezuela, he's welcomed by this character named Diosdado Cabello. I don't know if you've heard of this guy. And he welcomes him, hugging the guy. So does anybody have any doubt that these people are pushing these people into the United States to destabilize us and the region?

So yeah, we're looking for people like this, and we want to get them out of the United States, absolutely.

MODERATOR: Thank you. We'll now field a question from Guyana.

QUESTION: Thank you. Kurt Campbell, Newsroom. President Ali, you've already spoken about how President Trump's plans – tariff plans for China's ships could affect regional trade. I just wanted to know if in your trade talks today if that issue was specifically discussed –

SECRETARY RUBIO: Yes.

QUESTION: – by Secretary of State Rubio.

SECRETARY RUBIO: And I can tell you – oh, you're asking him. I'm sorry. (Laughter.)

QUESTION: It's for both of you. What assurances can you give Guyana and this hemisphere in terms of stemming indirect consequences?

SECRETARY RUBIO: Yes. Well, that's – look, the goal the President has in doing so is we need to have an ability to build ships in this world that don't just come from China, okay. I think it's just dangerous to have one country in the world building all the ships. I assure you that – and we don't want a war, but I mean, they're not going to build ships for us if we get in trouble, right? So we need to have alternatives to Chinese ships, and we're trying to create a market and a demand for alternatives to Chinese shipping construction. And I'm the first one to admit that the United States made a terrible mistake when we deindustrialized and we allowed all these industries to leave our country and go to other places. Now we're paying the consequences, but we have to fix it.

So I do believe – I can't speak – I don't – the trade portfolio does not belong to the Department of State, but I do believe that we will take this back because we've heard this not just here, Mr. President. We've heard it throughout our visits here in the Caribbean. And we're going to take it back and explain to those who are in charge of trade policy that there are some implications to applying it to certain nations who are partners and who are seeking to develop their economies in ways that I think serve the national interest of the United States, not to mention the national interest of our partners nations, and seeing what can happen.

So I can't make a commitment to those exempt, because that's not something we handle in the Department of State. What I can commit to is that I will most certainly raise this issue as a recurring issue, in multiple places, that it would have a real detrimental effect on economic development. Maybe in 10 years it won't be an issue because there's been some diversification, maybe in five, but right now it would be problematic. That message I'll take back to Washington

and to my colleagues that are handling the trade portfolio, and we'll see how the President decides to proceed. But rest assured we will take that message back.

PRESIDENT ALI: And just to echo the sentiments that, yes, we did discuss it and the region would have raised it also. But there Secretary Rubio is – as he said, will take this back and to see whether there can be any special initiative for the region, given our specific circumstances.

But let me say also that we have a responsibility to our friends. The U.S. is a great friend of ours. The U.S. would have made it very clear that they are ready to stand by us in our development, in our economic expansion, in our security, and in our defense. And I will say very boldly that such friends must have some different and preferential treatment, because a friend who will defend me when I need a friend to defend me, must be a friend that enjoys some special place in our hearts and in our country, and that will be the case. Thank you.

QUESTION: And just quickly, illegal migration was also listed as a topic of discussion. Could you say what are the expectations from Guyana in this regard and any discussions on third-country deportations?

SECRETARY RUBIO: Well, we want to work with you on that. I think that's a problem for you as well. I mean, obviously, because of the combination of your growing economy, labor needs, and your geography, you have been a place where a lot of people have come in, and I think you want it to be the right people, right? So I think if we have information that someone has entered your country who has bad intentions, we want to be able to share that with your government because you don't want that.

You don't want those – if we have information on a Tren de Aragua gang member from Venezuela, we want to make sure that we're – we have collaboration and we're sharing that information. If we have information that some narcotrafficker is taking up shop here and has decided to try to turn this into a base of operation, which could become – could lead to violence and warfare here, gang warfare, we want to be able to share that with you. We want to prevent these problems from happening.

So from the perspective of Guyana, which is not a source country of migration to the United States per se – illegal migration – but it is a country that receives, unfortunately, you're getting a lot of people. And not everybody that comes here – I mean, most people are probably here to

work hard and so forth, but not everyone. So if we have information that someone is in your country that we know is a bad person, we want to be able to share it with you. We want to be able to share it with you very quickly. So that sort of information sharing has to be a cornerstone of this security agreement that we've signed today and want to continue to expand upon.

MODERATOR: We will now field our final question from our visiting media.

QUESTION: Thank you so much. Vera with the – Vera Bergengruen with Wall Street Journal.

SECRETARY RUBIO: They're very tough, this Wall Street – be careful. All right. (Laughter.)

QUESTION: Secretary Rubio, when you and President Bukele – you mentioned Tren de Aragua several times. When you and President Bukele negotiated the deal to transfer the U.S. deportees to his prison in CECOT, did you discuss any provisions to ensure that individuals mistakenly identified as gang members would have access to legal recourse and that they can secure their release if they are wrongly brought – wrongfully detained?

SECRETARY RUBIO: Yeah, we have – that list was carefully vetted, provided to us by Homeland Security. We have confidence in it. What we negotiated is the reality that they, in El Salvador, comply with all the international requirements for imprisonment. So we sent them people. It was a combination of people – gang members, people we knew were involved in activities that were not productive to the United States, all of them removable in terms of our laws, all of them; every single one of them was someone who was removable from the United States irrespective – and MS-13 members, some of – many of whom are Salvadoran that we had identified as MS-13 members, that they had helped us identify as well. And that – so it was a combination of people that we sent. And we may send more. We'll see. I mean, it's up to their willingness to accept, but we are grateful to them for the opportunity to do that.

And remember, one of the reasons why we had to send some of those people there was because at the time Venezuela wasn't taking their people back. The Maduro regime – I say Venezuela, but it's not – it's the Maduro regime – was not taking their people back. They refused to take people back, their own people. They have an obligation. If you are a country and someone is illegally in another country, you have an obligation to take those people back, whether they're criminals or not. Venezuela said they wouldn't take them back, so we had to find a place to send them,

especially the ones that had records and – or ones that we had strong suspicions and evidence that were involved in illicit activity.

And so we had to send some to El Salvador because of that. Now they've taken them back. And one of them yesterday gets off an airplane, and this narcotrafficker Cabello greets him and hugs him on the tarmac. Now, what I heard ultimately, by the way, is that some of these gang members we sent back were so bad to Venezuela – they were so bad that after hugging them, maybe not this guy but I don't know, they had to put four or five of them back in jail. Because that's how dangerous these people are, even though they hugged them on the tarmac and put on this show.

These are some really bad people. Tren de Aragua is one of the most dangerous gangs the world has ever seen, okay? When they were held temporarily in Guantanamo while being transferred to Honduras because that's when the Venezuelans picked some of them up, the Marines at Guantanamo said these are some of the roughest people we've ever interacted with. They were worse than the al-Qaida guys that were in their jails. Think about that. So that's who we're getting rid of, and we want to get rid of more of them.

MODERATOR: Ladies and gentlemen, members of the media, this brings the end to our media conference. And I would like to invite his excellency and Secretary Rubio for a photo op right on the stage. (Applause.)

TAGS

Bureau of Western Hemisphere Affairs | Combating Drugs and Crime | Economic Growth and Prosperity | Economic Prosperity and Trade Policy | Energy | Energy | Guyana | Office of the Spokesperson | Official International Travel | The Secretary of State | Venezuela

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Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

BADAR KHAN SURI,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States;

Russell HOTT, in his official capacity as Field Office Director of Washington, Immigration and Customs Enforcement;

Jeffrey CRAWFORD, in his official capacity as Warden of Farmville Detention Center;

Todd LYONS, Acting Director, U.S. Immigration and Customs Enforcement;

Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security;

Marco RUBIO, in his official capacity as Secretary of State; and

Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 1:25-cv-480

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT

INTRODUCTION

1. This case concerns the government's targeted, retaliatory detention and attempted removal of a postdoctoral fellow at Georgetown University based on his family connections and constitutionally protected free speech. Petitioner Badar Khan Suri is a citizen and national of India, and is in the United States in lawful status as a visiting scholar pursuant to lawful admission. The Trump administration has openly expressed its intention to weaponize immigration law to punish noncitizens whose views are

deemed critical of U.S. policy as it relates to Israel. In this case, the government appears to be targeting Mr. Suri, a noncitizen, due to his U.S. citizen wife's identity as a Palestinian and her constitutionally protected speech.

2. On March 17, 2025, Badar Khan Suri, a J-1 visa holder, was arrested and charged with removability under 8 U.S.C. §1227(a)(4)(C) and detained. This was done pursuant to a policy ("the Policy") to retaliate against and punish noncitizens like Mr. Suri solely for their family ties to those who may have either expressed criticism of U.S. foreign policy as it relates to Israel, or who are perceived to hold such critical views imputed to them due to familial relationship. Under the Policy, Respondent Marco Rubio, the Secretary of State, would make determinations that such individuals' presence or activities in the United States would have potentially serious foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest. These determinations would then permit the Department of Homeland Security to seek to detain and remove such individuals from the United States.

3. Pursuant to the Policy, Respondent Rubio, the Secretary of State, purportedly made such a determination as to Mr. Suri (the "Rubio Determination"). Secretary Rubio made this determination based on Mr. Suri's lawful activity protected by the First Amendment, his wife's lawful activity protected by the First Amendment, and his wife's familial relationship. Neither Secretary Rubio nor any other government official has alleged that Mr. Suri has committed any crime or, indeed, broken any law whatsoever.

4. Pursuant to the Rubio Determination, the Department of Homeland Security decided to arrest Mr. Suri, detain him, and place him in removal proceedings. On the evening of March 17, 2025, agents from the Department of Homeland Security ("DHS") arrested Mr. Suri with no prior notice at his home and initiated proceedings to remove him from

this country.

5. Mr. Suri is, upon information and belief, detained at Farmville Detention Center in Farmville, VA, Prince Edward County. He is at imminent risk of being moved to a detention facility in Los Fresnos, Texas, on the Mexican border.

6. Mr. Suri lives in Rosslyn, Virginia. On March 17, 2025, he was coming back home from iftar. Law enforcement agents surrounded him outside of his building. Mr. Suri called his wife, Mapheze Saleh, immediately. The agents identified themselves as members of the Department of Homeland Security and stated that the government had revoked his visa.

7. Mr. Suri asked that his wife be allowed to bring his passport and documents from inside the home. Ms. Saleh brought the documents and stood with Mr. Suri and multiple agents outside for about 10 minutes. The agents had face coverings, and Ms. Saleh could only see their eyes. The officers took Mr. Suri's passport and DS-2019 form, but they did not permit his wife to hand over the passport or other documents directly to Petitioner. Approximately two hours later, Mr. Suri called Ms. Saleh to state he was being transferred to a detention center in Farmville, VA. Mr. Suri and Ms. Saleh have three children.

8. Mr. Suri and his U.S. Citizen wife, Mapheze Saleh, have long been doxxed and smeared. Ms. Saleh is featured with her photograph and academic affiliation on the anonymously-run blacklisting site, The Canary Mission, which includes her former employment at Al Jazeera and her city of birth, Gaza City, as support for her alleged ties with Hamas. The Canary Mission website maintains a blacklist of individuals perceived to support Palestinian rights and is infamous for bullying, slandering, and defaming academics and students. In addition, Mr. Suri and Ms. Saleh have been smeared by Camera.org ("The Committee for Accuracy in Middle East Reporting and Analysis"), a

lobbying and media monitoring group that spreads misinformation and seeks to discredit American Muslims.

9. The Rubio Determination and the government's subsequent actions, including its ongoing detention of Mr. Suri, and plans to whisk him 1,600 miles away in the same manner as the government did in the case of Mr. Mahmoud Khalil, isolating him from his wife, children, community, and legal team, are plainly intended as retaliation and punishment for Mr. Suri's protected speech and intended to silence, or at the very least restrict and chill, his speech now and in the future, all in violation of the First Amendment. Indeed, contemporaneous and subsequent statements by administration officials expressly characterize the invocation of this rarely used provision as punishment for Mr. Suri's lawful and protected speech. The Rubio Determination and Mr. Suri's unjustified detention also violate his due process rights. Finally, the government's unlawful Policy of targeting noncitizens for removal based on protected speech is arbitrary and capricious, contrary to law in violation of the Administrative Procedure Act, and viewpoint discriminatory in violation of the First Amendment. Accordingly, this Court should vacate the Rubio Determination and the Policy, order Mr. Suri's immediate release, and set aside the government's unlawful policy.

PARTIES

10. Petitioner Badar Khan Suri is a citizen and national of India. He is married to a U.S. citizen, and is in the United States in J-1 status as a visiting scholar after having been duly admitted. He is currently teaching a course on Majoritarianism & Minority Rights in South Asia and as a postdoctoral fellow. He hopes to become a university professor and embark on a career in academia and teaching. Petitioner has no criminal record and is not being charged with any crime.

11. Respondent Donald J. Trump is named in his official capacity as the President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of State and Department of Homeland Security. Respondent Trump's address is the White House, 1600 Pennsylvania Ave. NW, Washington, D.C. 20500.

12. Respondent Russell Hott is named in his official capacity as the Acting Field Office Director of the Washington Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a custodian of Petitioner. Respondent Hott's address is Washington ICE ERO Field Office, 14797 Murdock St., Chantilly, VA 20151.

13. Respondent Jeffrey Crawford is the Director of the Farmville Detention Center where, upon information and belief, Petitioner is detained. In this capacity, he is responsible for the immediate execution of detention over Petitioner and is the immediate custodian of Petitioner. Respondent Crawford's address is Farmville Detention Center, 508 Waterworks Dr., Farmville, VA 23901.

14. Respondent Todd Lyons is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in the Eastern District of Virginia; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a custodian of the Petitioner. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

15. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland

Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Eastern District of Virginia; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

16. Respondent Marco Rubio is named in his official capacity as the United States Secretary of State. In this capacity, among other things, he has the authority to determine, based on "reasonable" grounds, that the "presence or activities" of a noncitizen "would have serious adverse foreign policy consequences for the United States." Following such a determination, DHS may initiate removal proceedings under 8 U.S.C. § 1227(a)(4)(C)(i) (INA § 237(a)(4)(C)(i).) In addition to his legal responsibilities under Section 237(a)(4)(C)(i), he routinely transacts business in the Eastern District of Virginia and as such is a custodian of the Petitioner. His address is United States Department of State, 2201 C Street, NW, Washington, D.C. 20520.

17. Respondent Pamela Bondi is the Attorney General of the United States. In this capacity, she routinely transacts business in the Eastern District of Virginia; is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g) (2007); and as such is a custodian of the Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.

JURISDICTION & VENUE

18. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241, Article I, §9, cl. 2 (the Suspension Clause) and Article III of the U.S. Constitution, the Administrative Procedure Act, 5 U.S.C. §701 et seq.; and 28 U.S.C. § 2201 (Declaratory Judgment).

19. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.

20. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because a substantial part of the events or omissions giving rise to this action occurred and continue to occur at ICE's Washington Field Office in Chantilly, Virginia within this district. Moreover, according to the federal government's official records at the time of filing, Mr. Suri was being held in Farmville, VA, when this habeas was initiated. At the time of filing, the detainee locator failed to update Mr. Suri's location. However, upon information and belief, Mr. Suri is, at the moment of this filing, physically within the Commonwealth of Virginia.

FACTS

The Trump Administration's Hostile Campaign Against Palestinians and Palestinian Rights Advocacy: A Concerted Effort to Silence Protected Political Speech

21. In the fall of 2023, thousands of students across the U.S. from a wide range of racial, ethnic, religious, and socioeconomic backgrounds began organizing on their campuses, many criticizing what they saw as the steadfast support of their universities and the United States government for Israel's policies. These campus protests resulted in opponents of these students' messages—including President Donald J. Trump—to characterize campus speech in favor of Palestinian rights as inherently supportive of

Hamas and antisemitic. For example, in several instances, President Trump described a Jewish lawmaker who had criticized Israeli Prime Minister Benjamin Netanyahu as "a proud member of Hamas" and "a Palestinian," using "Palestinian" as a slur.[3]

22. During his campaign for re-election, President Trump repeatedly vowed to use visa revocations as a tactic to pursue his policy of silencing pro-Palestine activities on university campuses.

23. For example, at a rally in Las Vegas on October 28, 2023, Trump pledged to "terminate the visas of all of those Hamas sympathizers, and we'll get them off our college campuses, out of our cities, and get them the hell out of our country."

24. In the spring of 2024, Trump promised campaign donors that he would deport pro-Palestinian student demonstrators to get them to "behave." Upon information and belief, at a round table event in New York, he stated, "One thing I do is, any student that protests, I throw them out of the country. You know, there are a lot of foreign students. As soon as they hear that, they're going to behave."[1]

25. Similarly, in a social media post on his official X account on October 15, 2023, then-Senator Marco Rubio, referring to ongoing student protests in support of Palestinians, stated the U.S. should "cancel the visa of every foreign national out there supporting Hamas and get them out of America."

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[1] Niha Masih, *Trump draws condemnation for using 'Palestinian' as a slur against Schumer*, Washington Post (March 13, 2025), https://www.washingtonpost.com/politics/2025/03/13/trump- schumer-palestinian-slur/. Indeed, in his first term, President Trump also issued Executive Order 13899, titled "Combating Anti-Semitism," which, among other things, adopted a definition of antisemitism that includes plainly protected criticism of Israel and its policies. *See* 84 Fed. Reg. 68779 (Dec. 11, 2019) (including as an example of antisemitism "drawing comparisons of contemporary Israeli policy to that of the Nazis")

President Trump Issues Executive Orders to Target Speech of Noncitizen Protestors

26. Shortly after assuming office on January 20, 2025, President Trump signed two executive orders aimed at fulfilling the above campaign promises: Executive Order 14161, titled "Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats," signed on January 20, 2025, and Executive Order 14188, titled "Additional Measures to Combat Anti-Semitism," signed on January 29, 2025.

27. Executive Order 14161 states that it is the United States' policy to "protect its citizens" from noncitizens who "espouse hateful ideology." It further articulates the administration's desire to target noncitizens who "advocate for, aid, or support designated foreign terrorists and other threats to our national security," those who hold "hateful" views, and those who "bear hostile attitudes toward [America's] citizens, culture, government, institutions, or founding principles." The order's overly broad framing of "hostile attitudes" towards the American government could encompass any form of political dissent, including advocacy for Palestinian human rights.

28. Executive Order 14188 states that, in order to "combat campus anti-Semitism," the administration will target for investigation "post-October 7, 2023, campus anti-Semitism." The order adopts a definition of antisemitism that includes constitutionally protected criticism of the Israeli government and its policies.[7] In a fact sheet accompanying Executive Order 14188, the White House described the measure as "forceful and unprecedented," specifically targeting "leftist, anti-American colleges and universities." It framed the order as a "promise" to "deport Hamas sympathizers and revoke student visas," sending a clear message to all "resident aliens [*sic*] who participated in pro-jihadist protests" that the federal government "will find you… and

deport you."

The Government Responds to Groups Identifying Noncitizen Protestors for Deportation By Adopting the Unlawful Policy

29. In response to these Executive Orders and as part of an escalating attack on the core political speech at issue, certain groups opposed to Palestinian rights protests began publicizing the names of individuals they wanted the government to deport. Specifically, these groups compiled lists of students and faculty who had engaged in Palestine-related advocacy and, upon information and belief, submitted these lists to ICE's tip line, or publicly flagged names to U.S. Government official accounts.

30. Earlier this month, media reports described widespread fear of retaliation for pro-Palestine speech among noncitizen students, faculty, and other university affiliates, noting that the executive orders "already appear to be chilling political activism."

31. On or before March 7, 2025, Respondents adopted the Policy by which they would retaliate against and punish noncitizens like Mr. Suri for his family relationship and constitutionally protected free speech. Under the Policy, Respondent Rubio, the Secretary of State, would make determinations that such individuals' presence or activities in the United States would have potentially serious foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest. These determinations would then permit the Department of Homeland Security to seek to detain and deport such individuals.

32. In the days since Mr. Khalil's arrest, there have been reports of other instances of visa revocations of individuals purportedly based on their participation in Palestine-related speech. On March 13, Secretary of Homeland Security Kristi Noem announced that another Columbia student, Ranjani Srinivasan, who had participated in student protests on Columbia University's campus had her student visa revoked, and a third individual,

Leqaa Kordia, who had been arrested on Columbia's campus in April 2024, was arrested by ICE.

33. Secretary of State Marco Rubio stated, "We will be revoking the visas and/or green cards of Hamas supporters in America so they can be deported."

34. The Rubio Determination was exclusively motivated by Mr. Suri's family relationship and constitutionally-protected past, current, or expected beliefs, statements, or associations. Public statements by government officials, up to and including the President and Secretary of State in cases for similarly situated noncitizens, invoking the same charge under 8 U.S.C. 1227(a)(4)(C)(i), establish that Respondents are punishing, detaining, and attempting to silence Mr. Suri.

35. The Foreign Policy Bar expressly prohibits the Secretary of State from issuing a policy to exclude or condition entry based on a noncitizen's "past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States," unless the Secretary personally certifies to Congress that admitting the individual would compromise a compelling U.S. foreign policy interest. *See id.* (citing INA § 212(a)(3)(C)(iii)). Upon information and belief, Secretary Marco Rubio has not provided any certifications regarding a determination under the Foreign Policy Ground concerning Mr. Suri to the chairs of the House Foreign Affairs, Senate Foreign Relations, and House and Senate Judiciary Committees, as required by 8 U.S.C. § 1182(a)(3)(C)(iv).

36. Nor could he. Legislative history reveals that Congress intended to limit the Executive's authority to exclude noncitizens based on their speech or beliefs. When the Moynihan Amendment was passed in 1987, the Senate Committee warned that "[f]or many years,

the United States has embarrassed itself by excluding prominent foreigners from visiting the United States solely because of their political beliefs." The amendment was intended "to take away the executive branch's authority to deny visas to foreigners solely because of the foreigner's political beliefs or because of his anticipated speech in the United States," while affirming "the principles of the First Amendment." (S. Rep. No. 100–75 at 11, 100th Cong., 1st Sess. (1987), reprinted in 133 Cong. Rec. S2326 (1987)).

37. Congress further evinced its intent to restrict the Executive's ability to exclude foreign speakers by asserting that such exclusions should not be based solely on "the possible content of an alien's speech in this country," that the Secretary's authority to determine that entry would compromise foreign policy interests should be used "sparingly and not merely because there is a likelihood that an alien will make critical remarks about the United States or its policies," and that the "compelling foreign policy interest" standard should be applied strictly. (H.R. Conf. Rep. No. 101-955, 101st Cong., 2nd Sess. (1990), reprinted in 1990 U.S.C.C.A.N. 6784, 6794).

CLAIMS FOR RELIEF

FIRST CLAIM
Violation of the First Amendment to the United States Constitution

38. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein. The First Amendment to the United States Constitution provides in part that "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances." U.S. Const. Amend. I. The First Amendment protects past, present, and future speech, including speech by noncitizens.

39. The Rubio Determination and Policy Mr. Suri's targeting, arrest, transfer, and ongoing detention violate the First Amendment because they:

- retaliate against and punish Mr. Suri for his or his wife's past protected speech, or speech imputed to him or his wife as a result of his family relationship;
- prevent him from speaking now (through detention);
- attempt to chill (through past punishment and ongoing threat) or prevent (through eventual removal) his future speech in the United States;
- deprive audiences of his present and future speech on matters of public concern; and
- chill other individuals who express support for Palestinian rights.

40. These speech-related consequences are not side effects of an action with some other purpose; they are, instead, the point of the Determination and the government's subsequent actions against Mr. Suri and those similarly situated, in government officials' own telling, the result of their disagreement with his protected speech and the viewpoint it expresses.

SECOND CLAIM
Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

41. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

42. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

43. The government's detention of Mr. Suri is wholly unjustified. The government has

not demonstrated that Mr. Suri—a husband to a U.S. citizen, a father of three young children, and with no criminal history—needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Mr. Suri cannot be safely released back to his family.

44. Moreover, Mr. Suri's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Zadvydas*, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). The sole basis of his detention—the Foreign Policy Ground and the Rubio Determination—are unlawful for the reasons discussed *supra*. Here, there is every indication that his "detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring).

45. The Policy and the Rubio Determination also violate Mr. Suri's right to due process. The government's policy of Foreign Policy Ground making such determinations concerning people like Mr. Suri—who is in valid J-1 status, living peacefully in the country is unconstitutionally vague where it is due to perceived or actual constitutionally protected free speech and familial relationships.

THIRD CLAIM
Violation of the Administrative Procedure Act and the *Accardi* Doctrine

46. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein. The government has adopted a policy of targeting noncitizens for removal based on First Amendment-protected

speech advocating for Palestinian rights, including the speech of close family members. This policy is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C.A. § 706 (2)(A), (B), (C), and violates the *Accardi* doctrine and federal agencies' own rules, *see Accardi v. Shaughnessy*, 347 U.S. 260 (1954). In addition, the Secretary of State's determination that Mr. Suri's "presence or activities would potentially have serious adverse foreign policy consequences for the United States" and "would compromise a compelling United States foreign policy interest" is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C.A. § 706 (2)(A), (B), (C).

FOURTH CLAIM

Release on Bail Pending Adjudication

47. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

48. Under 28 U.S.C.A. § 2241, federal district courts are granted broad authority, "within their respective jurisdictions," 28 U.S.C.A. § 2241(a), to hear applications for writs of habeas corpus filed by persons claiming to be held "in custody in violation of the Constitution or laws or treaties of the United States." *Timms v. Johns*, 627 F. 3d 525 (4th Cir. 2010)

49. This petition raises numerous substantial constitutional and statutory claims challenging Mr. Suri's retaliatory detention. Extraordinary circumstances exist that make Mr. Suri's release essential for the remedy to be effective. His detention prevents him from adequately litigating his removal proceedings.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Vacate and set aside Respondents' unlawful Policy of targeting noncitizens for removal based on First Amendment-protected speech advocating for Palestinian rights and/or their family relationships;

3) Vacate and set aside the Rubio Determination;

4) Enjoin Respondents from transferring the Petitioner from the jurisdiction of this District pending these proceedings;

5) Order the immediate release of Petitioner pending these proceedings;

6) Order the release of Petitioner;

7) Declare that Respondents' actions to arrest and detain Petitioner violate the First Amendment and the Due Process Clause of the Fifth Amendment;

8) Award reasonable attorneys' fees and costs for this action; and

9) Grant such further relief as the Court deems just and proper.

Dated: March 18, 2025

Sterling, Virginia

/s/*Hassan Ahmad*
Hassan Ahmad (VSB #83428)
The HMA Law Firm, PLLC
6 Pidgeon Hill Dr, Suite 330
Sterling, VA 20165
T: 703.964.0245
hma@hmalegal.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore mail a copy by USPS Certified Priority Mail with Return Receipts to each of the following individuals:

Jeffrey Crawford, Warden
Farmville Detention Center
P.O. Drawer N
508 Waterworks Road
Farmville, VA 23901

Russell Hott, Field Office Director
U.S. Immigration and Customs Enforcement, Washington Field Office
c/o DHS Office of the General Counsel
2707 Martin Luther King Jr. Ave, SE
Washington, DC 20528-0485

Kristi Noem, Secretary
U.S. Department of Homeland Security
c/o DHS Office of the General Counsel
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Pamela Bondi, Attorney General
U.S. Department of Justice
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Todd Lyons, ICE Director
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Jessica D. Aber, U.S. Attorney
c/o Civil Process Clerk
Eastern District of Virginia, Alexandria Division
2100 Jamieson Avenue
Alexandria, VA 22314

Dated: March 18, 2025

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Exhibit F

U.S. DISTRICT COURT – N.D. OF N.Y.
FILED
Mar 15 - 2025
John M. Domurad, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MOMODOU TAAL, MŨKOMA WA NGŨGĨ, and SRIRAM PARASURAMA,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; and KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security;

Defendants.

COMPLAINT

Civil Action No. 3:25-cv-335 (ECC/ML)

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This action seeks to enjoin Defendants Donald J. Trump, the Department of Homeland Security ("DHS"), and DHS Secretary Kristi Noem from enforcing parts of two executive orders ("Orders") – Executive Order 14161, "Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats," 90 Fed. Reg. 8451 (Jan. 30, 2025), ("EO 1"), and Executive Order 14188, "Additional Measures to Combat Anti-Semitism," 90 Fed. Reg. 8451 (Feb. 3, 2025), ("EO 2") – against Plaintiffs and similarly situated persons.

2. The unprecedented and sweeping character of these Orders – coupled with the threat of imminent enforcement – has unconstitutionally silenced Plaintiffs and chilled protected expression, prohibiting them from speaking, hearing, or engaging with viewpoints critical of the U.S. government or the government of Israel, under threat of criminal prosecution or deportation.

These Orders violate the First and Fifth Amendments of the U.S. Constitution and must be enjoined, at least in part.

3. EO 1 prohibits non-citizens lawfully living in the U.S. – such as Plaintiff Momodou Taal ("Mr. Taal") – from engaging in constitutionally protected speech that Defendants may subjectively interpret as expressing a "hostile attitude" toward U.S. "citizens, culture, government, institutions, or founding principles" on penalty of deportation.

4. EO 2 declares that "[it] shall be the policy of the United States" to use "all available and appropriate tools" "to prosecute, remove or otherwise hold to account" citizens and non-citizens who engage in activity that Defendants label as "anti-Semitic." EO 2 further mandates the creation of mechanisms to monitor, surveil, and report the lawful expressive activities of non-citizen students, faculty, and staff on university campuses – explicitly linking such surveillance to immigration enforcement including deportation. While EO 2 claims to address harassment based on Jewish identity, public statements by Defendant Trump and other officials reveal that Defendants conflate criticism of the Israeli government and participation in pro-Palestinian advocacy – such as protests against the Israeli military's operations in Gaza – with antisemitism.

5. Both Orders violate the constitutional rights of U.S. citizens and non-citizens alike by impermissibly restricting speech based on viewpoint, in violation of the First Amendment. They also raise serious due process concerns under the Fifth Amendment by threatening severe penalties – such as deportation or criminal prosecution – based on vague, subjective, and overbroad standards that grant unfettered discretion to government officials. The chilling effect is lreadyy being felt by both citizens and noncitizens, including Plaintiffs Mũkoma Wa Ngũgĩ ("Prof. Wa Ngũgĩ") and Sriram Parasurama ("Mr. Parasurama"), who now fear government

retaliation for engaging in constitutionally protected expression critical of U.S. foreign policy and supportive of Palestinian human rights.

6. Defendants' own statements make clear that the Orders are intended to suppress dissenting viewpoints. A White House Fact Sheet released on January 30, 2025, accompanying EO 2 acknowledges that its language is "unprecedented."[1] The Fact Sheet claims that American universities are overrun by "pro-Hamas aliens and left-wing radicals," and that the Orders are designed to suppress speech occurring at "leftist, anti-American colleges and universities." In May 2024, Defendant Trump stated: "One thing I do is, any student that protests, I throw them out of the country. You know, there are a lot of foreign students. As soon as they hear that, they're going to behave."[2]

7. The threat of adverse immigration enforcement – including deportation – against Mr. Taal is imminent and real. The Fact Sheet "promises" that *every* non-citizen student visa holder residing in the U.S. will be deported by the end of the calendar year if they merely participate in a demonstration in support of Palestine. It quotes Defendant Trump: "To all the resident aliens who joined in the pro-jihadist protests, we put you on notice: come 2025, we will find you, and we will deport you. I will also quickly cancel the student visas of all Hamas sympathizers on college campuses, which have been infested with radicalism like never before."

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[1] *See* The White House, Fact sheet: President Donald J. Trump Takes Forceful and Unprecedented Steps to Combat Anti-Semitism (Jan. 30, 2025), https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-forceful-and-unprecedented-steps-to-combat-anti-semitism/.

[2] Josh Dawsey, Karen DeYoung, & Marianne LeVine, *Trump told donors he will crush Pro-Palestinian protests, deport demonstrators*, WASH. POST. (May 27, 2024), https://www.washingtonpost.com/politics/2024/05/27/trump-israel-gaza-policy-donors/.

8. At the end of February 2025, in an apparent reference to both citizen and non-citizen students, Defendant Trump's Senior Counsel to the Department of Justice's Civil Rights Division, Leo Terrell, stated: "You see all these disorderly demonstrations, supporting Hamas and trying to intimidate Jews? We are going to put these people in jail — not for 24 hours, but for years." Terrell added that "a lot is going to happen in the next four to five weeks," and that once protestors face a threat of jail time, "it will stop."[3]

9. Indeed, enforcement began shortly thereafter. On March 9, 2025, Defendant DHS arrested and detained Mahmoud Khalil, a former Columbia University graduate student and prominent participant in pro-Palestinian campus demonstrations. On March 10, 2025, Defendant Trump stated: "This is the first arrest of many to come. We know there are more students at Columbia and other Universities across the Country who have engaged in pro-terrorist, anti-Semitic, anti-American activity, and the Trump Administration will not tolerate it. Many are not students, they are paid agitators. We will find, apprehend, and deport these terrorist sympathizers from our country — never to return again."[4]

10. As a non-citizen lawfully living in the U.S., Mr. Taal is entitled to First Amendment protection. The chilling effect imposed by the Orders violates his right to free speech. EO 2's encouragement of the criminal prosecution for engaging in constitutionally protected expression likewise violates his and the citizen-Plaintiffs' First Amendment rights. The Orders also violate Plaintiffs' First Amendment right to receive information, including the right to hear

[3] Jewish News Syndicate, DOJ Antisemitism Task Force: We'll Put Hamas Supporters in Jail 'for Years', NEWSMAX (Feb. 26, 2025, 9:18 AM), https://www.newsmax.com/us/hamas-terrorists-antisemitic/2025/02/26/id/1200545/.
[4] Donald Trump (@realDonaldTrump), Truth Social (March 10, 2025, 1:05 PM), https://truthsocial.com/@realDonaldTrump/posts/114139222625284782.

and engage with each other's speech. Both Orders infringe on all Plaintiffs' right to free association, creating a reasonable fear that public association could be construed as "evidence" of antisemitism or a "hostile attitude" toward the U.S. government.

11. Each Order is also unconstitutionally vague and overbroad. EO 1 imposes an amorphous and subjective standard for what constitutes a "hostile attitude" toward U.S. "government," "institutions," "culture," or "founding principles," depriving Plaintiffs of fair notice and sweeping up substantial amounts of protected speech. EO 2 does the same with regard to activity Defendants may interpret as "anti-Semitic." Vagueness in the First Amendment context demands the highest degree of judicial scrutiny – especially where, as here, the penalties include deportation, criminal prosecution, and the permanent disruption of Plaintiffs' lives and academic careers.

12. Even Defendants acknowledge the unprecedented breath and scope of these content-based speech restrictions. The chilling effect has already impacted millions across the country. As of November 2024, there were an estimated 1.1 million non-citizens holding valid student visas in the U.S.,[5] alongside millions of citizen peers, professors, and colleagues whose free speech, association, and due process rights are also impaired by the Orders. Not even during wartime has any branch of government attempted to prohibit such a large segment of the population from criticizing the U.S. government, the president, Congress, the Supreme Court, or a foreign government. As Defendant Trump said, the goal is to force people to "behave."

[5] Inst. of Int'l Edu., United States Hosts More Than 1.1 Million International Students at Higher Education Institutions, Reaching All-Time High, INST. OF INT'L EDU. (Nov. 18, 2024), https://www.iie.org/news/us-hosts-more-than-1-1-million-intl-students-at-higher-education-institutions-all-time-high/.

13. Whatever broad authority the President may hold over non-citizens seeking initial entry into the United States, those "plenary powers" do not justify the sweeping domestic content-based speech restrictions imposed here. Defendants' attempt to bar non-citizens from criticizing the U.S. government, its institutions, American culture, or the government of Israel – and to prohibit citizens form hearing those views – serves no legitimate government interest in preventing terrorism or enforcing immigration laws. The justifications offered are pretextual and dangerous. Criticism of the U.S. government does not constitute terrorism, and criticism of the Israeli government is not anti-Semitism. Even if some governmental interest were implicated, the challenged provisions fail strict scrutiny and are not narrowly tailored to achieve any legitimate end.

14. This Court should therefore:

A. Vacate Section 1(b) of EO 1's prohibition on speech critical of the government, its institutions, and American culture as applied to non-citizens lawfully living in the U.S.;

B. Vacate any provisions establishing vetting or enforcement mechanisms to implement Section 1(b), including Sections 2(a)(i), 2(a)(ii), and 2(a)(iv) of EO 1 and the "monitor and report" requirement in Section 3€ of EO 2, as applied to citizens and non-citizens facing risk of criminal prosecution or deportation;

C. Enjoin Defendants from enforcing any such provision of either EO against non-citizens; and

D. Enjoin Defendants from enforcing Section 2 of EO 2's criminal prosecution provision against speech and activity by citizens and lawfully present non-citizens critical of the government of Israel.

PARTIES

15. Plaintiff MOMODOU TAAL is a citizen of the United Kingdom and the Republic of The Gambia and currently resides in Tompkins County, New York. He is a 31-year-old Ph.D. student in Africana Studies at Cornell University and holds a bachelor's degree in law from the University of East Anglia in the United Kingdom. In the course of his early academic career, he has participated in numerous scholarly panels and authored significant academic works. He has spoken at events hosted by Harvard University, Sheffield University, the Muslim Council of Britain, and the Tahara Collective in Lagos, Nigeria. His first book, *The Malcolm Effect: Revisited*, was published in February 2025.

16. Plaintiff MŨKOMA WA NGŨGĨ is a U.S. citizen and Professor of Literatures in English at Cornell University. He is the author of *The Rise of the African Novel: Politics of Language, Identity and Ownership*, as well as the novels *Mrs. Shaw, Black Star Nairobi*, *Nairobi Heat* and *Unbury Our Dead With Song*. He has also published two books of poetry: *Logotherapy* and *Hurling Words at Consciousness*. He is the co-founder of the Mabati-Cornell Kiswahili Prize for African Literature. In 2013, *New African* magazine named him one of the 100 most Influential Africans. He is Mr. Taal's professor.

17. Plaintiff SRIRAM PARASURAMA is a second-year Ph.D. student in the School of Integrative Plant Sciences. In 2023, he was awarded the prestigious NSF Graduate Research Fellowship to support his research on tree physiology and forest ecology. He has also served as a teaching assistant in Food Sciences and currently maintains a 4.3 cumulative GPA. Despite being early in his research career, he already has two scientific publications – one as first author and one as second author.

18. Defendant DONALD J. TRUMP is the President of the United States and is sued in his official capacity. He is responsible for the formulation, issuance, and implementation of the executive orders and policies that are the subject of this action.

19. Defendant UNITED STATES DEPARTMENT OF HOMELAND SECURITY is an independent agency within the executive branch of the United States government. 6 U.S.C. § 111.

20. Defendant KRISTI NOEM is the Secretary of the United States Department of Homeland Security and is sued in her official capacity. As Secretary, she is the highest-ranking official within the Department and is responsible for seeing its policies, operations, and enforcement actions. She is charged by law with the supervision and direction of all activities of the Department pursuant to 6 U.S.C. § 112.

JURISDICTION & VENUE

21. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1346(a)(2) in that the matter in controversy arises under the Constitution and laws of the United States, and the United States and its officers are named as Defendants.

22. Venue is proper in this District under 28 U.S.C. § 1391€(1) because the United States and its officers are Defendants, and at least one Plaintiff resides in the district.

FACTUAL ALLEGATIONS

Mr. Taal, a Longtime Advocate for Palestinian Rights, Is Accepted into Cornell University's Graduate Studies Program in February 2022

23. Mr. Taal is a citizen of both the United Kingdom and the Republic of The Gambia. He is a currently a graduate student at Cornell University ("Cornell") and lawfully resides in the United States on a F-1 student visa pursuant to 8 U.S.C. § 1101(a)(15)(F)(i).

24. Mr. Taal's academic journey and professional journey has been shaped by a deep commitment to understanding the historical, cultural, and geopolitical roots of social injustice and political oppression. He is a vocal advocate for Palestinian human rights and a consistent critic of state and institutional actors – including the governments of Israel and the United States – whom he believes are complicit in conducting a genocide against the people of Palestine. In February 2022, Mr. Taal was accepted into Cornell's graduate program at the Africana Studies and Research Center, which offers an interdisciplinary curriculum focused on the global experience of Black communities.

25. On July 28, 2022, Cornell certified Mr. Taal's Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, with the United States Citizenship and Immigration Services ("USCIS"), thereby confirming his admission and registration in the Student and Exchange Visitor Information System ("SEVIS"). Cornell's Graduate Admissions Specialist, Katherine Muro, attested that she had reviewed Mr. Taal's application, academic transcript, and records, and that Cornell had determined he met all criteria for admission qualifications met all standards for admission, requiring him to pursue a full course of study as defined by 8 C.F.R. 214(f)(6).

26. Following the issuance and certification of Form I-20, Mr. Taal became eligible to apply for an F-1 student visa under 8 U.S.C. § 1101(a)(15)(F)(i), which he did on June 14, 2022. Since enrolling at Cornell, Mr. Taal has consistently demonstrated academic excellence, maintaining a cumulative GPA of 3.82.

Mr. Taal Was Approved for Admission by the Department of State and Inspected by Customs and Border Protection at a Port of Entry

27. On or about August 5, 2022, the U.S. Department of State ("State Department") approved Mr. Taal's student visa application after determining that he was statutorily eligible and

posed no threat to national security. This decision reflected the State Department's conclusion that Mr. Taal satisfied all requirements for admission under the Immigration and Nationality Act ("INA") and that no grounds of inadmissibility applied to him.

28. Pursuant to 22 C.F.R. § 40.6, "[a] visa can be refused only upon a ground specifically set out in the law or implementing regulations." The regulation further clarifies that the "reason to believe" standard under INA § 221(g) requires a "determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive a visa." The burden of proof rests with the applicant to establish eligibility under INA § 212 or any other applicable legal provision, and Mr. Taal met that burden.

29. On August 12, 2022, Mr. Taal entered the United States at John F. Kennedy International Airport, where he was inspected and lawfully admitted by U.S. Customs and Border Protection ("CBP"). His admission further confirmed the federal government's prior determination that he met all legal requirements for entry and posed no national security threat.

After Inspection and Admission to the U.S., Mr. Taal Engaged in Expressive Activity Online and on Campus

30. During his time at Cornell, Mr. Taal has established himself as a scholar and public intellectual. He has authored academic articles, been invited to lecture at institutions, and served as a panelist at conferences. Journalists frequently seek his expertise on history, culture, and geopolitics.

31. As a graduate student, Mr. Taal taught undergraduate classes at Cornell, including *What is Blackness* in Fall 2024 and *Africa: Its Continent and Its People* in Fall 2023. Since 2020, he has hosted *The Malcolm Effect*, a widely followed podcast featuring interviews with American and international scholars on political and historical issues, spanning from post-World War II

anti-colonial movements to contemporary global events. In February 2025, his first book, *The Malcom Effect: Revisited*, was published.

32. Beyond academia, Mr. Taal has been an outspoken critic of U.S. foreign policy, particularly regarding military and financial support for Israel. He has expressed his views in classroom discussions, on social media, and through his podcast. His critiques have extended to U.S. political figures – including former President Joseph R. Biden,[6] Defendant Trump,[7] and members of Congress[8] – as well as both major political parties,[9] the British government,[10] Israeli Prime Minister Benjamin Netanyahu,[11] the Israeli military,[12] and corporations profiting from military conflicts.[13] His commentary has also addressed broader issues such as wealth

[6] Momodou Taal (@momodoutaal), X (Oct. 11, 2023, 10:11 AM), https://x.com/momodoutaal/status/1712141636321390730 ("No one should be tear-gassed, brutalized or arrested for supporting Palestine. What's happening at American universities is disgusting and terrifying.")
[7] Momodou Taal (@momodoutaal), X (Jan. 7, 2021, 4:28 PM), https://x.com/momodoutaal/status/1347239899209068559 ("The silencing of Palestinian voices in this country is violent").
[8] Momodou Taal (@MomodouTaal), X (Oct. 18, 2023, 9:46 AM), https://x.com/MomodouTaal/status/1815871390899396826 ("The U.S. government's silence on the violence in Gaza speaks volumes about where their priorities lie").
[9] Momodou Taal (@momodoutaal), X (Sept. 22, 2021) https://x.com/momodoutaal/status/1440336610344640520 ("The lack of accountability for U.S. foreign policy perpetuates injustice and harm globally").
[10] Momodou Taal (@momodoutaal), X (Sept. 5, 2022, 9:14 AM) https://x.com/momodoutaal/status/1567182099634872321 ("The hypocrisy of U.S. foreign policy in the face of human rights violations is undeniable").
[11] Momodou Taal (@momodoutaal), X (Mar. 13, 2024, 7:42 PM), https://x.com/momodoutaal/status/1836948532621644172 ("World leaders continue to be silent while innocent lives are being lost in Gaza. This is a moral failure").
[12] *Id.*
[13] Momodou Taal (@MomodouTaal), X (Mar. 12, 2024, 8:29 PM), https://x.com/MomodouTaal/status/1851718089991237753 ("The U.S. administration's silence on the violence in Gaza is shameful and speaks volumes about their priorities").

inequality,[14] corporate influence in politics,[15] and U.S. military interventions[16] in Africa,[17] Latin America, and the Middle East.[18]

33. Mr. Taal faced university disciplinary measures for his participation in student protests and was temporarily suspended on April 26, 2024, and September 23, 2024. However, Cornell did not impose any sanctions affecting his immigration status. An alternative resolution ("Agreement) finalized on January 29, 2025, contained no allegations of violence and allowed Mr. Taal to continue his studies remotely. Under the Agreement, Mr. Taal could return to campus for medical, religious, and research purposes and would regain full campus access at the end of the Spring 2025 semester.

34. Since entering the United States on an F-1 visa, Mr. Taal has traveled internationally and been lawfully re-admitted upon inspection by Customs and Border Protection

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[14] Momodou Taal (@MomodouTaal), X (Jan. 4, 2025), https://x.com/MomodouTaal/status/1875408898292904280 ("'American society despises equality. Extreme inequality is not only tolerated, it is taken as a symbol of the success that liberty promises. But liberty without equality is equal to barbarism.' - Samir Amin").

[15] Momodou Taal (@MomodouTaal), X (Dec. 27, 2022, 5:42 PM), https://x.com/MomodouTaal/status/1608488775566626816 ("The double standard in how global powers treat human rights violations is stark and unacceptable").

[16] Momodou Taal (@MomodouTaal), X (Jun. 30, 2023, 10:52 AM), ("Affirmative action killed, student loan forgiveness deaded and discrimination against sexual minorities legalised all in a matter of days. The fascists are winning. No such thing as being neutral now").

[17] Momodou Taal (@MomodouTaal), X (Mar. 31, 2024, 3:09 PM), https://x.com/momodoutaal/status/1774514352822845661?s=46 ("When I was a student in the United States I was so revolted by the ruthless colonial exploitation and political oppression of the people of Africa that I knew no peace. The matter exercised my mind to such a degree that I decided to put down my thoughts in writing and to dilate on the results of some of my research concerning the subject of colonialism and imperialism' - Nkrumah").

[18] Momodou Taal (@MomodouTaal), X (July 25, 2023, 10:12 AM) https://x.com/MomodouTaal/status/1674792989347155971 ("The international community's inaction in the face of ongoing humanitarian crises is a failure of global responsibility").

on March 19, 2023; May 7, 2023; August 16, 2023; October 14, 2023; January 20, 2024; August 21, 2024; and December 22, 2024.

Defendant Trump Campaigns on Pledge to "Deport" Students for Protest Activity and Officials Pledge Prosecution of Citizens While Pro-Israel Groups Target Mr. Taal

35. During the 2024 presidential campaign, Defendant Trump repeatedly vowed to deport non-citizen students who participate in protest activity. On or about October 28, 2023, he told the Republican Jewish Coalition, "All of the resident aliens who joined in the pro-jihadist protest this month, nobody's ever seen anything like it. Come 2025, we will find you and we will deport you." On May 14, 2024, he told reporters, "Any student that protests, I throw them out of the country… As soon as they hear that, they're going to behave." He described campus protests as a "radical revolution" and promised, "we're going to set that movement back 25 or 30 years." At a rally in Wildwood, New Jersey, he declared, "If you come from another country and try to bring Jihadism or anti-Americanism or anti-Semitism to our campuses, we will immediately deport you."

36. As Mr. Taal became a prominent voice within the student movement, he faced escalating scrutiny. On March 21, 2024, Representative Jason Smith of the House Committee on Ways and Means – a prominent supporter of Defendant Trump – sent a letter to Cornell President Martha Pollack citing Mr. Taal's public comments as examples of speech that should be curtailed.[19] This letter indicated the Committee had dedicated resources to monitoring protest activity at Cornell, a focus that appears ongoing.

[19] Letter from U.S. Rep. Jason Smith to Martha E. Pollack 4 n.16 (March 21, 2024), https://gop-waysandmeans.house.gov/wp-content/uploads/2024/03/Antisemitism-Ltr-to-Universities.pdf.

37. Mr. Taal has also been directly targeted by Zionist groups advocating for his removal from the U.S. In November 2024, Betar US ("Betar") compiled a list of pro-Palestinian foreign students it sought to have deported, naming Mr. Taal as the sole individual identified. [20] Betar's director, Ross Glick, delivered this list to Senator John Fetterman and aides from the offices of Senators Ted Cruz and James Lankford, later telling the *New York Post,* "They all gave me the thumbs up." And added that Betar was in communication with prospective Trump administration appointees at the Department of Justice regarding enforcement actions against individuals on the list.[21]

38. On February 11, 2025, the *Washington Free Beacon* reported that Mr. Taal was considered the most prominent "foreign student" who played a leading role in pro-Palestinian protests – specifically referring to him as the first and most important target – who could face investigation or deportation under a potential Trump executive order.[22] Since then, high-profile social media accounts have called for Mr. Taal's removal, often tagging the official social media account of Immigration and Customs Enforcement ("ICE").[23] On March 13, 2025, Betar posted

[20] Jon Levine, *Zionist org preps list of foreign pro-Hamas students, hoping Trump will deport them*, N.Y. POST (Nov. 23, 2024, 8:22 AM), https://nypost.com/2024/11/23/us-news/zionist-org-preps-list-of-foreign-pro-hamas-students-hoping-trump-will-deport-them/.

[21] *Id.*

[22] Alana Goodman, *Trump Pledged To Deport Pro-Hamas Student Visa Holders. Who Are They?*, WASH. FREE BEACON (Feb. 11, 2025), https://freebeacon.com/campus/trump-pledged-to-deport-pro-hamas-student-visa-holders-who-are-they/.

[23] See, e.g., Jews Fight Back (@JewsFightBack), X (Feb. 20, 2025, 1:08 PM), https://x.com/JewsFightBack/status/1892637461412540818 ("This terror supporter Momodou Taal is NOT an American citizen. Why hasn't he been deported yet? Hit like and repost this to get @ICEgov's attention! He's in blatant violation of his visa. DEPORT. NOW").

on X a "Deport Alert" that specifically named Mr. Taal.[24] Mr. Taal's growing fear that he will be the target of an ICE removal operation is grounded in a pattern of escalating attention, coordination among high-ranking political and influential private actors, and public threats by figures with the power to influence immigration enforcement decisions.

Defendant Trump Issues Executive Orders

EO 1: "Protecting the United States from Terrorists and National Security and Public Safety Threats

39. Section 1(a) of EO 1 states that it is the policy of the federal government "to protect its citizens from aliens who intend to commit terrorist attacks, threaten our national security, espouse hateful ideology, or otherwise exploit the immigration laws for malevolent purposes." Exec. Order No. 14161, 90 Fed. Reg. 8451 (Jan. 30, 2025).

40. Section 1(b) further states that, in order "[t]o protect Americans . . . the United States must ensure that admitted aliens and aliens otherwise already present in the United States do not bear hostile attitudes toward its citizens, culture, government, institutions, or founding principles, and do not advocate for, aid, or support designated foreign terrorists and other threats to our national security." *Id.*

41. Section 2 of EO 1 implements enhanced vetting of the speech and political opinions of non-citizens. As relevant to the Plaintiffs:

a. Section 2(a)(i) requires Defendant Noem, the Attorney General, and the Director of National Intelligence to "promptly . . . identify all resources that may be used

[24] Betar USA (@Betar_USA), X (March 13, 2025, 10:38 AM), https://x.com/Betar_USA/status/1900194755050434943 ("Deport alert: Momodou Taal Affiliation: Cornell University Role: Graduate student Countries of Origin: Gambia and the United Kingdom...").

to ensure that all aliens . . . who are already in the United States, are vetted and screened to the maximum degree possible." *Id.*

b. Section 2(a)(ii) mandates the same officials to "ascertain whether [an] individual seeking [an immigration] benefit is . . . not a security or public safety threat." *Id.*

c. Section 2(a)(iv) requires the officials to "vet and screen to the maximum degree possible all aliens who . . . are already inside the United States." *Id.*

42. Section 3 requires the Secretary of State, in coordination with Defendant Noem, the Attorney General and the Director of National Intelligence, to "[r]ecommend *any actions necessary* to protect the American people from the actions of foreign nationals who have undermined or seek to undermine the fundamental constitutional rights of the American people, including, but not limited to, our Citizens' rights to freedom of speech and the free exercise of religion protected by the First Amendment, who preach or call for sectarian violence, the overthrow or *replacement of the culture* on which our constitutional Republic stands, or who provide aid, advocacy, or support for foreign terrorists." (Emphasis added). *Id.* These recommendations were due no later than February 19, 2025, but as of the date of this filing, they have not been made public.

EO 2: "Additional Measures to Combat Anti-Semitism"

43. Section 1 of EO 2 includes a preamble attacking "the prior administration" for failing to take steps to "protect American Jews," and declaring that "this failure is unacceptable and ends today." Exec. Order No. 14188, 90 Fed. Reg. 8451 (Feb. 3, 2025).

44. Section 2 states: "It shall be the policy of the United States to combat anti-Semitism vigorously, using all available and appropriate legal tools, to prosecute, remove, or otherwise hold to account the perpetrators of unlawful anti-Semitic harassment and violence." *Id.*

45. Section 3 requires Defendant Noem, in consultation with the Secretaries of State and Education, to issue a report within 60 days to "identify[] all civil and criminal authorities or actions within the jurisdiction of" each agency to "combat anti-Semitism." *Id.*

46. Section 3€ authorizes the Attorney General to make "recommendations for familiarizing institutions of higher education with the grounds for inadmissibility under 8 U.S.C. § 1182(a)(3) so that such institutions may monitor for and report activities by alien students and staff relevant to those grounds and for ensuring that such reports about aliens lead, as appropriate and consistent with applicable law, to investigations and, if warranted, actions to remove such aliens." *Id.*

47. High-ranking officials from the Department of Justice have recently indicated Defendants' intent to prosecute citizens like Plaintiff Prof. Wa Ngũgĩ and Mr. Parasurama and subject them to lengthy prison sentences pursuant to EO 2. This threat is imminent. At the end of February 2025, Senior Counsel to the Assistant U.S. Attorney for Civil Rights Leo Terrell told Israel's Channel 12 News: "You see all these disorderly demonstrations, supporting Hamas and trying to intimidate Jews? We are going to put these people in jail — not for 24 hours, but for years."[25] He added, "a lot is going to happen in the next four to five weeks" and that once protestors face a threat of jail time, "it will stop."[26]

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[25] Jewish News Syndicate, *DOJ Antisemitism Task Force: We'll Put Hamas Supporters in Jail 'for Years'*, NEWSMAX (Feb. 26, 2025, 9:18 AM), https://www.newsmax.com/us/hamas-terrorists-antisemitic/2025/02/26/id/1200545/.

[26] *Id.*

48. On February 28, 2025, the U.S. Department of Justice's Task Force to Combat Anti-Semitism announced it would begin "meet[ing] with university leadership, impacted students and staff, local law enforcement, and community members as it gathers information" about protest activity and alleged "anti-Semitic" activity on campuses in preparation for possible prosecution.[27]

Executive Orders Impose Chilling Effect on Plaintiffs

49. As a result of the executive orders, Mr. Taal has been forced to profoundly alter his prior speech and association patterns. He has refrained from attending protests and public political meetings, has substantially reduced his activity on social media, and no longer discusses politics with associates from Cornell, fearing his words will be misinterpreted or reported to government authorities. He lives in constant fear that he may be arrested by immigration officials or police as a result of his speech.

50. Following the issuance of the Orders, Mr. Taal also began withdrawing from broader forms of public engagement, including canceling speaking engagements and declining invitations to participate in public events – opportunities that had previously been integral to his advocacy work and professional development. Critically, Mr. Taal has been forced to cancel travel to international academic events. For example, he was invited by Queens University in Toronto, Ontario to speak at a launch event for his book, *The Malcolm Effect: Revisited*. He was

[27] Press Release, U.S. Dep't of Justice, Federal Task Force to Combat Antisemitism Announces Visits to 10 College Campuses that Experienced Incidents of Antisemitism (Feb. 28, 2025), https://www.justice.gov/opa/pr/federal-task-force-combat-antisemitism-announces-visits-10-college-campuses-experienced#:~:text=Created%20pursuant%20to%20President%20Trump's,schools%20and%20on%20college%20campuses.

unable to attend for fear of being unlawfully detained and deported upon arrival at a U.S. port of entry. He is also fearful of traveling to London to visit family and friends.

51. As a result of the chilling effect the executive orders have had on Mr. Taal's speech, the citizen-plaintiffs have been unable to listen to his views in the types of public € where Mr. Taal used to be able to speak his mind freely. These € include academic conferences, public political meetings, off-campus protests, and even less formal political discussions in public places like cafés, sidewalks, restaurants, and other locations. Prof. Wa Ngũgĩ and Mr. Parasurama have been deprived of their rights to listen to Mr. Taal's ideas and suggestions about planning peaceful protests and organizing educational meetings about the rights of the Palestinian people, as well as his political insights into the historical, political, and sociological roots of what they understand to be a genocide against the people of Palestine. The loss of Mr. Taal's voice in these spaces has diminished the richness and diversity of political dialogue within the community and has deprived the citizen-Plaintiffs of an important source of intellectual and organizing leadership. The absence of such discussion has also made it harder for Plaintiffs to build momentum around their advocacy work, since they no longer feel safe meeting and brainstorming in public.

52. As a result, all Plaintiffs have ceased interacting with one another in public locations, fearing that their associations may draw scrutiny. Mr. Parasurama – a U.S. citizen, student, and prominent participant in local campus protests in support of the Palestinian people – used to regularly meet Mr. Taal at political meetings and demonstrations. Since the promulgation of the Orders, they have not met in person for fear that mere association could be construed as "anti-government" or "anti-Semitic." The resulting isolation has eroded their ability to engage in collective action and has undermined their ability to freely express their views on contemporary political events.

March 2025: Enforcement Begins

53. On March 9, 2025, Defendant DHS arrested a former Columbia University graduate student and lawful permanent resident at his apartment in New York City. Following the arrest, DHS spokesperson Tricia McLaughlin issued a public statement declaring that action was taken "in support of President Trump's executive orders prohibiting anti-Semitism" and affirming that Defendant DHS is "committed to enforcing President Trump's executive orders and to protecting U.S. national security."

54. The individual arrested, Mahmoud Khalil, was a prominent activist on Columbia's campus and, like Mr. Taal, had previously been listed by Betar as a target for removal.[28]

55. On March 10, 2025, Defendant Trump posted the following statement on the social media platform Truth Social:

> Following my previously signed Executive Orders, ICE proudly apprehended and detained Mahmoud Khalil, a Radical Foreign Pro-Hamas Student on the campus of Columbia University. This is the first arrest of many to come. We know there are more students at Columbia and other Universities across the Country who have engaged in pro-terrorist, anti-Semitic, anti-American activity, and the trump Administration will not tolerate it. many are not students, they are paid agitators. We will find, apprehend, and deport these terrorist sympathizers from our country — never to return again. If you support terrorism, including the slaughtering of innocent men, women, and children, your presence is contrary to our national and foreign policy interests, and you are not welcome here. We expect

[28] Surina Venkat, *Department of Homeland Security Confirms Arrest of Palestinian Activist Mahmoud Khalil, SIPA '24*, COLUMBIA SPECTATOR (March 10, 2025), https://www.columbiaspectator.com/news/2025/03/10/department-of-homeland-security-confirms-arrest-of-palestinian-activist-mahmoud-khalil-sipa-24; Azad Essa, *Who is Mahmoud Khalil, the Palestinian student activist facing deportation from the US?* MIDDLE EAST EYE (Mar. 12, 2025), https://www.middleeasteye.net/profile/mahmoud-khalil-who-is-palestinian-student-columbia-facing-deportation-us.

every one of America's Colleges and Universities to comply. Thank you![29]

CLAIMS FOR RELIEF

Count 1: Violation of the First Amendment Right to Free Speech

56. Plaintiffs hereby incorporate by reference the allegations contained in each and every preceding paragraph, as if fully set forth herein.

57. Each EO has imposed an unconstitutional chilling effect on Mr. Taal's right to free speech. The First Amendment protects "people" and not citizens alone. U.S. Const. Amend. I. This includes non-citizens living in the U.S. "Freedom of speech and of press is accorded [non-citizens] residing in this country." *Bridges v. Wixon*, 326 U.S. 135, 148 (1945).

58. The Orders have had an immediate chilling effect on Mr. Taal, and Defendant Trump's "promise" to deport each and every visa holder who "joined" a pro-Palestinian protest by the end of 2025 renders Mr. Taal's subjective fear of imminent enforcement eminently reasonable. Mr. Taal has been forced to substantially curtail his speech activity. He has cancelled speaking engagements at which he had planned to speak on his views about Defendant Trump, U.S. policy toward Israel and the Israeli invasion of Gaza, he has ceased speaking at local public events or attending peaceful protests on and off Cornell University's campus, as he had done before the executive orders were published, and he has substantially limited his social media posts.

59. Prof. Wa Ngũgĩ and Mr. Parasurama are similarly chilled by the executive orders. While not threatened with deportation, EO 2 contemplates the criminal prosecution of speech

[29] Donald Trump (@realDonaldTrump), Truth Social (March 10, 2025, 1:05 PM), https://truthsocial.com/@realDonaldTrump/posts/114139222625284782

deemed "anti-Semitic" by Defendants. The government may not criminalize speech unless that speech is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447-48 (1969). Lacking from either executive order is any language indicating that the speech restrictions are limited to specific imminent lawless action likely to incite such action.

60. The executive orders plainly impose content-based restrictions on speech by targeting speech that is critical of the U.S. government, its institutions, American "culture" and the State of Israel. "Speech critical of the exercise of the State's power lies at the very center of the First Amendment." *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1034 (1991); *see, e.g.*, *Cohen v. California*, 403 U.S. 15, 18 (1971) (treating conviction for wearing a jacket with offensive message as based on speech). These rights are of particular importance on university campuses. *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

61. Content-based restrictions on speech are strictly scrutinized to ensure they pass constitutional muster. Defendants cannot satisfy this test. There is no compelling or legitimate state interest in preventing individuals from criticizing the government, its institutions, Defendant Trump, American government policy, American culture, or the State of Israel. Even if the orders did possess some nexus to an articulable national security concern, such concerns "do not warrant abdication of the judicial role" and courts "should not defer to the government's reading of the First Amendment, even when such interest are at stake." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010). Neither executive order contains language that is narrowly tailored to meet a legitimate state end.

62. By threatening deportation of non-citizens and criminal prosecution of U.S. citizen who protest Israel and Israeli actions in Palestine, the language of executive orders combined with

statements made by Defendant Trump and high-ranking officials in the Department of Justice have had an immediate chilling effect on the speech and activity Plaintiffs, who despite a past pattern and practice of attending protests and criticizing the U.S. government and government of Israel have refrained from such activity in the weeks following the promulgation of the Orders for fear of being arrested, prosecuted, jailed, or deported.

Count 2: Violation of the First Amendment Right to Listen

63. Plaintiffs hereby incorporate by reference the allegations contained in each and every preceding paragraph, as if fully set forth herein.

64. The First Amendment protects the right of citizens like Prof. Wa Ngũgĩ and Mr. Parasurama to hear, receive, debate, and discuss views that are critical of the U.S. government with non-citizens. "The First Amendment involves not only the right to speak and publish but also the right to hear, to learn, to know." *Kleindienst v. Mandel*, 408 U.S. 753, 771 (1972). "We have recognized a First Amendment right to receive information and ideas." *Murthy v. Missouri*, 144 S. Ct. 1972, 1996 (2024). *See, e.g.*, *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *Amer. Acad. Of Religion v. Napolitano*, 573 F.3d 115 (2d Cir. 2009).

65. This includes the right to hear criticisms of the government by non-citizens, even when such criticisms come from outside the U.S. (unlike here). In *Lamont v. Postmaster General*, the U.S. Supreme Court struck down an act of Congress requiring citizens to affirmatively request in writing that the Postal Service deliver mail containing "subversive" publications sent by a foreign sender. The Court held that "[t]his amounts in our judgment to an unconstitutional abridgment of the addressee's First Amendment rights." 381 U.S. 301, 307 (1965). "The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them." *Id*. At 308 (Brennan, J., concurring). "The First Amendment goes

beyond protection of . . . the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." *Boston v. Bellotti*, 435 U.S. 765, 783 (1978).

66. The orders have substantially disrupted Prof. Wa Ngũgĩ and Mr. Parasurama's rights to hear views critical of the U.S. government and government of Israel. The orders deprive the citizen-plaintiffs of their ability to listen to Mr. Taal's historical, political, and academic views on issues of contemporary relevance and therefore violate their First Amendment rights. Likewise, the chilling effect the threat of criminal prosecution has had on Prof. Wa Ngũgĩ and Mr. Parasurama has deprived Mr. Taal of his right to benefit from and discuss their views.

Count 3: Violation of the First Amendment Right to Association

67. Plaintiffs hereby incorporate by reference the allegations contained in each and every preceding paragraph, as if fully set forth herein.

68. All plaintiffs have a First Amendment right to associate with individuals who possess views that are critical of the U.S. government, its institutions, policies, American "culture," or whose views are critical of the Israeli government. "When it comes to the freedom of association, the protections of the First Amendment are triggered not only by actual restrictions on an individual's ability to join with others to further shared goals. The risk of a chilling effect on association is enough, '[b]ecause First Amendment freedoms need breathing space to survive.'" *Ams. For Prosperity Found. V. Bonta*, 594 U.S. 595, 609 (2021) (Quoting *NAACP v. Button*, 371 U. S. 415, 433 (1963)).

69. By barring non-citizens from criticizing the U.S. government, its institutions, its policies, American culture, and the government of Israel, the orders have chilled Plaintiffs and their professor-colleagues and fellow students from interacting, meeting, holding discussions or

otherwise publicly associating with one another. This implicates each Plaintiff's associational rights, regardless of alienage. Because of Mr. Taal's prominent role speaking against U.S. and Israeli government policy and because EO 1 announced that Defendant DHS is surveilling all non-citizens in the U.S. to monitor their political views, he possesses a reasonable fear that associating with local activists may constitute an "anti-American" act in itself, thereby subjecting him to possible negative immigration consequences. And because EO2's criminal prosecution provision applies to citizens as well as non-citizens, all Plaintiffs fear that Defendants might interpret their association with one another as proof of activity that falls under the ambit of that order. This has produced an unconstitutional chilling effect on all Plaintiffs' right to freely and publicly associate with one another.

Count 4: Violation of the First Amendment – Vagueness and Overbreadth

70. Plaintiffs hereby incorporate by reference the allegations contained in each and every preceding paragraph, as if fully set forth herein.

71. Both executive orders are unconstitutionally vague and overbroad. The sweeping and confusing language of the orders creates substantial uncertainty as to the type of speech that is barred. This uncertainty has chilled a broad range of protected speech on the part of Plaintiffs, which renders each order unconstitutionally vague for overbreadth.

72. "Where a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked." *Grayned v. City of Rockford*, 408 U.S. 104, 391 (1972) (quotations and citations omitted). A restriction on speech is unconstitutionally vague if "a substantial number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly

legitimate sweep." *Ams. For Prosperity Found. V. Bonta*, 594 U.S. at 615; *United States v. Hansen*, 599 U. S. 762, 770 (2023) (speech restriction is void for vagueness if it "prohibits a substantial amount of protected speech relative to its plainly legitimate sweep").

73. This test is met here. The language of the orders encompasses all speech critical of the government, its institutions, American culture, and the government of Israel. Its scope is unprecedented in the context of First Amendment restrictions. The vast majority of the orders' applications sweep-up clearly protected speech. In fact, the orders criminalize no type of activity or speech that isn't already barred by either the inadmissibility and deportability statutes (8 U.S.C. §§1182 and 1227, respectively) or the criminal "material support for terrorism" statute (18 U.S.C. §2339B). The ban on expressing a "hostile attitude" toward American "culture" is of particular concern as EO1 does not define the elements of American "culture" that are to be insulated from criticism.

74. The broad and sweeping character of the Orders will lead reasonable individuals to self-censor speech that is plainly protected for fear of transgressing the vague boundaries enumerated therein. The Orders are overbroad and vague in violation of the First Amendment.

Count 5: Violation of the Fifth Amendment – Vagueness and Lack of Notice

75. Plaintiffs hereby incorporate by reference the allegations contained in each and every preceding paragraph, as if fully set forth herein.

76. Both executive orders are also unconstitutionally vague under the Fifth Amendment because they cause persons "of common intelligence . . . necessarily [to] guess at its meaning and [to] differ as to its application." *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926). The degree of precision required increases with the gravity of the penalty and the

importance of the rights at stake. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982) (higher standard applicable when speech at stake).

77. EO 2 subjects all Plaintiffs to the threat of prosecution for pro-Palestinian speech, and both EO 1 and EO 2 subject Mr. Taal to the threat of removal. Deportation/removal is a "particularly severe penalty," *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010). Neither executive order provides individuals of common intelligence with an understanding as to the type of speech and association barred. EO 1 conflates any criticism of the U.S. government, its institutions and American "culture" with "terrorism," and EO 2 conflates criticism of the State of Israel with "anti-Semitism." According to Defendant Trump's January 30, 2025, fact sheet on the executive orders, the orders equate "joining protests" with support for "Hamas," a designated Foreign Terrorist Organization ("FTO"). In the fact sheet, Defendant Trump states that college campuses as a whole are "leftist" and "infested with radicalism like never before."

78. As a result of the vague language of each executive order, the accompanying fact sheet and public statements by Defendant Trump, a person of average intelligence would understand that any criticism of a government "institution" might include a social media post questioning the actions of the office of the president, a decision to sign an open letter expressing concerns over a particular executive action, or that attending a peaceful demonstration in support of the people of Palestine might be construed as "terrorism" or support for "Hamas." In the academic context, this would apply to academic research, homework assignments or statements in class. Because each executive order fails to provide sufficient notice of the type of speech barred, it denies Plaintiffs' due process right to conform their speech to the orders.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following relief:

(a) Assume jurisdiction over this matter;

(b) Temporarily restrain and enjoin Defendants from implementing or enforcing Section 1(b) of EO 1 barring speech by non-citizens lawfully residing in the U.S. critical of American "culture, government, institutions, or founding principles," pending further orders from this Court;

(c) Temporarily restrain and enjoin Defendants from implementing or enforcing other parts of EO 1 to the extent they facilitate the speech restrictions in Section 1(b), including Section 2(a)(i) of EO 1 (requiring extreme vetting and screening of speech by non-citizens "who are already in the United States" lawfully); and Sections 2(a)(ii) and (iv) of EO 1 (allowing speech to be used to deny immigration benefits under the INA);

(d) Temporarily restrain and enjoin Defendants from implementing or enforcing Section 3€ of EO 2 preparing reports requiring, coercing, or otherwise pressuring universities to "monitor for and report" student and staff campus speech and activity to federal law enforcement and immigration authorities;

(e) Temporarily restrain and enjoin Defendants from implementing or enforcing Section 2 of EO 2's criminal prosecution authority to arrest, charge, or otherwise prosecute citizens and non-citizens for protected speech criticizing of the government of Israel;

(f) Pursuant to Federal Rule of Civil Procedure 65(b)(2), set an expedited hearing within fourteen (14) days to determine whether the Temporary Restraining Order should be extended;

(g) Pursuant to 5 U.S.C. §702, vacate the specific provisions in both Executive Orders outlined in (b)-€ *supra*;

(h) Preliminarily and permanently enjoin DHS from enforcing the specific provisions

of the Executive Orders outlined in (b)-€ *supra*;

(i) Issue a writ of mandamus compelling Defendants to immediately cease implementing the specific provisions of the Executive Orders outlined in (b)-€ *supra* without further delay;

(j) Award costs and attorney fees under the Equal Access to Justice Act (EAJA), 5 U. S. C. § 2412, and on any other basis justified under law; and

(k) Grant other such relief that the Court may deem proper.

Dated: March 15, 2025

Respectfully submitted,

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**pro hac vice* forthcoming
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Exhibit G

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS-HARVARD FACULTY CHAPTER,

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS AT NEW YORK UNIVERSITY,

RUTGERS AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS-AMERICAN FEDERATION OF TEACHERS, and

MIDDLE EAST STUDIES ASSOCIATION,

Plaintiffs,

v.

MARCO RUBIO, in his official capacity as Secretary of State, and the DEPARTMENT OF STATE,

KRISTI NOEM, in her official capacity as Secretary of Homeland Security, and the DEPARTMENT OF HOMELAND SECURITY,

TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement,

DONALD J. TRUMP, in his official capacity as President of the United States, and

UNITED STATES OF AMERICA,

Defendants.

Civil Action No. 1:25-cv-10685

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Implementing executive orders issued by President Trump in January, the defendant agencies have announced that they intend to carry out large-scale arrests, detentions, and deportations of noncitizen students and faculty who participate in pro-Palestinian protests and other related expression and association (the "ideological-deportation policy"). The defendant agencies arrested Mahmoud Khalil, a recent Columbia University graduate and a legal permanent resident, pursuant to this policy earlier this month; they revoked the visas of at least four others, one of whom fled to Canada in fear of arrest; they supplied universities with the names of other students they intend to target under the policy; and they launched new social media surveillance programs aimed at identifying still others. After federal agents seized Khalil in the lobby of his university-owned student housing, President Trump warned: "This is the first arrest of many to come."

2. While President Trump and other administration officials have described pro-Palestinian campus protests as "pro-Hamas," they have stretched that label beyond the breaking point to encompass any speech supportive of Palestinian human rights or critical of Israel's military actions in Gaza. They have left no doubt that their new policy entails the arrest, detention, and deportation of noncitizen students and faculty for constitutionally protected speech and association. In an interview twelve days ago on NPR's *Morning Edition*, Deputy Secretary of Homeland Security Troy Edgar responded this way to questions from journalist Michel Martin about the arrest of Mahmoud Khalil:

> **Edgar:** This is a person that came in under a visa. And again, the secretary of state at any point can take a look and evaluate that visa and decide if they want to revoke it.
>
> **Martin:** He's a legal permanent resident. I have to keep insisting on that. He is a legal permanent resident. So what is the standard? Is any criticism of the Israeli government a deportable offense?

Edgar: Like I said, I think that at this point when he entered into the country on a student visa, at any point we can go through and evaluate what his status is.

Martin: Is any criticism of the United States government a deportable offense?

Edgar: Like I said, if you go through the process and you're a student and you're here on a visa and you go through it, at any point . . .

Martin: Is any criticism of the government a deportable offense?

Edgar: Let me put it this way, Michel, imagine if he came in and filled out the form and said, "I want a student visa." They asked him, "What are you going to do here?" And he says, "I'm going to go and protest." We would have never let him into the country.

3. By design, the agencies' policy has created a climate of repression and fear on university campuses. Out of fear that they might be arrested and deported for lawful expression and association, some noncitizen students and faculty have stopped attending public protests or resigned from campus groups that engage in political advocacy. Others have declined opportunities to publish commentary and scholarship, stopped contributing to classroom discussions, or deleted past work from online databases and websites. Many now hesitate to address political issues on social media, or even in private texts. The agencies' policy, in other words, is accomplishing its purpose: it is terrorizing students and faculty for their exercise of First Amendment rights in the past, intimidating them from exercising those rights now, and silencing political viewpoints that the government disfavors.

4. Plaintiffs are associations whose members include thousands of faculty and students at universities across the country. They commence this action because the ideological-deportation policy, and the repressive climate it has engendered, has far-reaching implications for the expressive and associational rights of their U.S. citizen members, and for Plaintiffs themselves. The policy prevents or impedes Plaintiffs' U.S. citizen members from hearing from, and associating with, their noncitizen students and colleagues. It makes it practically impossible for

them to organize with those students and colleagues and to participate in political expression alongside them. It also makes it more difficult for them to benefit from those individuals' insights and scholarship and to collaborate with them on academic projects. Plaintiffs themselves have also been harmed because they are no longer able to learn from and engage with noncitizen members to the extent they once did, and because they have had to divert resources from other projects to address the all-too-real possibility that their noncitizen members will be arrested, imprisoned, and deported for exercising rights that the Constitution guarantees.

5. The First Amendment protects the rights of Plaintiffs and their U.S. citizen members to hear from, and associate with, noncitizen students and faculty. Because the ideological-deportation policy abridges these rights without adequate justification, the policy is unconstitutional. Plaintiffs respectfully request that the Court declare that the policy violates the First and Fifth Amendments, as well as the Administrative Procedure Act, and enjoin Defendants from further implementation of it. They also seek a declaration that Defendants' campaign of coercive threats to arrest, detain, and deport noncitizen students and faculty based on their pro-Palestinian expression and association violates the First Amendment.

JURISDICTION AND VENUE

6. The Court has jurisdiction over the action pursuant to 28 U.S.C. § 1331, 5 U.S.C. § 702, the First and Fifth Amendments, and Article III of the U.S. Constitution.

7. The Court has authority to issue the requested relief pursuant to 5 U.S.C. § 706(2), 28 U.S.C. §§ 2201–2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and the Court's inherent equitable powers. The Court has authority to award costs and attorneys' fees pursuant to 28 U.S.C. § 2412.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(1).

PLAINTIFFS

9. Plaintiff American Association of University Professors ("AAUP") is a nonprofit membership association and labor union of faculty, graduate students, and other academic professionals with chapters at colleges and universities throughout the country. The AAUP's mission is to advance academic freedom and shared governance; to define fundamental professional values and standards for higher education; to promote the economic security of faculty, academic professionals, graduate students, postdoctoral fellows, and all those engaged in teaching and research in higher education; to help the higher education community organize to accomplish their goals; and to ensure higher education's contribution to the common good. Founded in 1915, the AAUP has helped to shape American higher education by developing the standards and procedures that maintain quality in education and academic freedom in the country's colleges and universities. The AAUP is headquartered in Washington, DC.

10. Plaintiff AAUP-Harvard Faculty Chapter ("Harvard-AAUP") is a nonprofit membership association of faculty across Harvard University's many departments and schools, and it is a chapter of the AAUP. Harvard-AAUP advocates for meaningful and democratic shared university governance, for academic freedom, and for the economic security of those who perform the institution's core instructional work. Harvard-AAUP is headquartered in Cambridge, Massachusetts.

11. Plaintiff AAUP at New York University ("NYU-AAUP") is a membership association of faculty across NYU's many schools and campuses, and it is a chapter of the AAUP. NYU-AAUP is focused on defending academic freedom, encouraging participation in university governance, and advancing the interests of NYU faculty, students, and staff. NYU-AAUP is headquartered in New York City, New York.

12. Plaintiff Rutgers AAUP-American Federation of Teachers ("Rutgers AAUP-AFT") is a membership association representing more than 5,000 full-time faculty, graduate workers, postdoctoral associates, and Education Opportunity Fund counselors at Rutgers University, and it is a chapter of the AAUP. Rutgers AAUP-AFT is one of the oldest higher education unions in the country, negotiating collective bargaining agreements for full-time faculty since 1970 and graduate workers since 1972. Rutgers AAUP-AFT's mission includes promoting the well-being of its unit members; protecting and improving the university's teaching, research, and service activities as a public good; promoting the development of the intellectual capacities and economic interests of students, the public, and workers at the university; advancing academic freedom and shared governance within the university; and building community and labor coalitions to achieve educational and economic justice. Rutgers AAUP-AFT is headquartered in New Brunswick, New Jersey.

13. Plaintiff Middle East Studies Association ("MESA") is a 501(c)(3) nonprofit membership association of scholars, educators, and those interested in the study of the Middle East (including Southwest Asia, the Arab world, and North Africa). MESA's mission is to foster the study of the Middle East; to promote high standards of scholarship and teaching; and to encourage public understanding of the region and its peoples through programs, publications, and services that enhance education, further intellectual exchange, recognize professional distinction, and defend academic freedom. MESA is incorporated in Arizona and its principal place of business is in Washington, DC.

DEFENDANTS

14. Defendant U.S. Department of State is a cabinet-level department of the Executive Branch of the federal government and is an "agency" within the meaning of 5 U.S.C. § 551(1).

15. Defendant Marco Rubio is the Secretary of State and has ultimate authority over the operations of the State Department. In that capacity and through his agents, Defendant Rubio has broad authority over the operation and enforcement of the immigration laws. Defendant Rubio and the department he leads have adopted and begun implementing the ideological-deportation policy. Defendant Rubio is sued in his official capacity.

16. Defendant U.S. Department of Homeland Security ("DHS") is a cabinet-level department of the Executive Branch of the federal government and is an "agency" within the meaning of 5 U.S.C. § 551(1). DHS includes various component agencies, including U.S. Immigration Customs and Enforcement ("ICE").

17. Defendant Kristi Noem is the Secretary of Homeland Security and has ultimate authority over DHS. In that capacity and through her agents, Defendant Noem has broad authority over the operation and enforcement of the immigration laws. Defendant Noem and the department she leads have adopted and begun implementing the ideological-deportation policy. Defendant Noem is sued in her official capacity.

18. Defendant Todd Lyons is the Acting Director of ICE and has authority over the operations of ICE. In that capacity and through his agents, Defendant Lyons has broad authority over the operation and enforcement of the immigration laws. Defendant Lyons and the agency he leads have adopted and begun implementing the ideological-deportation policy. Defendant Lyons is sued in his official capacity.

19. Defendant Donald J. Trump is President of the United States. He issued Executive Order 14,161 and Executive Order 14,188 (together, the "Executive Orders"), which the defendant agencies have cited as the basis for the ideological-deportation policy. He is sued in his official capacity.

20. Defendant United States of America includes all other government agencies and departments responsible for the promulgation and implementation of the ideological-deportation policy.

FACTUAL BACKGROUND

The 2023 and 2024 Campus Protests

21. Following the Hamas-led attacks on Israel of October 7, 2023, and Israel's subsequent bombing and invasion of Gaza, students and faculty organized protests on campuses across the United States. Many of the pro-Palestinian protests included calls for a ceasefire and for humanitarian aid to displaced or wounded Palestinians. Others centered on calls for institutional divestment from Israel. Many included criticism or condemnation of Israel's campaign in Gaza; and some included denunciations of Zionism. Others featured calls for a "free Palestine" and included chants—such as "from the river to the sea, Palestine will be free" and "intifada revolution"—that protesters said were calls for liberation and justice but that some listeners interpreted as calls for discrimination or violence. A small minority of protesters and counter-protesters engaged in violence and property damage, but the protests were overwhelmingly peaceful, even when they violated universities' rules.

22. The pro-Palestinian protests on campus took different forms. They included teach-ins, sit-ins, walk-outs, marches, exhibitions, vigils, encampments, and in some instances the occupation of buildings. On April 17, 2024, student protesters at Columbia University erected a "Gaza Solidarity Encampment" on the university's Morningside campus, and more than one hundred solidarity encampments were established at universities across the United States in the weeks thereafter. Some universities eventually persuaded student protesters to dismantle their encampments; others immediately called in the police. At Columbia University, police arrested more than a hundred students in an effort to clear the encampment on April 18, 2024, the day after

the encampment was established. Later, after a smaller group of protesters broke into and occupied Hamilton Hall—a building that students had also occupied in earlier protests relating to the Vietnam War and Apartheid South Africa—Columbia's administration called in the police again.

23. The students and faculty who participated in the pro-Palestinian protests on campus came from diverse backgrounds and held a wide range of political views. Some protesters viewed their participation as an extension of an American protest tradition, encompassing the anti-war and anti-apartheid protests of the 1960s, 70s, and 80s. Some protesters were Palestinians whose family members had been killed in or displaced by the war. Some protesters were Jewish, and many of them joined the protests to express their opposition to what they viewed as the displacement and even genocide of Palestinians in their name. While most of the protesters were likely U.S. citizens, many foreign citizens with visas or green cards joined the protests, and sometimes even led them.

24. Despite the diversity of the protesters and the wide range of views they expressed, President Trump repeatedly characterized the protests as "pro-Hamas," "pro-terrorist," "antisemitic," and "anti-American" during his 2024 campaign. He also promised that, if elected, he would deport the noncitizen students and faculty who had participated in the protests. At an event in May 2024, for example, he told donors to his campaign: "One thing I do is, any student that protests, I throw them out of the country. You know, there are a lot of foreign students. As soon as they hear that, they're going to behave."

The Executive Orders

25. The defendant agencies adopted the ideological-deportation policy challenged here to implement two executive orders that President Trump issued shortly after taking office. President Trump issued Executive Order No. 14,161, titled "Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats," on January 20, 2025.

He issued Executive Order No. 14,188, titled "Additional Measures to Combat Anti-Semitism," on January 29, 2025.

26. Executive Order 14,161 states that it is the policy of the United States to protect its citizens from noncitizens who "espouse hateful ideology," and to ensure that noncitizens who are already present in the United States "do not bear hostile attitudes towards its citizens, culture, government, institutions, or founding principles" and "do not advocate for, aid, or support designated foreign terrorists and other threats to [America's] national security." The order directs the Secretary of State, in coordination with the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, to promptly "vet and screen" all noncitizens who are already inside the United States "to the maximum degree possible."

27. Executive Order 14,188 states that it is the policy of the United States "to combat anti-Semitism vigorously, using all available and appropriate legal tools, to prosecute, remove, or otherwise hold to account the perpetrators of unlawful anti-Semitic harassment and violence." It reaffirms Executive Order 13,899, issued during the first Trump administration, which adopted a definition of antisemitism that encompasses constitutionally protected criticism of Israel and Israeli policies. (The definition encompasses, for example, speech that claims that Israel "is a racist endeavor," speech that holds Israel to standards "not expected or demanded of any other democratic nation," and speech that compares contemporary Israeli policies to those of the Nazis.) The order directs the head of each executive department or agency, within 60 days, to submit a report to the President "identifying all civil and criminal authorities or actions within the jurisdiction of that agency" that might be used "to curb or combat anti-Semitism." It also directs the Secretary of State, the Secretary of Education, and the Secretary of Homeland Security to include in their reports "recommendations for familiarizing institutions of higher education with

the grounds for inadmissibility under 8 U.S.C. § 1182(a)(3) so that such institutions may monitor for and report activities by alien students and staff relevant to those grounds and for ensuring that such reports about aliens lead, as appropriate and consistent with applicable law, to investigations and, if warranted, actions to remove such aliens."

28. The "grounds for inadmissibility under 8 U.S.C. § 1182(a)(3)" are the security and related grounds of inadmissibility, including various terrorism- and foreign policy–related provisions, 8 U.S.C. § 1882(a)(3)(B), (a)(3)(C), which also serve as grounds for deportation, *see* 8 U.S.C. § 1227(a)(4)(B), (C). Under the terrorism-related provisions, noncitizens who have engaged in or incited terrorist activity are inadmissible to the country, *id.* § 1182(a)(3)(B)(i)(I), (III); the same is true of noncitizens who "endorse[] or espouse[] terrorist activity or persuade[] others to endorse or espouse terrorist activity or support a terrorist organization," *id.* § 1182(a)(3)(B)(i)(VII), or who are representatives of "a political, social, or other group that endorses or espouses terrorist activity," *id.* § 1182(a)(3)(B)(i)(IV)(bb) (together, the "endorse or espouse" provisions). The foreign policy provision renders inadmissible any noncitizen "whose entry or proposed activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States." *Id.* § 1182(a)(3)(C)(i). This provision also states, however, that individuals may not be excluded based on "past, current, or expected beliefs, statements, or associations [that] would be lawful within the United States" unless "the Secretary of State personally determines that the [noncitizen]'s admission would compromise a compelling United States foreign policy interest," *id.* § 1182(a)(3)(C)(iii), and provides timely notice of that determination to Congress, *id.* § 1182(a)(3)(C)(iv).

29. After President Trump signed Executive Order 14,188, the White House released a fact sheet about the order "promis[ing]" to "Deport Hamas Sympathizers and Revoke Student Visas." The fact sheet included this warning from the President:

> To all the resident aliens who joined in the pro-jihadist protests, we put you on notice: come 2025, we will find you, and we will deport you. I will also quickly cancel the student visas of all Hamas sympathizers on college campuses, which have been infested with radicalism like never before.

The Ideological-Deportation Policy

30. To implement the two executive orders described above, the defendant agencies adopted the ideological-deportation policy challenged here, announcing that they intend to carry out large-scale arrests, detentions, and deportations of noncitizen students and faculty who participate in pro-Palestinian protests and other related expression and association. Pursuant to this policy, they arrested Mahmoud Khalil, a recent Columbia University graduate and a legal permanent resident, earlier this month; they revoked the visas of at least four others, one of whom fled to Canada in fear of arrest; they supplied universities with the names of other students they intend to target under the policy; and they launched new social media surveillance programs aimed at identifying still others.

31. On March 6, 2025, Secretary of State Rubio posted to X: "Those who support designated terrorist organizations, including Hamas, threaten our national security. The United States has zero tolerance for foreign visitors who support terrorists. Violators of U.S. law—including international students—face visa denial or revocation, and deportation." A news report published that same day revealed that the State Department had already launched a new social media surveillance program, called "Catch and Revoke," to identify noncitizen students for deportation pursuant to the new policy of ideological deportation. According to senior State Department officials cited by *Axios*, the program involves "AI-assisted reviews of tens of

thousands of student visa holders' social media accounts" to find "evidence of alleged terrorist sympathies expressed after Hamas' [October 7] attack on Israel." According to the report, "[i]f officials find a social media post from a foreign national that appears to endorse the [October 7] attack on Israel and looks 'pro-Hamas,' . . . that could be grounds for visa revocation."

32. Two days later, on March 8, 2025, ICE agents arrested Mahmoud Khalil, a 30-year-old legal permanent resident and recent Columbia graduate, at his Columbia University student housing. The agents initially told Khalil that they were detaining him because his student visa had been revoked by the State Department, but when Khalil's lawyer informed the agents that Khalil was a green card holder, the agents responded that the State Department had revoked Khalil's green card, too. The deportation notice later filed by the government cites the foreign policy provision and states: "The Secretary of State has determined that your presence or activities in the United States would have serious adverse foreign policy consequences for the United States."

33. Khalil has not been charged with any crime, and an administration official stated to *The Free Press* that "[t]he allegation here is not that he was breaking the law." Instead, the administration has made clear that it arrested Khalil because of his role in organizing protests that the administration characterizes as pro-Hamas. In a post made to X on March 9, 2025, DHS asserted that Khalil had led activities "aligned to" Hamas, and that ICE had arrested Khalil "in support of President Trump's executive orders prohibiting anti-Semitism, and in coordination with the Department of State." At a news briefing on March 11, 2025, Press Secretary Karoline Leavitt stated that "Mahmoud Khalil was an individual who was given the privilege of coming to this country to study at one of our nation's finest universities and colleges. And he took advantage of that opportunity, of that privilege by siding with terrorists." She asserted that "pro-Hamas

propaganda" fliers had been distributed at a protest that Khalil had led, though she did not provide any evidence that Khalil had produced, distributed, or even known about them.

34. When Deputy Secretary of Homeland Security Troy Edgar appeared on NPR's *Morning Edition* two days later, he indicated even more clearly that the government had targeted Khalil for deportation based on his political speech. Edgar initially stated that the State Department revoked Khalil's green card "for supporting a terrorist type organization," namely Hamas. But when asked to clarify how Khalil had supported Hamas, Edgar pointed to his involvement in pro-Palestinian protests generally: "Well, I think you can see it on TV, right? This is somebody that we've invited and allowed the student to come into the country, and he's put himself in the middle of the process of basically pro-Palestinian activity." When asked if that meant any criticism of Israel or the United States is "a deportable offense," he said: "Let me put it this way, . . . imagine if he came in and filled out the form and said, 'I want a student visa.' They asked him, 'What are you going to do here?' And he says, 'I'm going to go and protest.' We would have never let him into the country."

35. On March 17, 2025, after Khalil had challenged the State Department's decision to revoke his green card on the basis of his speech, ICE filed an additional (and transparently pretextual) justification for the State Department's decision. This additional charge alleged that Khalil had, at the time of his adjustment of status in March 2024, sought to procure an immigration benefit by fraud because he failed to disclose that he was "a member" of the United Nations Relief and Works Agency for Palestine Refugees ("UNWRA") and Columbia University Apartheid Divest ("CUAD"), and that he had continued working for the British government.

36. The State Department has revoked the visas of at least four other students and faculty pursuant to the ideological-deportation policy.

37. On March 5, 2025, the State Department revoked the student visa of Ranjani Srinivasan, an Indian national, doctoral student at Columbia University, and Adjunct Assistant Professor of Urban Planning at NYU's Robert F. Wagner Graduate School of Public Service, also under the foreign policy provision. Three federal immigration agents showed up at her apartment looking for her two days later, but she did not open the door. They showed up again the following night, just hours before Khalil was arrested, but she was not home because, fearing arrest, she had already fled the United States for Canada. On March 13, 2025, agents returned to her home with a judicial warrant. DHS released a statement characterizing Srinivasan as a terrorist sympathizer and accused her of advocating violence and being "involved in activities supporting Hamas," but the agency has not provided any evidence for its allegations, and Srinivasan disputes them. Srinivasan appears to be active, however, in protesting what she believes to be human rights violations in Gaza, and in December 2023 she signed an open letter published by the Society of Architectural Historians in support of "Palestinian liberation."

38. On March 8, 2025, ICE signed an arrest warrant for Yunseo Chung, a 21-year-old legal permanent resident and Columbia University student who has lived in the United States since she was seven. A few days earlier, Ms. Chung protested outside a Barnard College building where pro-Palestinian student demonstrators were holding a sit-in. She was arrested by police officers, given a desk ticket by the New York City Police Department for "obstruction of governmental administration," and released. On March 10, a federal law enforcement official advised Ms. Chung's attorney that her legal permanent resident status had been revoked. On March 13, federal law enforcement agents executed a judicial search warrant at Ms. Chung's dormitory. The warrant appears to have been issued in connection with an investigation of Columbia University for an alleged violation of the federal harboring statute.

39. On March 17, 2025, ICE arrested Badar Khan Suri, an Indian national and postdoctoral fellow at the Alwaleed Bin Talal Center for Muslim-Christian Understanding, which is part of Georgetown University's School of Foreign Service. Suri's student visa was revoked pursuant to the foreign policy provision. In a statement given to *Fox News*, DHS asserted that Suri had "spread[] Hamas propaganda," "promot[ed] antisemitism on social media," and had "close connections to a known or suspected terrorist, who is a senior advisor to Hamas." Suri has no criminal record and has not been charged with a crime. DHS's allegations appear to reference the fact that Suri's father-in-law, Ahmed Yousef, is a former advisor to Ismael Haniyeh, the Hamas leader assassinated by Israel last year in Iran. But Yousef left his position in the Hamas-run government in Gaza more than a decade ago and has publicly criticized Hamas's decision to attack Israel on October 7, 2023. DHS has not alleged that Suri himself has taken any action on behalf of Hamas.

40. On March 21, 2025, the Justice Department wrote to counsel for Momodou Taal, a student visa holder and doctoral candidate in Africana Studies at Cornell University, to convey ICE's intention to serve a deportation notice on Taal and request that Taal voluntarily "surrender to ICE custody." Taal is a prominent and outspoken pro-Palestinian advocate. The Justice Department wrote to Taal's lawyers after Taal sought a temporary restraining order to enjoin DHS from attempting to detain, remove, or otherwise enforce the Executive Orders against him, and while that application remained pending. In response to that application, the government informed the court that the State Department had revoked Taal's student visa.

41. Defendants and other administration officials have made clear that they intend to target other foreign students and faculty for arrest, detention, and deportation under the policy.

42. On March 9, 2025, the Secretary of State shared a news story about Khalil's arrest on X and warned: "We will be revoking the visas and/or green cards of Hamas supporters in America so they can be deported." The same day, DHS posted to X: "ICE and the Department of State are committed to enforcing President Trump's executive orders and to protecting U.S. national security."

43. The next day, President Trump posted on Truth Social:

> Following my previously signed Executive Orders, ICE proudly apprehended and detained Mahmoud Khalil, a Radical Foreign Pro-Hamas Student on the campus of Columbia University. This is the first arrest of many to come. We know there are more students at Columbia and other Universities across the Country who have engaged in pro-terrorist, anti-Semitic, anti-American activity, and the Trump Administration will not tolerate it. Many are not students, they are paid agitators. We will find, apprehend, and deport these terrorist sympathizers from our country — never to return again. If you support terrorism, including the slaughtering of innocent men, women, and children, your presence is contrary to our national and foreign policy interests, and you are not welcome here. We expect every one of America's Colleges and Universities to comply. Thank you!

44. The White House Press Secretary Karoline Leavitt reiterated this message at the news briefing she gave on March 11, 2025. When asked how many arrests the administration planned to make, she said that she did not have an estimate, but that DHS "is actively working on it." She stated that DHS had gathered "very good intel" "at the direction of the President's executive order, which made it very clear . . . that engaging . . . in anti-American, anti-Semitic, pro-Hamas protests will not be tolerated." This intelligence was, she said, aimed at "identify[ing] individuals on our nation's colleges and universities, on our college campuses who have engaged in such behavior and activity, and especially illegal activity." She also added that "Columbia University has been given the names of other individuals who have engaged in pro-Hamas activity, and they are refusing to help DHS identify those individuals on campus." She concluded: "We expect all America's colleges and universities to comply with this administration's policy."

45. On March 12, 2025, the *New York Times* reported that "[i]nvestigators from a branch of [ICE] that typically focuses on human traffickers and drug smugglers [had] scoured the internet for social media posts and videos that the administration could argue showed sympathy toward Hamas" and "handed over reports on multiple protesters to the State Department."

46. On March 13, 2025, Vice President J.D. Vance gave an interview on Fox News in which he commented on Khalil's arrest, stating: "This is not fundamentally about free speech. And to me, yes, it's about national security, but it's also more importantly about who do we as an American public decide gets to join our national community. And if the Secretary of State and the President decide this person shouldn't be in America, and they have no legal right to stay here, it's as simple as that." Asked whether he saw "more such deportations happening," he said "I think we'll certainly see some people who get deported on student visas if we determine that it's not in the best interests of the United States to have them in our country, so yeah, I don't know how high that number is going to be, but you're going to see more people."

47. On March 16, 2025, Secretary of State Rubio gave an interview on CBS's *Face the Nation* in which he promised that the administration would continue enforcing its policy of ideological deportation: "[W]e're going to do more. In fact, every day now we're approving visa revocations, and, if that visa led to a green card, the green card process as well."

A Climate of Fear and Repression for Noncitizen Students and Faculty

48. The ideological-deportation policy has created a climate of fear and repression on university campuses across the country and forced many noncitizen students and faculty into silence. Out of fear that pro-Palestinian expression might lead to arrest, detention, and deportation, many noncitizen students and faculty are no longer willing to participate in, or even attend, public political protests. Some have stepped back from leadership roles and participation in groups that engage in advocacy related to Israel and Palestine. Some are abstaining from public writing or

scholarship that they would otherwise have pursued. Others have attempted to purge their earlier public writings, including online articles, blog posts, and social media posts. Some students have stopped contributing to classroom discussions of Israel and Palestine; others are skipping class altogether. Some faculty have even fled their cities of residence, effectively forced to abandon their academic communities.

49. The chill on university campuses flows directly from the policy challenged here, as well as from Defendants' threats to arrest, detain, and deport noncitizen students and faculty based on their lawful expressive and associational activities.

50. Plaintiffs all have noncitizen faculty and student members who have been compelled to curtail their exercise of expressive and associational rights in the ways described above. Some of these members are described below. These individuals have been anonymized because they fear that their connection to this lawsuit could lead to them being targeted for arrest, detention, and deportation. Some noncitizen members interviewed by undersigned counsel were too fearful even to have their experiences described anonymously.

51. **AAUP Member A.** AAUP Member A is a legal permanent resident, a member of the AAUP, and a lecturer at a university in the Northeast whose research interests include race and migration.

52. Before the administration adopted the ideological-deportation policy, AAUP Member A regularly posted on social media and engaged in other public advocacy on issues related to Israel and Palestine. Because of the policy, however, and the fear that they will be targeted for deportation based on their writing and advocacy, AAUP Member A has taken down previously published social media posts about Israel and Palestine and stopped assigning materials about Palestine in the courses they teach.

53. They have also been chilled from engaging in peaceful political protest and assembly. AAUP Member A previously participated in pro-Palestinian protests and public demonstrations regularly and still wishes to gather with others to engage in pro-Palestinian speech and advocacy. They no longer participate in these activities because of the fear that they will be arrested and deported for doing so.

54. **AAUP Member B.** AAUP Member B is a legal permanent resident, a member of the AAUP, and a professor at a university in the Northeast.

55. Although AAUP Member B's academic work has obvious relevance to issues relating to Israel and Palestine, they have decided to forgo opportunities to write about these issues due to concerns that they may face immigration consequences stemming from the policy. They also decided against teaching a class they have offered in the past because the class syllabus would necessarily have included materials related to Palestine. AAUP Member B made this decision out of concern that including that material would put them at risk of deportation under the policy.

56. AAUP Member B has also been chilled from associating with AAUP colleagues. AAUP Member B has worked for over a year with university faculty across the United States, including other AAUP members, on a national organization addressing the concerns of Jewish faculty, including on issues related to Israel and Palestine. Due to the ideological-deportation policy, AAUP Member B no longer feels comfortable having their name associated with the prospective organization or doing any public-facing work for the prospective organization.

57. AAUP Member B has also been chilled from engaging in peaceful political protest and assembly. They previously participated in pro-ceasefire protests and other public demonstrations but no longer do so because of the fear that their lawful advocacy will lead to arrest and deportation.

58. **AAUP Member C.** AAUP Member C is a legal permanent resident, a member of the AAUP, and a professor at a university in the Northeast.

59. Before the administration adopted the ideological-deportation policy, AAUP Member C regularly published their writing and participated in public advocacy on issues related to academic freedom. Now, due to fears that they will be targeted for deportation based on that writing and advocacy, AAUP Member C has felt compelled to remove previously published writing and scholarship from the internet, and to turn down opportunities to speak at academic talks and other public-facing events that they would otherwise have accepted.

60. The individual has also been chilled from associating with colleagues at their local AAUP chapter. AAUP Member C values the ability to engage in collective action with other chapter members, but because they fear that public association with the chapter could expose them to deportation, they have forgone leadership opportunities within the chapter, reduced their participation in the chapter's public-facing work, and declined to participate in political organizing with the chapter.

61. AAUP Member C has also been chilled from engaging in peaceful political protest and assembly. Although they would like to gather with others to engage in pro-Palestinian advocacy, they no longer do so out of fear of arrest and deportation for lawful political speech.

62. **AAUP Member D.** AAUP Member D is a legal permanent resident, a member of the AAUP, and a professor at a university in the Northeast.

63. AAUP Member D recently withdrew from presenting on a topic related to Israel and Palestine at an academic conference out of concern that this could expose them to deportation under the policy. Also due to the concern about the policy, they have stopped traveling abroad for academic conferences.

64. The individual has also been chilled from associating with colleagues at their local AAUP chapter and colleagues nationally. AAUP Member D no longer signs their name to open letters that their colleagues circulate—including open letters related to Israel and Palestine—for fear of being targeted for deportation. For the same reason, they have also ruled out pursuing a leadership position at their local AAUP chapter.

65. The individual has also been chilled from engaging in peaceful political protest and assembly. AAUP Member D wishes to gather with others to engage in pro-Palestinian speech and advocacy, but now fears that they will be deported for doing so. They do not plan to attend future protests, but, if they do attend, they intend to wear a mask and other clothing to obscure their identity.

66. **AAUP member E.** AAUP Member E is a legal permanent resident, a member of the AAUP, and a professor in at a university in the Northeast. As a noncitizen, AAUP Member E was already hesitant to speak about political issues on social media. The ideological-deportation policy has made them reluctant to participate in protests and to engage in expressive or associational activities that require them to disclose their name. As a result of the policy, AAUP Member E no longer feels that they can safely exercise their free speech rights in the United States and will be spending most of the Spring semester outside of the country. Although they are able to conduct research abroad, an extended stay would substantially disrupt their professional activities and daily life.

67. **MESA Member A.** MESA Member A is a legal permanent resident, a member of MESA, and a professor at a university in the southern United States whose research interests include topics related to Israel and Palestine.

68. Before the administration adopted the ideological-deportation policy, MESA Member A regularly posted on social media about Israel and Palestine, including on topics related to their area of academic expertise, and engaged in other public advocacy on issues related to Israel and Palestine. Other MESA members followed MESA Member A on social media and frequently engaged with their posts. Because of the policy, however, and the fear that they will be targeted for deportation based on their writing and advocacy, MESA Member A has significantly reduced their engagement on social media, and feels compelled to self-censor when posting about Israel and Palestine.

69. The policy has also interfered with MESA Member A's academic research and writing. Out of concern that their current immigration status could be revoked at any moment based on their past expressive activity, MESA Member A now refrains from traveling internationally. This has prevented them from engaging in key aspects of their research, including conducting interviews with people abroad and accessing research materials that are available only abroad. It has disrupted MESA Member A's ability to conduct research for a new book project that relies on those methods. MESA Member A also had to cancel plans to travel to academic conferences in Europe that they otherwise would have attended, preventing them from associating with their colleagues, including other MESA members.

70. They have also been chilled from engaging in peaceful political protest and assembly. MESA Member A previously participated in pro-Palestinian protests and public demonstrations regularly and still wishes to gather with others to engage in pro-Palestinian speech and advocacy. They no longer participate in these activities because of fear that they will be arrested and deported for doing so.

71. **MESA Member B.** MESA Member B is a legal permanent resident, a member of MESA and the AAUP, and a professor at a university in the Northeast whose research interests include gender studies and Middle East studies.

72. Before the administration adopted the ideological-deportation policy, MESA Member B regularly organized workshops, teach-ins, and meetings related to Palestine and shared information about Palestine-related events on social media. Now, due to fears that these activities could lead to deportation, they have declined opportunities to chair academic committees, refrained from publishing work related to Palestine, stopped going to protests or demonstrations, and taken down all their social media posts about events related to Palestine.

73. MESA Member B has also forgone research grants and opportunities that would have required them to travel to the Middle East, due to the risk of being denied reentry based on their pro-Palestinian expression and association. This has harmed their ability to pursue their scholarship, which requires traveling abroad to interview people and attend cultural events that are the subject of their research.

74. **Noncitizen Student A.** Noncitizen Student A is a student visa holder and a graduate student who studies history and has been involved in pro-Palestinian advocacy at a university in the Northeast. They have worked closely with members of their local AAUP chapter in academic and political settings.

75. Before the administration adopted the ideological-deportation policy, Noncitizen Student A regularly posted on social media, including about their academic work related to Israel and Palestine. Following the policy, however, Noncitizen Student A deleted their account on the social media platform X out of concern that their posts related to Palestine would make them a target for ideological deportation. They used their X account primarily for academic purposes; X

had been an important forum for them to publicize their academic work, to learn about research findings and opportunities in their discipline, and to network with other scholars, including members of the AAUP, their local AAUP chapter, and MESA. They also removed information about the content of their work from university-hosted websites.

76. Noncitizen Student A has also been chilled from associating publicly with their peers and colleagues, including members of the AAUP, their local AAUP chapter, and MESA. Because of the ideological-deportation policy, they have declined to give speeches at campus protests and stayed away from rallies where law enforcement could be present; decided to pull out of a film screening and panel discussion related to indigenous studies that they had previously agreed to moderate; and cancelled their plans to attend a conference at which they had planned to speak on a panel about pro-Palestinian student movements.

Expressive and Associational Harms to Plaintiffs and their U.S. Citizen Members

77. The chill resulting from the ideological-deportation policy has caused significant harm to Plaintiffs and their U.S. citizen members.

Plaintiffs

78. **AAUP.** Founded in 1915, the AAUP is one of the nation's oldest and largest membership associations and is dedicated to the advancement of higher education and academic freedom. Today, the AAUP has over 44,000 members, including faculty, graduate students, and other academic professionals based at universities across the country. These members are the lifeblood of the organization. The AAUP's leadership operates through a democratic process of engaging with its members in developing its positions and priorities and carrying out its initiatives. Throughout the year, the AAUP hosts in-person and virtual gatherings to facilitate discussions with its members about pressing topics in higher education and academic freedom. The gatherings

often draw hundreds of members. The leadership relies on these conversations in making virtually every decision of substance about the organization's work.

79. The ideological-deportation policy has dramatically undermined the AAUP's ability to pursue its mission by deterring noncitizen members from participating in AAUP events. Many noncitizen members have also stayed away from AAUP gatherings over the last few weeks, particularly those that touch upon the Trump administration's efforts to deport pro-Palestinian students and to investigate universities for their handling of campus protests over the last eighteen months. The AAUP has heard directly from some of these noncitizen members, who explained that their decisions to disengage were based on fear. Noncitizen members who have nonetheless attended recent AAUP events on these topics have generally been silent. All of this has deprived the AAUP of the input of a significant segment of its membership, undermining the ability of the organization to learn from those members and represent their interests in the organization's policymaking, report writing, and public advocacy.

80. For example, the AAUP recently hosted the first of a series of member gatherings to discuss the destruction of schools in Gaza. The purpose of the series was to inform the AAUP's position on and advocacy relating to the allegation that Israel has engaged in "scholasticide." Crucial to that purpose was hearing from a diverse range of the AAUP's membership, but some noncitizen members did not attend out of fear that the government might target them for their association with the event, and most of the noncitizen members who did appear kept their videos off and voices muted. The AAUP has had similar experiences with a range of other events, including conversations organized to allow discussion of academic freedom and Israel and Palestine, and an event last week at Columbia University directed at students and focused on the Trump administration's attacks on the university and how the AAUP should respond.

81. The ideological-deportation policy has also required the AAUP to divert resources that it would otherwise devote to its mission. Its leadership has spent a significant percentage of its time counseling its noncitizen members on the risks of deportation for participating in pro-Palestinian protests and connecting noncitizen members with immigration attorneys. At the same time, the policy has caused many noncitizen leaders at AAUP chapters to step back from leadership positions and public appearances out of fear that they will be labeled as pro-Hamas or pro-terrorist and targeted for deportation on that basis.

82. **Harvard-AAUP.** Harvard-AAUP is a membership association of Harvard faculty and researchers, with approximately 70 members, that advocates for meaningful and democratic shared university governance, academic freedom, and the economic security of those who perform the university's core instructional work. Harvard-AAUP seeks to advance that mission through organizing, advocacy, and coalition-building at Harvard, as well as by working with other AAUP chapters and the AAUP on issues of broad concern across the higher education sector.

83. The ideological-deportation policy has impaired Harvard-AAUP's ability to pursue its mission by deterring noncitizen faculty and students from joining Harvard-AAUP. Harvard-AAUP has learned that some noncitizens who would have been eligible to become members of Harvard-AAUP have declined to join the organization out of fear that their membership and association with Harvard-AAUP could put them at risk of deportation. The participation of noncitizen members in Harvard-AAUP is uniquely important to the organization's mission. Given the large population of international faculty and students within the Harvard University community, noncitizen member participation contributes to Harvard-AAUP's strategic decision-making, event planning, recruiting, and engagement with the university. The ideological-deportation policy has deprived Harvard-AAUP of opportunities to hear from and associate with

an important segment of the community it serves, undermining the ability of the organization to learn from those prospective members and to represent their interests in pursuing the organization's goals.

84. The ideological-deportation policy has also diverted the resources and attention that the Harvard-AAUP would otherwise use to focus on its core mission. Prior to the policy, Harvard-AAUP focused primarily on promoting more robust shared governance at the university, advancing the economic justice and institutional security of academic workers, and preserving academic freedom. Now, Harvard-AAUP devotes significant attention to advising and engaging the concerns of noncitizens on Harvard's campus who fear immigration consequences stemming from the ideological-deportation policy. For instance, Harvard-AAUP has worked with other groups at Harvard to organize information security trainings to help members of the university community protect against potential surveillance of their expressive activities online.

85. **NYU-AAUP.** NYU-AAUP is a membership association made up of faculty across NYU's schools and campuses, with over 100 individual members. NYU-AAUP is dedicated to defending academic freedom at NYU and throughout the academy, encouraging participation in shared governance at NYU, and advancing the professional interests of NYU faculty and researchers. To fulfill its mission, NYU-AAUP holds two full membership meetings a semester, where members communicate and collaborate with one another on addressing important issues in higher education. Throughout the year, NYU-AAUP also hosts events open to the broader NYU community focused on advancing academic freedom. As a reflection of NYU's large population of international and noncitizen faculty and students, NYU-AAUP's membership includes many noncitizen members, who play a vital role in fulfilling NYU-AAUP's goals.

86. The ideological-deportation policy has impaired NYU-AAUP's ability to advocate for its interests in concert with noncitizen faculty and students at NYU. For example, members of NYU-AAUP recently delivered a petition to the NYU administration urging the university to drop disciplinary charges against students who had engaged in pro-Palestinian activism. NYU-AAUP members felt the need to remove the names of all the signatories from the petition due to concerns that noncitizen signatories, including both faculty and students, could be targeted for deportation or visa revocation based on their decision to participate. The NYU administration discounted the petition in part because it lacked the names of the signatories. This undermined NYU-AAUP's ability to effectively advocate before the NYU administration, one of the organization's primary missions.

87. The ideological-deportation policy has also required NYU-AAUP to divert resources that it would otherwise have used to pursue its core mission. NYU-AAUP's primary goals are to advance academic freedom and better facilitate faculty-university relations at NYU. But since the policy began, NYU-AAUP has been forced to devote increasing attention and resources to addressing the potential immigration consequences of the policy for noncitizen faculty and students. For example, NYU-AAUP is devoting resources to preparing "know your rights" materials related to immigration enforcement on NYU's campus. NYU-AAUP members and others in the NYU community have asked NYU-AAUP for immigration consultations, and it now often falls on NYU-AAUP to connect and guide members through NYU's immigration resources. Additionally, the policy has had an impact on the content of NYU-AAUP's events. For instance, NYU-AAUP recently hosted a faculty town hall to discuss the state of the university. The organizers of the event intended to spend much of the event discussing how federal funding freezes and executive orders targeting diversity, equity, and inclusion programs would impact life at NYU.

In the end, a significant part of the town hall focused on the threat of deportation noncitizen faculty and students face under the policy.

88. **Rutgers AAUP-AFT.** Rutgers AAUP-AFT is a union representing more than 5,000 full-time faculty, graduate workers, postdoctoral associates, and Education Opportunity Fund counselors at Rutgers University. Rutgers AAUP-AFT is one of the oldest higher education unions in the country. It is also a chapter of the AAUP.

89. The ideological-deportation policy has undermined Rutgers AAUP-AFT's ability to represent all bargaining unit members. Rutgers AAUP-AFT's research, pedagogy, and outreach depend on creating academic and community spaces where all members of its community, whether citizen or noncitizen, can fully participate. Noncitizen members, however, have shared with leadership that they are concerned that engaging on some research topics, such as racism and Israel and Palestine, could expose them to deportation. Many have also refrained from speaking out publicly or taking political action on these topics within the union because of the threat of deportation. Some noncitizen bargaining unit members have also expressed fears about joining the union because they are concerned it could invite targeting. When noncitizens do not join or speak out in the union, it becomes more difficult for Rutgers AAUP-AFT to represent the needs and priorities of all bargaining unit members, including by involving all union members in union leadership and decision making.

90. The ideological-deportation policy has also required Rutgers AAUP-AFT to divert resources it would otherwise dedicate to its mission. Rutgers AAUP-AFT has had to devote time and resources to support noncitizen members who fear deportation, including by spending time organizing trainings, finding legal support for individual members, and engaging with university management to ensure that the university is taking appropriate action.

91. **MESA.** MESA is a 501(c)(3) non-profit membership association that fosters the study of the Middle East, promotes high standards of scholarship and teaching, and encourages public understanding of the region and its peoples. Today, MESA has over 2,000 individual members, including faculty and students at universities across the country. MESA provides its members with programs, publications, and services that enhance research and education, recognize professional distinction, and defend academic freedom. MESA hosts an annual meeting that is the premiere conference for scholars who research the Middle East. The conference, which is the largest such gathering in the world, consists of four days of academic programming, professional development, job market interviews, networking, and special events. For MESA's members, the annual meeting is a critical forum for scholarship, intellectual exchange, and pedagogical innovation. MESA also publishes the *International Journal of Middle East Studies*, the leading peer-reviewed scholarly journal on the region, the *MESA Review of Middle East Studies*, a biannual newsletter, and frequent advocacy letters.

92. The ideological-deportation policy has substantially harmed MESA's ability to pursue its mission by deterring noncitizen scholars of the Middle East from joining MESA or participating in MESA's events. A substantial portion of MESA's members are interested in studying the Middle East because of their own personal or family background in the region, which makes them invaluable members of MESA's academic community. Due to their personal connections, heritage, and language skills, these members are often the most effective ethnographers and most skilled archival researchers working in the discipline. Many of these members are also noncitizens who, due to fears of being targeted for deportation based on the content of their scholarship, have scaled back their participation in MESA's events and projects. This chill has undermined MESA's core function as a scholarly association that facilitates the

exchange of pedagogical insights, academic expertise, and novel research between its members and advocates for their academic freedom.

93. For example, noncitizen members of MESA have expressed concern about attending MESA's annual meeting, which is scheduled to take place in November 2025 in Washington, DC, for fear that their attendance at the conference will expose them to the attention of immigration authorities. As described above, MESA's annual meeting is a landmark conference in the discipline and is MESA's marquee event. Each year, MESA solicits paper proposals for the conference by mid-February. This year, after the administration's adoption of the ideological-deportation policy, a number of scholars who would usually submit proposals informed MESA that they were unable to meet the deadline, or afraid of attending the meeting, due to its location. In particular, international members outside of the United States expressed fears that they would be denied entry or harassed because of the policy of ideological deportation. Noncitizen members also reported being overwhelmed and unable to focus on making medium-term plans because of their fear that their scholarship and speech about the Middle East might become the basis for targeting by the government. Because submissions at the initial deadline were almost 40 percent below where they should have been, based on past meetings in Washington, DC, MESA granted an across-the-board extension. After MESA extended the deadline, there was still a sharp drop in the number of submissions compared to prior years. At present, participation in the 2025 annual meeting is projected to fall 10 percent below the expected level. Due to its members' fears of ideological deportation, including harassment by officials based on their scholarly activities, MESA's annual meeting will have lower attendance, garner fewer contributions to the scholarly field, and provide a less effective opportunity for intellectual exchange. Moreover, members' reports of self-censorship in research and scholarship for fear of being targeted by the government

is expected to depress participation in the meeting and reduce submissions to MESA's publications, particularly concerning Israel and Palestine.

94. The ideological-deportation policy has also required MESA to divert resources it would otherwise devote to its mission. The annual meeting is a key recruitment vehicle for MESA, and reduced attendance means fewer dues-paying MESA members. MESA's leadership, staff, and volunteer faculty now spend more time and energy responding to crises stemming from the policy than on scholarship. For example, MESA's Committee on Academic Freedom and MESA's Task Force on Civil and Human Rights have both been inundated with requests for assistance from noncitizen members who fear ideological deportation. Before the policy, these advocacy committees addressed each member's request for assistance individually. Now, they spend time developing triage criteria for prioritizing certain requests. MESA leadership has worked to develop new and different programming, such as know your rights workshops and meetings with legal services groups, that would not typically fall under the purview of a scholarly association. Because so many MESA members are fearful of ideological deportation, MESA is beginning a new monthly message to provide members with resources and information about MESA's response to the policy. As a result, MESA has far fewer resources available for its regular academic programming.

Plaintiffs' Members

95. **Aslı Bâli.** Aslı Bâli is a professor of law at Yale Law School. Bâli's scholarship and teaching focus on international human rights law and comparative constitutional law. She is a U.S. citizen, a member of the AAUP and MESA, and the president of MESA.

96. The ideological-deportation policy has harmed Bâli's ability to hear from and engage with her noncitizen colleagues and students. As the president of MESA, Bâli is receiving a cascade of requests for advice and assistance from noncitizen students and colleagues who fear

that they will be targeted for deportation based on their speech. Many of these individuals have deleted their social media profiles, removed online references to their involvement in campus groups that have supported Palestinian rights, and taken down previously public writing about Palestine. One noncitizen colleague is considering declining an offer to chair their department out of concern that they might be limited in what they could say or do in the role without making themselves a target for deportation. Bâli has lost the benefit of these colleagues' and students' participation in events and programming and is no longer able to freely communicate with them about their views and opinions.

97. The policy has also limited Bâli's ability to associate with noncitizen members of the AAUP and MESA, and it has undermined her academic work. Because of her noncitizen colleagues' fears of ideological deportation, Bâli now hesitates to approach noncitizens to be co-authors, which harms her ability to produce scholarly work. Additionally, Bâli recently felt she had to propose moving the participation of some colleagues in a conference scheduled to take place in April at Yale Law School entirely online because of concerns for the safety of noncitizen participants. This change would mean that participants will no longer be together in the same space to mingle and discuss ideas, which significantly reduces the value of an academic conference.

98. **Beth Baron.** Beth Baron is a distinguished professor of History at the City University of New York. Baron's scholarship focuses on the history of medicine in Egypt. She is a U.S. citizen and a member of MESA.

99. The ideological-deportation policy has harmed Baron's ability to receive information from her noncitizen students. Several of Baron's noncitizen students, some of whom are members of MESA, are now afraid to travel abroad to visit archives and libraries that have historical sources critical to their research because they fear they will not be allowed back into the

country. This fear of travel due to the policy significantly limits the set of topics Baron's students can research or write about, which diminishes her own, and her department's, ability to benefit from these students' work. Baron has also heard from noncitizen students who have removed content from their social media accounts, taken down images and content from websites, and who are self-censoring in their teaching, especially on topics related to Israel and Palestine and U.S. foreign policy. These students have taken these actions out of a fear that their speech could lead to them being targeted for deportation. Baron has been deprived of these students' insights and experiences, which she otherwise would have valued engaging with.

100. The policy has also limited Baron's ability to associate and assemble with noncitizen colleagues and students. Baron recently attended an academic event related to Palestine that was accessible only in-person because the organizers decided not to allow people to access the event remotely, out of fear that doing so would expose noncitizen participants to deportation. Prior to the policy, Baron attended anti-war demonstrations with noncitizen students and colleagues. Now, many of those individuals have stopped attending protests because they are afraid of being deported.

101. **Patricia Dailey.** Patricia Dailey is an associate professor of English and Comparative Literature at Columbia University. She specializes in medieval literature and critical theory. Dailey is a U.S. citizen and a member of the AAUP.

102. The ideological-deportation policy has harmed Dailey's ability to hear perspectives she values as a member of her university community, and to associate with other members of the AAUP. Dailey was a member of an independent and long-running online community made up of Columbia faculty and staff, including other AAUP members. The goal of this community was to share information about the university and facilitate collective organizing. Dailey relied on the

community to engage with other members of the Columbia community, including AAUP members, and to stay informed about university-related topics as well as political issues, including issues related to Israel and Palestine. Fearing that the community's content about Israel and Palestine could now jeopardize the immigration status of noncitizen members, however, the organizer of the online community, who is a noncitizen, recently decided to delete it. As a result, Dailey has lost access to views and information she found valuable, and she is no longer able to engage with other AAUP members as she once did.

103. **Nadia Abu El-Haj.** Nadia Abu El-Haj is a professor of anthropology at Barnard College, Columbia University and the Co-Director of the Center for Palestine Studies ("CPS") at Columbia University. Abu El-Haj's scholarship focuses on Zionism, Israel, and Palestine. She is a U.S. citizen and a member of MESA and the AAUP.

104. The ideological-deportation policy has harmed Abu El-Haj's ability to hear from and associate with her noncitizen colleagues and students. One of her noncitizen students, who previously contributed to many events on campus and posted useful updates from Arabic language news reports on social media, has now ceased participating in events and deleted their social media accounts for fear of losing their student visa. Another noncitizen student, who was once a leading pro-Palestinian voice on campus, has stopped speaking publicly and has gone into hiding since Khalil's arrest, out of fear that ICE might arrest or detain them. In response to her noncitizen students' and colleagues' concerns about ICE raids at campus events, Abu El-Haj cancelled a CPS event that was scheduled to take place in February. She is considering cancelling another upcoming CPS event for the same reason. The policy has thus impaired Abu El-Haj's ability to learn from and meet with these students and to host CPS events.

105. **Noura Erakat.** Noura Erakat is a professor of Africana studies and Criminal Justice at Rutgers University. Her research and teaching focus on international law, including human rights law. She is a U.S. citizen and a member of MESA.

106. The ideological-deportation policy has harmed Erakat's ability to hear from her noncitizen colleagues and students. Noncitizen colleagues with whom Erakat collaborates closely have paused work on ongoing projects related to Palestine out of concern that they will be targeted for ideological deportation. One colleague, for example, paused their contributions to a legal research project that they are drafting in collaboration with Erakat after learning of Khalil's arrest. Erakat has also observed that noncitizens students are less willing to speak in class and in public about Palestine or related issues, even if those issues relate to their personal experiences. Because her scholarship relies on narratives from conflict zones, her work suffers when noncitizens are chilled from sharing their experiences.

107. **Joseph Howley.** Joseph Howley is an associate professor of Classics and the Paul Brooke Program Chair for Literature Humanities at Columbia. Howley's current scholarship and teaching focus on the history of the book and Greek and Latin literature, among other topics. He is a U.S. citizen and a member of the AAUP.

108. The ideological-deportation policy has limited Howley's ability to hear from and engage with his noncitizen colleagues and students, and it has undermined his teaching. As program chair of the year-long Literature Humanities course in Columbia's Core Curriculum, Howley supervises graduate students who instruct weekly seminars with undergraduate students to discuss significant works from a range of perspectives across time and cultures. In his regular teaching sessions with instructors, he has observed that many noncitizen instructors have stopped attending in recent weeks, and that those who do attend are preoccupied with fears of deportation

and unable to focus on the course material. One noncitizen instructor told Howley they feared deportation based on their attendance merely as a bystander at a protest last year. Howley has also heard from noncitizen colleagues that are considering not teaching topics related to Israel and Palestine or political activism that they might otherwise have taught.

109. The policy has also harmed Howley's right to assemble with his noncitizen colleagues and students to engage in public advocacy. Howley joined other faculty and staff members in de-escalation efforts outside the Columbia solidarity encampment in April 2024. Following the police sweep of the encampment on April 18, he appeared alongside Mahmoud Khalil and other speakers at an emergency press conference, to criticize the school president's decision to have police arrest students at the encampment. On April 22, Howley joined hundreds of citizen and noncitizen faculty at Columbia in a walkout protesting that same decision. But when he spoke at a press conference convened by the AAUP following Khalil's arrest this month, he was backed only by citizen members of faculty and staff. He understood that noncitizen members who previously would have joined him were too afraid to do so now, given the threat of deportation under the policy. It is now much more difficult for Howley to coordinate de-escalation efforts with noncitizen colleagues, including one who is now afraid to move freely around the Columbia campus and surrounding neighborhood.

110. **Maya Jasanoff.** Maya Jasanoff is a professor of History at Harvard. Jasanoff's scholarship and teaching focus on the history of the British empire. She is a U.S. citizen and a member of Harvard-AAUP and the AAUP.

111. The ideological-deportation policy has harmed Jasanoff's ability to hear from her noncitizen colleagues and students. She has recently observed that noncitizen colleagues and students are reluctant to speak publicly about politics and world affairs out of concern that they

will be targeted for ideological deportation. The silencing of noncitizen colleagues and students directly impacts Jasanoff's work. Because she studies the British empire, which covered nearly a quarter of the globe at its peak, she relies on the perspectives of students and colleagues from around the world to inform her scholarship and teaching.

112. **Lauren Kaminsky.** Lauren Kaminsky is an associate senior lecturer and the director of studies for the Committee on Degrees in History and Literature at Harvard. Kaminsky's scholarship and teaching focus on European history. She is a U.S. citizen and a member of Harvard-AAUP and the AAUP.

113. The ideological-deportation policy has harmed Kaminsky's ability to hear from, as well as associate and assemble with, her noncitizen colleagues and students. She has observed that noncitizen colleagues—even those who previously felt secure in their immigration status—have recently refrained from teaching classes or speaking publicly on increasingly politicized topics, including Palestine, and noncitizen colleagues and students have recently refrained from writing on these topics. Kaminsky is also aware of several noncitizens who have declined to join Harvard-AAUP in recent weeks out of fear that their membership could put them at risk. She has observed that noncitizen colleagues have been less willing to attend political gatherings in recent weeks.

114. **Rebecca Karl.** Rebecca Karl is a professor of History at NYU. Karl's research and teaching focus on modern Chinese history, as well as the history of social theory, feminism, Mao Zedong Thought and Marxism, and global revolution. Karl is a U.S. citizen, a member of the AAUP, and a former president and now member-at-large of NYU-AAUP.

115. The ideological-deportation policy has limited Karl's ability to hear and engage with perspectives and scholarship she values. As a student of and researcher on histories of repressive regimes, Karl is interested in the multiple ways in which marginalized people

understand their lives and worlds. As a Jew, she is particularly interested in the history of antisemitism and Zionism and has helped organize educational events at NYU on those topics. In doing so, she has sought out and engaged with the views of citizen and noncitizen colleagues. Following the adoption of the policy, however, some noncitizen colleagues have been forced to take down research and scholarly work that was previously available online, and have ceased speaking publicly about issues related to Israel and Palestine; others have declined public speaking opportunities.

116. The policy has undermined Karl's ability to assemble with noncitizen faculty and students to engage in public advocacy. Over the last year and a half, Karl has regularly engaged in pro-Palestinian protests and public advocacy at NYU. Since the implementation of the policy, however, Karl has noticed a significant decrease in the participation of noncitizen faculty and students in pro-Palestinian expression, including petition-signing and public letter signing.

117. **Chenjerai Kumanyika.** Chenjerai Kumanyika is an assistant professor at NYU's Arthur L. Carter Journalism Institute. He specializes in using audio journalism to critically investigate the way Americans understand issues such as race, the Civil War, and policing. He is also the Peabody Award–winning host of the *Empire City* podcast, which focuses on the history of the New York Police Department. Kumanyika is a U.S. citizen, a member of the AAUP and NYU-AAUP, and an elected at-large council member of the AAUP.

118. The ideological-deportation policy has limited Kumanyika's ability to hear and engage with perspectives and scholarship critical to his work. Kumanyika has collaborated in his research and scholarship with scholars across the university working on interdisciplinary initiatives that address issues of inequality and justice in the U.S. and transnationally. These scholars include noncitizens who have concerns about the public visibility of their research and scholarship because

of the ideological-deportation policy. Some of these scholars have removed research and scholarship from the internet because they fear this research and scholarship could expose them to deportation.

119. **David Kurnick.** David Kurnick is a professor of English at Rutgers University. His research and teaching interests include the history and theory of the novel, narrative theory, and sexuality and gender, with an emphasis on the nineteenth century. He is a U.S. citizen and a member of the AAUP and Rutgers AAUP-AFT.

120. The ideological-deportation policy has limited Kurnick's ability to associate with his noncitizen colleagues and students. Several graduate and undergraduate students that Kurnick associates with have informed him that they have decided to refrain from signing anything related to Israel and Palestine, and to refrain from participating in any pro-Palestinian marches or demonstrations, out of fear of being targeted for deportation. Kurnick has also abstained from any public discussion of matters relating to Israel and Palestine with his noncitizen students. Instead, he has limited his communications with noncitizen students to in-person conversations. Kurnick is also responsible for the English Department's graduate admissions process this year, and some admitted students outside the U.S. have expressed hesitation about coming to study inside the United States because of concerns that the ideological-deportation policy would force them to self-censor.

121. **Zachary Lockman.** Zachary Lockman is a professor of Middle Eastern and Islamic Studies and of History at NYU. His research and teaching focus on the modern history of the Middle East. He is a U.S. citizen and a member of the AAUP, NYU-AAUP, and MESA. He chairs the subcommittee of MESA's Committee on Academic Freedom that seeks to address threats to academic freedom in the United States and Canada.

122. The ideological-deportation policy has harmed Lockman's ability to hear from and engage with his noncitizen colleagues and students. Lockman relies on the perspectives of noncitizen colleagues and students to enrich his work in Middle East studies. Some of his noncitizen colleagues in MESA have recently declined invitations to speak at academic events, however, due to concern that increased visibility could lead to their deportation. Others have censored their syllabi for the same reason. Lockman has also observed that noncitizen students are less willing to speak in class and in public about Palestine or related issues, even if those issues relate to their countries of origin. And he is aware of noncitizen graduate students who have altered their research plans to avoid international travel because they fear having their visas or green cards revoked based on their pro-Palestinian expression or association. As a result, Lockman and his colleagues are deprived of the results of this research.

123. **Vasuki Nesiah.** Vasuki Nesiah is a professor of practice at NYU's Gallatin School of Individualized Study, and faculty director of the Gallatin Global Fellowship in Human Rights. Nesiah's scholarship and teaching focus on human rights and international law. She is a U.S. citizen and a member of the AAUP and NYU-AAUP.

124. The ideological-deportation policy has limited Nesiah's ability to hear from and engage with her noncitizen colleagues and students, and it has undermined her teaching. Prior to the policy's adoption, Nesiah frequently talked with noncitizen colleagues about Israel and Palestine and academic freedom to discuss these and other sensitive issues. Since the policy's implementation, Nesiah's noncitizen colleagues have become increasingly unwilling to discuss these topics in public or private. In a recent academic panel that Nesiah participated in, for example, the panel was simply advertised as a conversation without the names of the panelists or their institutional affiliations because another panelist feared retaliation under the policy. These

measures reduced attendance and hindered the dialogue and sharing of research that is critical to Nesiah's academic work. Similarly, many of her noncitizen colleagues who live outside of the United States are now unwilling to attend academic events inside the country for fear that they will be detained and deported. For instance, several colleagues who typically attend the Law and Society Association Annual Meeting (to be held in Chicago in May 2025) have informed her that they will not attend for this reason. Because her field of international law is particularly engaged with the work of scholars who live abroad, these withdrawals hamper Nesiah's research. The policy has also chilled student discussion on campus, with many noncitizen students now avoiding the topic of Israel and Palestine out of fear that they will be targeted for deportation if they discuss it. Some noncitizen students have also expressed concern about even showing up to class, and there have been conversations among her colleagues about conducting classes over Zoom, which Nesiah considers to be a poor substitute for in-person teaching.

125. The policy has also limited Nesiah's ability to associate with noncitizen colleagues. For example, a noncitizen colleague who had signed an open letter related to academic freedom that Nesiah and her colleagues had recently organized asked that their name be removed from the letter, because they feared that signing the letter would make them a target for deportation under the policy.

126. **Sonya Posmentier.** Sonya Posmentier is an associate professor of English at NYU and the director of graduate studies in the NYU English department. Her research and teaching interests include African American and Black Diasporic literature and culture, poetry and poetics, and abolition. She is a U.S. citizen, a member of the AAUP and NYU-AAUP, and a member of NYU-AAUP's executive committee.

127. The ideological-deportation policy has limited Posmentier's ability to hear and engage with perspectives and scholarship critical to her work. For example, Posmentier had planned to attend a conference concerning Israel and Palestine to hear a noncitizen scholar deliver a talk in their area of expertise, but that individual was forced to pull out of the conference due to a fear of deportation under the policy. As a result, Posmentier missed an opportunity to engage with and learn from that scholar, distorting Posmentier's academic community, which depends on the exchange of ideas and information between scholars. In addition, the NYU chapter of a pro-Palestinian faculty group recently removed all videos of teach-ins and public-facing events since October 2023 out of a fear that leaving the videos up would expose noncitizen colleagues featured in the videos to deportation. These videos focus on a range of topics, including definitions of antisemitism, the global university, and scholasticide. The removal of these videos prevents Posmentier and many others from listening to and learning from those conversations, as well as using them as a resource in research and teaching.

128. The policy has limited Posmentier's ability to associate with her noncitizen colleagues and students. Posmentier has been working with her students on a collaborative publication about abolition movements that addresses the intersection of the incarceration of Black and Brown Americans, immigrant detention in the United States, the war in Gaza and the Israeli occupation, and the criminalization of pro-Palestinian protest on university campuses. The group had planned to publish and distribute the publication and hold a launch event including readings and performance. In consultation with her students, however, Posmentier has decided not to move forward with this plan because of student fears that it could lead to noncitizen contributors to being targeted for deportation. This deprives the entire department of the contributors' many valuable insights.

129. **Judith Surkis.** Judith Surkis is a professor of History at Rutgers University and Director of Graduate Studies in the History Department. She specializes in Modern European History, with an emphasis on France and the French Empire, gender and sexuality, and intellectual, cultural, and legal history. She is a U.S. citizen and a member of the AAUP and Rutgers AAUP-AFT.

130. The ideological-deportation policy has limited Surkis's ability to associate with her noncitizen colleagues and students. As a member of Rutgers Faculty for Justice in Palestine, she has witnessed a radical decline in public engagement by noncitizen students and faculty on the question of Palestine since the announcement of the ideological-deportation policy. She has also noticed that noncitizen faculty are more hesitant to speak about or even attend events that address Palestine. The inability of noncitizen students and faculty to freely participate in these events deprives Surkis of their experiences and insights.

131. The policy has also forced Surkis to modify how she advises noncitizen graduate students in her department. Surkis previously encouraged students to travel abroad to conduct the necessary field research to write their seminar papers, devise their dissertation topics, and ultimately write their dissertations. Now, she is reluctant to recommend that they travel for their studies, because she fears some of these students may be denied re-entry, detained, and even stripped of their visas on return.

132. **Kirsten Weld.** Kirsten Weld is a professor of History at Harvard. Weld's research focuses on modern Latin America and explores struggles over inequality, justice, historical memory, and social inclusion. She is a U.S. citizen and a member of the AAUP and Harvard-AAUP. She also serves as Harvard-AAUP's president.

133. Weld has observed that following the administration's adoption of the ideological-deportation policy, many noncitizen students, staff, and faculty colleagues, particularly those who had been involved in pro-Palestinian organizing, have retreated from ordinary university life. Rather than engaging with the university community and participating in educational and developmental activities, noncitizen students, staff, and faculty have devoted significant attention and resources to preparing for potential immigration consequences that may result from their past expressive activities. Additionally, some noncitizen students who had previously spoken or written publicly about Israel and Palestine have now ceased participating publicly on those issues out of fear that doing so will lead to deportation. Weld valued hearing from noncitizen students on these topics, and is now deprived of receiving the speech of those who have been chilled by the policy.

CAUSES OF ACTION

COUNT I
The ideological-deportation policy violates the First Amendment

134. The ideological-deportation policy violates the First Amendment because it entails the arrest, detention, and deportation of noncitizen students and faculty on the basis of, or in retaliation for, their political viewpoints; because it burdens the rights of Plaintiffs and their U.S. citizen members to hear from, and associate with, those noncitizen students and faculty; and because the policy is not narrowly tailored to any compelling governmental interest.

135. To the extent Defendants rely on the security and related grounds of inadmissibility, including the endorse and espouse and foreign policy provisions, as the basis for carrying out the policy, those provisions violate the First Amendment as applied for substantially the same reasons.

COUNT II
Defendants' threats to punish constitutionally protected speech violate the First Amendment

136. Defendants' threats to arrest, detain, and deport noncitizen students and faculty based on their political viewpoints violates the First Amendment because the threats are coercive and would chill individuals of ordinary firmness from exercising their expressive and associational rights.

COUNT III
The ideological-deportation policy violates the Fifth Amendment

137. The ideological-deportation policy violates the Fifth Amendment because it invites arbitrary and discriminatory enforcement.

138. To the extent Defendants rely on the security and related grounds of inadmissibility, including the endorse and espouse and foreign policy provisions, as the basis for carrying out the policy, those provisions violate the Fifth Amendment as applied because they invite arbitrary and discriminatory enforcement; and because they fail to give noncitizen students and faculty fair warning as to what speech and association the government believes to be grounds for arrest, detention, and deportation.

COUNT IV
The ideological-deportation policy violates the APA

139. The ideological-deportation policy violates the APA because it is arbitrary, capricious, an abuse of discretion, and contrary to constitutional right, and because it exceeds Defendants' statutory authority. 5 U.S.C. § 706(2)(A)–(C).

REQUEST FOR RELIEF

Plaintiffs respectfully request that this Court:

A. Declare that the ideological-deportation policy violates the First and Fifth Amendments and the APA, and set the policy aside.

B. Enjoin Defendants from implementing or enforcing the ideological-deportation policy—including, without limitation, through investigation, surveillance, arrest, detention, deportation, or any other adverse action.

C. Declare that Defendants' threats to arrest, detain, and deport noncitizen students and faculty based on their political viewpoints violates the First Amendment, and enjoin Defendants from continuing to make those threats.

D. To the extent Defendants rely on the security and related grounds of inadmissibility, including the endorse and espouse and foreign policy provisions, as the basis for carrying out the policy, declare that those provisions violate the First and Fifth Amendments as applied, and enjoin Defendants from applying those provisions.

E. Award Plaintiffs reasonable costs and attorneys' fees incurred in this action.

F. Grant such other and further relief as the Court may deem just and proper.

March 25, 2025

Respectfully submitted,

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Counsel for Plaintiffs

**pro hac vice* application forthcoming
**admission to the bar pending

Exhibit H

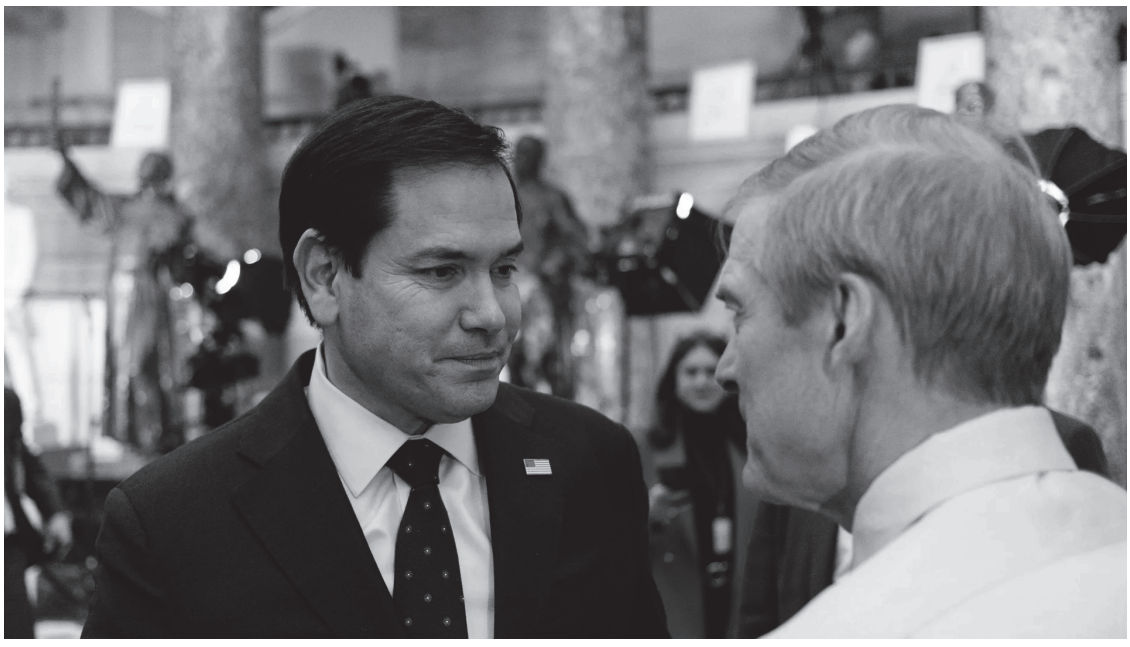
A message from Instagram

Congress can help keep teens safe with ap
parental approval and age verification. Lea

Mar 6, 2025 - Politics & Policy

Scoop: State Dept. to use AI to revoke visas of foreign students who appear "pro-Hamas"

Marc Caputo



Secretary of State Marco Rubio is launching an AI-fueled "Catch and Revoke" effort to cancel the visas of foreign nationals who appear to support Hamas or other designated terror groups, senior State Department officials tell Axios.

Why it matters: The effort — which includes AI-assisted reviews of tens of thousands of student visa holders' social media accounts — marks a dramatic escalation in the U.S. government's policing of foreign nationals' conduct and speech.

- The reviews of social media accounts are particularly looking for evidence of alleged terrorist sympathies expressed after Hamas' Oct. 7, 2023, attack on Israel, officials say.

Officials plan to examine internal databases to see whether any visa holders were arrested but allowed to stay in the country during the Biden administration.

- They say they're also checking news reports of anti-Israel demonstrations and Jewish students' lawsuits that highlight foreign nationals allegedly engaged in antisemitic activity without consequence.

- The State Department is working with the departments of Justice and Homeland Security in what one senior State official called a "whole of government and whole of authority approach."

Zoom in: To launch "Catch and Revoke," federal officials examined 100,000 people in the Student Exchange Visitor System since October 2023 to see if any visas had been revoked because the student been arrested or suspended from school.

- Usually, a consular official whose office issues the visa for a foreigner makes the revocation decision once they've been

- "We found literally zero visa revocations during the Biden administration," the official said, "... which suggests a blind eye attitude toward law enforcement."

Zoom out: The Immigration Nationality Act of 1952 gives the secretary of state the authority to revoke visas from foreigners deemed to be a threat —a point Rubio made as a senator eight days after Oct. 7.

- "We see people marching at our universities and in the streets of our country ... calling for Intifada, celebrating what Hamas has done ... Those people need to go," Rubio said.

- Trump echoed the same sentiments in a Jan. 30 White House fact sheet tied to an executive order aimed at antisemitism at "pro-Hamas" activity: "To all the resident aliens who joined in the pro-jihadist protests, we put you on notice. We will find you, and we will deport you."

- Another executive order, issued Jan. 20, targets visa holders and foreigners who "threaten our national security, espouse hateful ideology."

The big picture: The cumulative effect of Trump's executive orders is already having a chilling effect on student visa-holders. They're starting to shy away from protests critical of Israel.

- "This should concern all Americans. This is a First Amendment and freedom of speech issue and the administration will overplay its hand," said Abed Ayoub, head of the American-Arab Anti-Discrimination Committee.

- "Americans won't like this. They'll view this as capitulating free speech rights for a foreign nation."

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The backstory: Ayoub said "the blueprint" for the new program can be found in Operation Boulder of 1972, when the Nixon administration infiltrated and surveilled pro-Palestinian groups, which he said infringed on the rights of U.S. citizens as well as foreign nationals.

- "With the advent of AI, it's even scarier because they're policing speech and using faulty technology," Ayoub said.

The senior State Department official, however, said that "it would be negligent for the department that takes national security seriously to ignore publicly available information about [visa] applicants in terms of AI tools. ... AI is one of the resources available to the government that's very different from where we were technologically decades ago."

- If officials find a social media post from a foreign national that appears to endorse the attack on Israel and looks "pro-Hamas," the official said, that could be grounds for visa revocation.

- "Under President Trump, the Immigration Nationality Act is great again," the official added.

Between the lines: The Trump administration's pro-Israel posture reflects his and Rubio's longstanding commitment toward the Jewish state, an issue of intense interest to white evangelicals.

- Opposition to Israel's bombing campaign in Gaza, meanwhile, has divided the Democratic base, polls show.

and support for the Palestinian people — despite the efforts of some organizers.

- "We're not doing this for the polling, but it never hurts to be on the right side of an issue," a White House adviser said.

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Marc Caputo
Mar 27, 2025 - Politics & Policy

Exclusive: Trump's "pro-Hamas" purge could block foreign students from colleges

Illustration: Brendan Lynch/Axios

The Trump administration is discussing plans to try to block certain colleges from having any foreign students if it decides too many are "pro-Hamas," senior Justice and State Department officials tell Axios.

Why it matters: The effort — which could include grand jury subpoenas —marks another escalation of Trump's aggressive crackdown on immigration and antisemitism that civil libertarians say stifles campus speech and has led to several lawsuits.

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Avery Lotz
Mar 27, 2025 - Politics & Policy

Rubio says U.S. may have pulled more than 300 visas

Secretary of State Marco Rubio listens to a question during a press conference with Guyanese President Irfaan Ali (not pictured) in Georgetown, Guyana, on March 27. Photo: Nathan Howard/POOL/AFP via Getty Images

Secretary of State Marco Rubio said Thursday that the State Department may have already revoked more than 300 visas as the Trump administration pushes a sweeping immigration crackdown.

The big picture: Federal immigration enforcement has turned to college campuses, where it is targeting those who have expressed pro-Palestinian views in a strategy First Amendment and immigration advocates say is stifling free speech.

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Russell Contreras, Steph Solis
Mar 27, 2025 - Politics & Policy

Ambush arrest of Tufts student sparks new concerns about immigration crackdown

Signage and flowers are placed on a tree next to where ICE agents apprehended Tuft University graduate student Rumeysa Ozturk on March 27, 2025 in Somerville, Massachusetts. Photo: Scott Eisen/Getty Images

The arrest of a Tufts University student by hooded Homeland Security agents in plain clothes — caught on video on a suburban Boston street — is raising fresh questions about the Trump administration's aggressive crackdown on immigrants over the opinions they've expressed.

Why it matters: The administration's push to quickly scoop up, detain and deport college students with pro-Palestinian views has stunned civil libertarians, who say it violates American traditions of free speech and due process under the law.

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Exhibit I

Mar 27, 2025 - Politics & Policy

Exclusive: Trump's "pro-Hamas" purge could block foreign students from colleges

Marc Caputo

Illustration: Brendan Lynch/Axios

The Trump administration is discussing plans to try to block certain colleges from having any foreign students if it decides too many are "pro-Hamas," senior Justice and State Department officials tell Axios.

Why it matters: The effort — which could include grand jury subpoenas —marks another escalation of Trump's aggressive crackdown on immigration and antisemitism that civil libertarians say stifles campus speech and has led to several lawsuits.

Zoom in: The idea of prohibiting colleges from enrolling any student visa-holders grew out of Secretary of State Marco Rubio's "Catch and Revoke" program, which now is focusing on students who protested against the war in Gaza.

- A senior State Department official called the demonstrators it's targeting "Hamasniks" — people the government claims have shown support for the terror group.

- More than 300 foreign students have had their student visas revoked in the three weeks "Catch and Revoke" has been in operation, the official said. There are 1.5 million student visa-holders nationwide.

- "Everyone is fair game," the official said.

At the heart of the plan is the Student and Exchange Visitor Program, which certifies schools to accept student visa-holders. Institutions have been decertified in the past if the government determines they have too many student-visa holders who are using the education system as a ruse to live and work in the U.S., officials say.

- Now, the Trump administration is threatening to apply that decertification framework to the post-Oct. 7 demonstrations on college campuses.

- "Every institution that has foreign students ... will go through some sort of review," the official said. "You can have so many bad apples in one place that it leads to decertification of the school ... I don't think we're at that point yet. But it is not an empty threat."

Columbia University and UCLA — both of which had controversial, disruptive pro-Palestinian protests last year — are among the schools mentioned the most often by administration officials.

- Columbia officials couldn't be reached for comment.

- "UCLA is committed to eradicating hate," a spokesperson for that university said, pointing to UCLA's new Initiative to Combat Antisemitism.

What they're saying: Critics accuse the administration of trampling free speech and due process rights, and of unfairly conflating support for Palestinian rights with backing Hamas, the terror group that rules Gaza.

- The Foundation for Individual Rights and Expression (FIRE), a nonpartisan free-speech group, said the concept of decertifying entire universities based on who is "pro-Hamas" is "a worrying escalation."

- "Deemed 'pro-Hamas' by whom? This kind of explicitly viewpoint-driven decision-making is ripe for abuse and risks arbitrary enforcement," FIRE legal director Will Creeley told Axios in a statement.

Zoom out: The administration's zero-tolerance immigration enforcement has provoked a spate of lawsuits, some of which are likely headed to the U.S. Supreme Court.

- That's what the administration wants: to give the high court several opportunities to expand the executive branch's power to deport a noncitizen with little judicial review.

- A judge Tuesday temporarily blocked federal agents from detaining Yunseo Chung, a Columbia student who participated in pro-Palestinian protests. Her lawsuit argues that immigration enforcement can't "be used as a tool to punish noncitizen speakers who express political views disfavored by the current administration."

- The first major case challenging Rubio's right to revoke a green card was brought this month by Mahmoud Khalil, an organizer of the pro-Palestinian protests at Columbia.

The big picture: As the political parties realign, the GOP increasingly appeals to non-college voters and has clashed with academics and higher-education experts on cultural issues, including the Gaza war.

- Student visa holders are a lucrative revenue stream for colleges that can be choked off by the executive branch.

- "That's one of their biggest cash cows, foreign students. That's a meaningful source of revenue for them," a senior Justice Department official said.

- "What you're going to see in the not-too-distant future is the universities that we can show that were not doing anything to stop these demonstrations in support of Hamas — or encouraged enrollment by activists — ... we can stop approving student visas for them, and they can no longer admit foreign students," the official said.

Catch up quick: The Trump administration's assault on colleges and that had significant pro-Palestine, anti-Israel or antisemitic activism spans both coasts.

- Last week, to escape losing $400 million in federal money, Columbia caved to administration demands to combat antisemitism and limit protests.

- On March 5, the DOJ's new antisemitism task force launched a civil rights investigation into the University of California system.

- On March 10, the Education Department sent letters to 60 universities warning them of possible civil rights enforcement actions concerning antisemitism.

- And on March 18, the Justice Department filed a statement of interest siding with Jewish students suing over antisemitic activity during protests at UCLA.

What's next: The DOJ also is monitoring a new federal lawsuit from Columbia students accusing protest organizers of acting as a "propaganda arm" of Hamas.

- Expect more enforcement actions, the DOJ official said.

- "The way that this looks ... is a grand jury subpoena goes to a university, a very broad subpoena," the official said, adding that it would include "any information that they know about students who have actively participated in violent protests."

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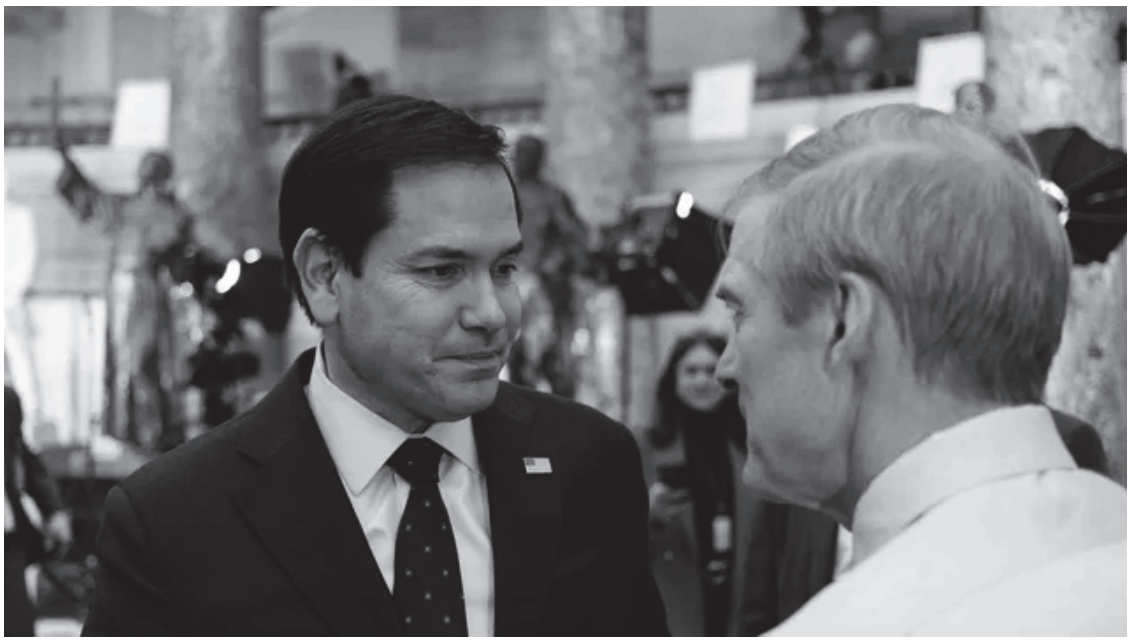
Marc Caputo
Mar 6, 2025 - Politics & Policy

Scoop: State Dept. to use AI to revoke visas of foreign students who appear "pro-Hamas"



Secretary of State Marco Rubio speaks with Rep. Jim Jordan (R-Ohio) in Statuary Hall before President Trump's address to Congress on Tuesday. Photo: Alex Wroblewski / AFP via Getty Images

Secretary of State Marco Rubio is launching an AI-fueled "Catch and Revoke" effort to cancel the visas of foreign nationals who appear to support Hamas or other designated terror groups, senior State Department officials tell Axios.

Why it matters: The effort — which includes AI-assisted reviews of tens of thousands of student visa holders' social media accounts — marks a dramatic escalation in the U.S. government's policing of foreign nationals' conduct and speech.

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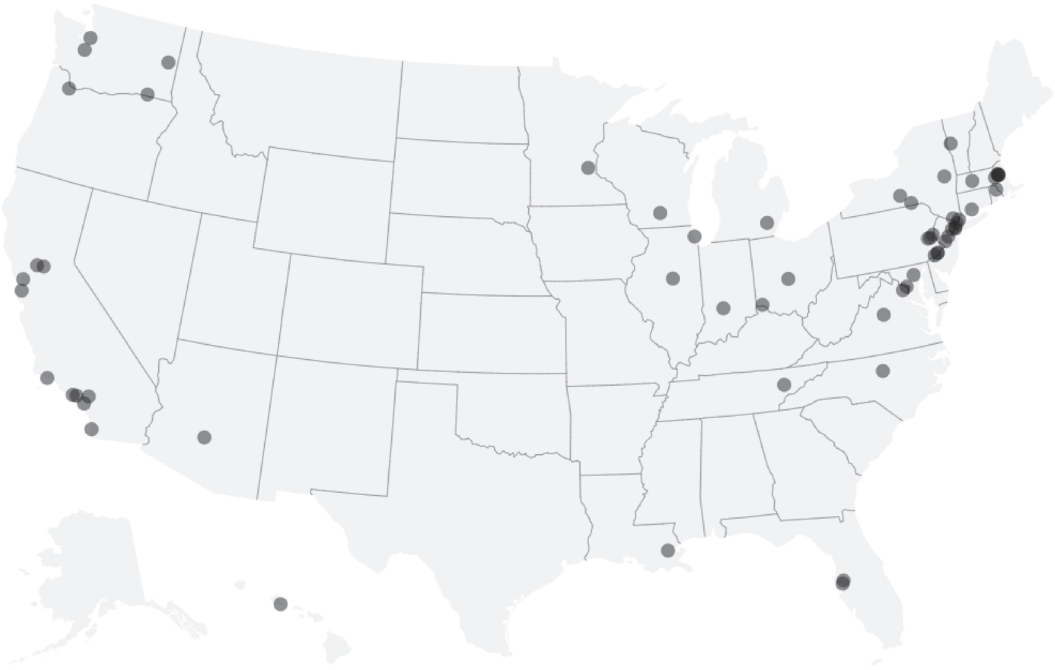
Nadia Lopez, Avery Lotz
Mar 12, 2025 - Axios San Francisco

UC Berkeley, Stanford among colleges targeted for alleged antisemitism

Universities being investigated by the Education Department for alleged antisemitism

As of March 11, 2025



Data: U.S. Department of Education; Chart: Axios Visuals

UC Berkeley and Stanford are among the dozens of higher education institutions being investigated by the Trump administration for allegations of antisemitic harassment and discrimination on campus.

Why it matters: President Trump is threatening to pull federal funding from schools that he alleges are failing to protect Jewish students and allow "illegal protests" on campus.

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Isaac Avilucea, Avery Lotz
Updated Mar 11, 2025 - Axios Philadelphia

Trump is targeting several Philly-area schools for alleged antisemitism

Pro-Palestinian students and faculty of Drexel, Temple and UPenn demonstrate last spring at a UPenn encampment. Photo: Matthew Hatcher / AFP

The Trump administration is threatening dozens of universities, including several in the Philly region, with possible sanctions over allegations of antisemitism on campus.

The big picture: The move comes after President Trump said last week that he'd strip federal funding from colleges that allow "illegal protests."

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Exhibit J

SCOOP: ICE Revoking Students' Immigration Statuses Without Their or the University's Knowledge

"Never seen something like this," say university officials about the secret targeting of Middle Eastern students.

PREM THAKKER
MAR 29, 2025

510 44 178 Share

Hundreds rally in New York City against the detention of Columbia student protest leader Mahmoud Khalil on March 12, 2025. Photo by Lev Radin/Pacific Press/LightRocket via Getty Images

In a developing story, it appears the Trump administration is quietly targeting *even more* students for deportation and doing so in a way that is taking universities and the students themselves completely by surprise.

According to documentation seen by **Zeteo** and interviews with university officials, the administration is deploying the rarely-used risk-to-foreign-policy immigration provision they used to detain Mahmoud Khalil to now target students across the country.

University officials say that targeted students hail from the Middle East and Muslim-majority countries. They've also reported inconsistent notification patterns: some students have been informed about the revocations by the government, some have

not; some only found out after officials manually checked internal visa status databases – while universities and officials themselves have mostly seemed to not be informed by the government.

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Revocation by Pushing a Button

The Immigration and Customs Enforcement (ICE) appears to be *manually* revoking students' immigration status – an authority typically left to university staff. And some students and universities are not even being made aware of those revocations – setting students up to be taken by immigration agents without even knowing it was coming.

Three university officials, who were given anonymity so they could speak freely, across the country report that, in recent days, student residency statuses in the Student and Exchange Visitor Information System – SEVIS, a database where residency statuses of foreign students are managed – are being changed without their knowledge.

Samah Sisay of the Center for Constitutional Rights told **Zeteo** that one's visa being revoked does *not* mean that their status would be too. Unlike student visas – which are entry documents that allow someone to enter the country – student *statuses* are what allow people to stay in the US. To maintain one's status, a student has to fulfill certain requirements, like being properly enrolled in classes, keeping documents up to date, and following work restrictions.

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A student's *visa* could expire or be revoked for any number of reasons, but that wouldn't necessarily mean their *status* to stay would be taken away, too. Some of these *statuses,* which are typically overseen by university officers, are now allegedly being unilaterally revoked by ICE instead. While university officers often oversee status in the SEVIS system, Sisay said that DHS can technically revoke status without a university actively disenrolling a student.

Still, the practice is alarming students and university staff across the country. As one official put it, "Someone at ICE pushed a button, and now [students] are 'illegal' through a process that absolutely should not be happening."

"Never Seen Something Like This"

According to documentation seen by **Zeteo** and university officials across the country, the unusual termination of students' statuses has occurred just in recent days, as

Secretary of State Marco Rubio has announced that the State Department has revoked at least 300 visas.

The reason? The same little-used rationale the State Department used to detain and attempt to deport Mahmoud Khalil, and an increasing string of students since then: A provision of Section 237 of the Immigration and Nationality Act — targeting students on the basis that their presence would have "potentially serious adverse foreign policy consequences" for the US.

In one case, a student was reportedly notified by the US that their visa was revoked per Section 221(i) of the act – which enables the Secretary of State to revoke visas per their "discretion" – and then that their *status* was terminated by Section 237.

In multiple cases, the US cited both the foreign policy provision and another portion of Section 237 to assert that the student was "otherwise failing to maintain their status."

This appears to be what happened to Tufts University graduate student Rumeysa Ozturk, who was detained by masked immigration authorities on Tuesday.

Some university officials are discovering these by sheer accident, encountering the changes as they look through the SEVIS database.

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A State Department spokesperson told **Zeteo** that the department "has broad authority to revoke visas under Section 221(i) of the Immigration and Nationality Act (INA)," and that they "exercise that authority when information comes to light indicating that a visa holder may be no longer be eligible for a visa."

"Generally, the Department is not required to notify an individual of a visa revocation but does so when the Department determines it is practicable," the spokesperson continued, adding that "the number of revocations is dynamic."

DHS and the White House did not respond to **Zeteo's** requests for comment.

"I don't think there is a justification for ICE to do this. Not meaningfully, anyway," said Hassan Ahmed, an immigration lawyer who is representing Georgetown scholar Badar Khan Suri, who was recently arrested by masked agents in Virginia.

"First, there's the issue of notice and opportunity to defend," Ahmed told **Zeteo.** "Second, what policy sense does it actually make to pull the plug on expensive education halfway through? Third, if done on 237a4C grounds (foreign policy a la Mahmoud Khalil), then this is absolutely an abuse of that section of law."

While much of the discourse surrounding college campuses has revolved around Ivy League colleges, virtually all the cases **Zeteo** reviewed occurred at state schools across the country.

As with several of the recent high-profile cases involving individuals whisked off the street, it's unclear what *actual* grounds have justified the revocation. One university official told **Zeteo** that a student from the Middle East whose status was revoked said they had not attended protests or had social media posts that might have triggered the move (recall, Rubio's State Department is reportedly using artificial intelligence to monitor social media and revoke student visas).

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As one university official described the dynamic between student visas and student statuses: "What we appear to be seeing now is that there's no difference, there's no daylight between the two; that there are cancellations happening in SEVIS by the government; we don't really know if all students are getting notified or if some are getting notified…the schools are not getting notified."

"We've really…never seen something like this, where it is so directly tied together," they added.

If you are a student affected by this, or have relevant information about these developments, please contact me via email or Signal (premthakker.35).

*And if you are already a paid subscriber to **Zeteo** but would like to increase your support for our accountability journalism, please consider a donation, too.*

Editor's note: This story has been updated with a comment from Hassan Ahmed.

Exhibit K

POWER

Will ICE Come to My Dorm Today? International students who protested Israel's war in Gaza grapple with Trump's crackdown.

By Sanya Mansoor, a freelance reporter who covers immigration and Gaza

MAR. 26, 2025

Photo-Illustration: by The Cut; Photo: Michael Nigro/Sipa USA via AP

SAVE | 24 COMMENTS

Since ICE agents arrested Columbia graduate Mahmoud Khalil in early March, Maryam, a student at Cornell University, doesn't leave the house unless they need to. They started getting groceries delivered and rarely go out to the shops. While they still help support and organize local demonstrations against Israel's war in Gaza, they no longer attend in person. When they do go out to class or to work, they write an employment lawyer's phone number on their body and carry all their documentation. As a person of Arab descent who is in the U.S. on a student visa, Maryam worries that they could be swept up in the Trump administration's crackdown on pro-Palestine activists. Recently, they installed security cameras outside their off-campus apartment. "It felt like a way I could protect myself," they say, if immigration agents were to show up at the door.

On top of all this, Maryam's sister is pregnant and they are now unsure of when they will be able to visit family. If they leave the country, they fear they won't be allowed to return. They try their best to calm down their

parents, who are scared of ICE detaining their child. Maryam's mother texts that she loves them more frequently, while their father, who normally talks a lot, now trails off and becomes quiet on the phone. "He understands that it is not in me to be bullied or cowed," they say.

International students across the country like Maryam are spooked by the arrests of Khalil, a U.S. permanent resident, and Georgetown University researcher Badar Khan Suri, an Indian national. (Maryam's name and that of other students in this story have been changed, as they fear the federal government may target them for deportation.) Trump's campaign-trail rhetoric about throwing student protesters out of the country has since become a real threat. The administration rescinded a longstanding policy that protected universities and other vulnerable locations from immigration enforcement; the State Department is launching an AI-driven program to help deport foreign nationals perceived as supporting Hamas; sweeping executive orders threaten deportation or criminal prosecution over actions the administration views as antisemitic or expressing a "hostile attitude" toward the U.S.; and Trump is pressuring universities to impose stricter protest rules or else lose their federal funding.

This all leaves international students wrestling with how to criticize the U.S.'s continued military support of Israel without jeopardizing their visa status. Several students I spoke with worried that identifying their country of origin or which university they attend, let alone talking about their protest activity, would put a target on their backs. Some are doubling down by engaging more publicly, including by protesting without a mask, while others are paring back their social-media activity and taking more precautions at protests. James, who attends New York University on a student visa, has continued to go to demonstrations and wears a shiesty to obscure his face and cover his eyebrows — "all this stuff we know can stop facial recognition," he explains. Stopping his activism was not an option. "I don't see myself disengaging completely," he says. "It's just a matter of picking different ways of engagement and supporting people who can be more visible." Still, he's nervous that authorities seem to be casting a wide net in their pursuit of pro-Palestine activists. "It's not just lead organizers, it's people who were at protests or signed letters," he says. "That makes me afraid, because how much more can they expand it? How much leeway do they have that I don't know about? Where do I fall?"

Salman, an Arab graduate student at NYU, had briefly met Khalil at a friend's birthday party last year. They didn't speak much, but the interaction was enough to make the news of the Columbia graduate's detention feel less abstract. *If they're deporting someone with a green card, then what protection does my F-1 student visa offer me?* Salman thought. He also saw parallels between his situation and the argument the Trump administration made for detaining Khalil: While he is not an organizer, Salman has frequently posted on social media about protests and policy demands, like calling for a cease-fire and arms embargo. "I don't think I post more or less than your average pro-Palestinian advocate," he says, but he fears that "people can read into what you post in whatever way." He's started to pull back from sharing his personal political opinions on social media. He did go to a protest earlier this month to demand Khalil's release, however, and then to another demonstration to protest Israeli airstrikes on Gaza. He wore a mask after friends and family urged him to take steps to conceal his identity. "I'm not taking a step back on this," he says.

Salman says his parents want him to be safe and finish his degree. "They also understand that I'm at a point in my life right now where even if they were to tell me 'Don't do this' or 'Don't do that,' they know me too well to think that I'm going to become silent all of a sudden out of fear," he says. Salman currently plans to fly to attend his sibling's engagement outside of the U.S., which he knows involves risk, but he plans to have a lawyer or emergency contact on standby in case he runs into issues reentering the United States.

If they're deporting someone with a green card, then what protection does my F-1 student visa offer me?

NYU is one of several universities, including Brown and UC Berkeley, that are urging international students to reconsider traveling out of the country. (Cornell had advised international students to return to campus before Trump took office in anticipation of changing immigration policies.) The U.S. government wields more power and discretion at the border than it does within its borders, and "severe consequences can emerge very quickly," says Golnaz Fakhimi, legal director of the civil-rights organization Muslim Advocates. In the span of a few hours, one interaction with a border agent could lead to a person's removal from the country and a ban on seeking reentry for years. Muslim Advocates is helping students prepare for all scenarios, including ICE detention; that means figuring out a care plan for any dependents and putting a process in place to notify emergency contacts.

Both Muslim Advocates and the advocacy group Palestine Legal tell me they've received an uptick in inquiries recently from non-citizen students who are trying to gauge the risks involved in traveling, living in on-campus housing, protesting, and posting pro-Palestine content on social media. Some students who've reached out to them have a more public profile, but many of them don't and are still worried they may be on the government's radar. Palestine Legal senior staff attorney Radhika Sainath says there has been a subtle shift in the group's approach to providing Know Your Rights training for students, given that "we have an administration in place that does not respect the law." "There's more of a focus on different scenarios and what people might expect given what they said, or who they are, and their citizenship status," she said. Still, she stresses, everybody in the U.S. — regardless of their immigration status — has a right to freedom of speech and expression, which includes criticizing the American and foreign governments.

At Columbia, which has become Trump's biggest campus target, the international student community is rallying together after ICE detained Khalil and attempted to arrest Fulbright student Ranjani Srinivasan, who subsequently left for Canada. Grant Miner, the president of Columbia's student workers union, said that typically about five people come to its international student working group meetings. Following Khalil's arrest, 80 showed up. "People I've never seen before are coming to union meetings," Miner says, "and that's not because we did a good job organizing them, it's because they feel angry." Ph.D. student Allie Wong has been referring these students to mutual-aid funds and friendly lawyers, helping provide walking escorts for those who feel unsafe, and connecting them to healing circles. She's also heard from international students who are considering moving off-campus or want a secondary place to stay should ICE agents show up at their residence. Some of her peers have expressed interest in helping out, but the Justice Department recently directed federal prosecutors to investigate local compliance with Trump's immigration crackdown. That can include cases where the government believes U.S. citizens are harboring people who are in the country illegally. "This is paralyzing people who do have good intentions, and who want to help their friends, who are not promoting terrorism; they're just trying to get a good education," Wong says.

Some international students are confronting the Trump administration head-on. At Cornell, Momodou Taal, a British Gambian Ph.D. student, filed a lawsuit this month alongside two U.S. citizens that alleged the executive orders Trump is using to crack down on pro-Palestine activists amount to an unconstitutional silencing of their political views. "It got to a point where international students are becoming sitting ducks," Taal says. "We shouldn't be penalized and punished with the threat of deportation because of expressing our views." Residents of Taal's building tipped him off last week that unidentified law-enforcement officers had arrived at his Ithaca

home, and in a statement on X he wrote, "Trump is attempting to detain me to prevent me from having my day in court." On Friday, the Justice Department asked Taal to surrender to ICE; his legal team filed an emergency petition seeking to prevent the government from detaining him before a Tuesday hearing on the merits of his case.

Columbia student Yunseo Chung also filed a lawsuit Monday after immigration officials unsuccessfully tried to deport her. Chung is a lawful permanent resident like Khalil, and the government is relying on the same obscure immigration law to argue that her conduct — she was arrested after a campus sit-in — negatively affects America's foreign policy. Chung, who does not appear to have a leadership role in the student protest movement, and her legal team filed a petition that would block her detention while her lawsuit is ongoing, which a judge granted Tuesday.

The crackdown has led several of the students I spoke with, including those from countries that routinely stifle free speech, to question their long-term plans. Even if they want to stay in America because of their strong community ties and a desire to fight for the cause they believe is right, they're grappling with whether it's worth living in a country that won't allow them to freely express their political beliefs. James says he planned to stay in New York after his program ends, "not for nationalistic reasons" but because of the city and the friendships he's built there. But now, he's not sure it'll be possible. "It's not a question of wanting" to remain in the States, he says. "How long will it be until they find something to use as a reason to not let me in?"

Maryam came to the U.S. to work with particular scholars at Cornell and had no plans to stay in the country longer. Then they got into a relationship with an American citizen. "I started to think, *Maybe I could settle down here. Maybe this is a place where we could have a family and be happy*," they say. But in the wake of Khalil's arrest, the couple is talking about living "anywhere that is not here." The future they envisioned together no longer feels realistic when "international students are being hunted by the federal government," Maryam says. They're not surprised that Trump is making good on his campaign promise, but they are increasingly worried that the American public won't push back enough on the administration's crackdown. "That scares me more than anything else," they say. "That the entire world is finding a way to make this a personal failing rather than a structural issue of targeting students who engage in constitutionally protected speech."

TAGS: POLITICS POWER TRUMP 2.0 THE CLASH ON CAMPUS MORE

Exhibit L

Dugan Meyer, El Paso, TX, 31.812083, -106.542667

ESSAYS AND SCHOLARSHIP

Protecting Immigrant Activists From U.S. Government Retaliation: Lessons From First Amendment Litigation

Immigrant activists in the U.S. face legal and structural barriers when fighting First Amendment retaliation.

BY ALINA DAS
FEBRUARY 12, 2025

REGARDLESS OF FRONTIERS: THE FIRST AMENDMENT AND THE EXCHANGE OF IDEAS ACROSS BORDERS
A project about surveillance, censorship, and the changing role of the international border

Do federal immigration officials have the power to arrest, detain, and deport immigrants in retaliation for their criticism of U.S. immigration policy?[1] The answer to this question should be an emphatic no. The U.S.

Supreme Court has long held that "[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state."[2] Few would contest that federal immigration policy is a matter of pressing public concern—which is confirmed, if anything, by its prominent role in current political debate.[3] As such, speech about federal immigration policy is entitled to the highest First Amendment protection.[4] A straightforward application of First Amendment law would firmly establish that the government is prohibited from silencing its critics through imprisonment or exile.

But constitutional protections in the immigration context are, unfortunately, anything but straightforward. In this essay, I describe and critique the legal and structural barriers that immigrant activists in the U.S. have faced when fighting back against ongoing First Amendment retaliation by federal immigration officials.[5] Drawing from my past scholarship and experience litigating these matters under the two previous administrations,[6] I describe the problematic legal positions taken by the federal government in First Amendment litigation and propose a better reading of the relevant constitutional and immigration provisions to promote First Amendment principles. I then briefly describe additional strategies, beyond defensive litigation, that immigrant advocates have pursued in order to address First Amendment retaliation. Ultimately, I argue that immigrant activists should not face onerous barriers to protecting their First Amendment rights.

The Context

The use of federal immigration powers to retaliate against immigrants for what might otherwise be protected speech is not a new phenomenon. In *Threat of Dissent: A History of Ideological Exclusion and Deportation in the United States,* Julia Rose Kraut traces the history of ideological exclusion and deportation from the late 18th century to the War on Terror.[7] The passage of the Alien and Sedition Acts of 1798, the Palmer Raids of 1919, and the repeated efforts to deport alleged communists and anarchists throughout long periods of the 20th century are all troubling examples.[8] Throughout this history, federal courts have been reluctant to intervene due to a judicially created "plenary power" doctrine that counsels against judicial intervention in immigration matters, particularly at the intersection of immigration and national security.[9] Congress has only increasingly constrained judicial review, and in 1999, the Supreme Court issued a decision in *Reno v. American-Arab Anti-Discrimination Committee* ("*AADC* ")holding that immigrants have no constitutional right to raise a selective enforcement claim against federal immigration officials relating to their decisions to commence proceedings, adjudicate cases, or enforce deportation orders in the absence of outrageous discrimination.[10]

In the decades since *AADC*, the power of federal immigration officials—and their ability to abuse that power—has only grown. In 2003, Congress transferred and consolidated federal immigration enforcement power to the newly created U.S. Department of Homeland Security (DHS), which divided responsibilities among: U.S. Immigration and Customs Enforcement (ICE, responsible for interior enforcement); U.S. Customs and Border Protection (CBP, responsible for border enforcement); and U.S. Citizenship and Immigration Services (USCIS, responsible for processing applications for immigration and citizenship status).[11] Federal law gives each of these agencies vast power to determine whom to detain, deport, or grant status or citizenship to.[12] Since the creation of the DHS, Congress has allocated billions of dollars to federal immigration agencies—more funds than all other federal law enforcement agencies combined.[13]

In recent years, these agencies have been repeatedly accused of abusing their authority in order to retaliate against immigrants for political speech—including criticism of federal immigration policy.[14] During the first Trump administration, the New York University (NYU) Immigrant Rights Clinic and its partners documented more than 1,000 incidents of alleged First Amendment retaliation against immigrant rights activists by numerous federal agencies.[15] ICE targeted prominent immigrant rights leaders in New

York City and Seattle for deportation, detained immigrants after they criticized ICE at town halls and rallies, and even detained and deported a grandfather after the Sundance Film Festival showcased a documentary about his past activism.[16] At the urging of immigrant rights organizations, the DHS under the Biden administration issued guidance that "[a] noncitizen's exercise of their First Amendment rights . . . should never be a factor in deciding to take enforcement action."[17] However, First Amendment retaliation continues to be reported, particularly against the most vulnerable immigrants.[18] With Donald Trump's return to the presidency, along with many of his first-term immigration advisors, many fear another surge of retaliation against immigrant activists and widespread suppression of speech in favor of immigrant rights.

The nature of this alleged retaliation and the harms that arise from it are severe. Immigrants who have spoken out against detention and deportation policies through protest, community organizing, the arts, the press, and the legal system have found themselves fined,[19] arbitrarily placed in deportation proceedings,[20] abruptly detained,[21] placed in solitary confinement or transferred to far-off detention facilities,[22] and/or rapidly deported because of their First Amendment activity.[23] The chilling effect of these efforts on immigrant organizing is significant, with immigrant communities being sent a clear message: Speak out against detention and deportation, and you will be detained and deported.[24] If the government can silence its critics, it has the power to control public debate and hide the inner workings of its most controversial immigration policies from public view.

With no right to government-appointed counsel and the full weight of the U.S. deportation apparatus against them, only a small number of immigrant activists have been able to raise First Amendment retaliation claims in court. As discussed in the next section, these cases have involved hotly contested issues regarding the power of the courts to review such claims and the scope of First Amendment protections afforded to immigrant activists. Potentially clear-cut cases of retaliation have been complicated by arguments that threaten to erode First Amendment principles. At the same time, these cases have given courts an opportunity to revive First Amendment principles in the wake of *AADC* and name the targeting of immigrant activists by immigration officials as a form of outrageous discrimination.

By upholding the right of immigrant activists to criticize federal immigration policy without fear of retaliation, courts can help resurface the anti-subordinating role of the First Amendment as a protection against majoritarian tyranny.[25] The next section discusses the core questions that have cropped up in immigrant activists' First Amendment litigation and proposes how courts should resolve these issues in line with First Amendment principles.

The Core Legal Questions

The core legal questions presented in any case alleging First Amendment retaliation by the government should address whether the evidence demonstrates that First Amendment retaliation has occurred and, if so, what the remedy should be.[26] Unfortunately, in the context of retaliation against immigrants in the U.S., the federal government has raised three additional immigration-specific gatekeeping questions that courts have had to confront before applying core First Amendment law: (1) Does the First Amendment protect all noncitizens in the U.S.? (2) Do federal courts have the power to consider, and do noncitizens have the right to raise, First Amendment challenges to retaliatory immigration enforcement? (3) Does the existence of a legally valid basis to arrest, detain, or deport a noncitizen preclude a noncitizen from bringing a First Amendment challenge to that action? In this section, I address each of these core questions in turn, proposing answers that would align with First Amendment principles. I focus on cases in which immigrants in the U.S. have sought to stop the retaliatory use of interior immigration enforcement power through stays, declaratory and injunctive relief, and grants of writs of habeas corpus.

Does the First Amendment protect all noncitizens in the U.S.?

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."[27] In *Bridges v. Wixon*, a case challenging efforts to deport Australian-born union leader Harry Bridges based on his alleged communist affiliation and membership, the Supreme Court affirmed that "[f]reedom of speech and of press is accorded aliens residing in this country."[28] There are many good reasons why the First Amendment would apply to noncitizens and citizens alike. Unlike other provisions in the U.S. Constitution, the First Amendment makes no reference to "citizens" and instead, where it refers to rights, speaks of "the people."[29] The values of the First Amendment reach much more broadly than the speaker: The First Amendment protects democratic self-governance for society as a whole and ensures both the right to speak and the right to listen.[30] Moreover, the First Amendment restricts the federal government from abusing its power to suppress speech based on its content or viewpoint, an important value irrespective of the status of the person whose speech is being silenced.[31]

Despite this, in a narrow set of circumstances, the federal government has argued that some immigrants in the U.S. are not entitled to First Amendment protections at all. Specifically, it has taken the position, in at least one First Amendment retaliation case litigated a decade ago, that noncitizens who have arrived in the U.S. recently and without authorization fall outside the First Amendment's protection.[32] In *Pineda-Cruz v. Thompson*, a group of mothers detained with their children at Karnes County Detention Center in Texas while seeking asylum sued the federal government, alleging First Amendment retaliation.[33] Approximately 80 mothers engaged in a protest, circulating a petition demanding their release and initiating a five-day hunger strike.[34] The complaint alleged that the prison reacted by placing several of the protest leaders in solitary confinement, terminating their prison jobs, threatening to take the mothers' children away, and engaging in verbal abuse.[35] The federal government filed a motion to dismiss that argued, in part, that "[a]s non-resident aliens who have not gained admission or entry to the United States – and who have not established connections to the United States – Plaintiffs are not entitled to prevail in a lawsuit seeking relief for alleged violations of the First Amendment."[36] The plaintiffs voluntarily dismissed the case prior to a decision on the motion to dismiss, but the federal government's position—that it had limitless power to silence asylum seekers within the U.S.—was alarming.[37]

The federal government based this position on three Supreme Court cases arising in significantly different contexts: *Johnson v. Eisentrager*, *United States ex rel. Turner v. Williams*, and *United States v. Verdugo-Urquidez*.[38] None of these cases hold that a noncitizen living in the U.S. lacks First Amendment rights, but the federal government's brief in *Pineda Cruz* used each case to suggest that immigration status may be relevant to a First Amendment inquiry.

Eisentrager addressed whether nonresident "enemy alien" German citizens captured as prisoners of war outside of the U.S. may seek habeas review in U.S. courts.[39] In denying them access to habeas review, the Supreme Court described the "ascending scale of rights" afforded to immigrants to the U.S.:

> The alien, to whom the United States has been traditionally hospitable, has been accorded a generous and ascending scale of rights as he increases his identity with our society. Mere *lawful presence* in the country creates an implied assurance of safe conduct and gives him certain rights; they become more extensive and secure when he makes preliminary declaration of intention to become a citizen, and they expand to those of full citizenship upon naturalization.[40]

In *Pineda Cruz,* the federal government used this case to argue the inverse, that a person without "lawful presence" in the U.S. is therefore categorically unprotected by the U.S. Constitution. This is something that the Supreme Court has not held,[41] and it was not addressed by *Eisentrager* (which, even in the context of addressing the reach of habeas corpus in wartime, has been interpreted as a highly context-specific decision).[42] *Eisentrager* therefore does not stand for the proposition that people in the U.S. without lawful presence have no First Amendment rights.

In *Turner*, the Supreme Court upheld the federal government's power to exclude "alien anarchists" from the U.S., finding no First Amendment concern and stating that a person excluded or expelled from the U.S. "does not become one of the people to whom these things are secured by our Constitution by an attempt to enter, forbidden by law."[43] The federal government in *Pineda Cruz* cited *Turner* to suggest that "deportable aliens" are therefore unable to seek First Amendment protection from deportation, but the analysis in *Turner* was much more narrow. In *Turner*, the Court observed that Congress reasonably viewed anarchy as a threat to national self-preservation and that, while anyone barred from entering the U.S. "is in fact cut off from worshipping or speaking or publishing or petitioning in the country[,]. . . that is merely because of his exclusion therefrom" and is not in and of itself a First Amendment injury.[44] Moreover, *Turner* pre-dates developments in constitutional law generally, and First Amendment law specifically, that recognize that the government may not deprive an individual of a benefit in violation of that individual's constitutional rights, even if the individual has no right to the benefit itself.[45] *Turner* does not, therefore, stand for the proposition that immigrants lack First Amendment protections.

United States v. Verdugo-Urquidez is a Fourth Amendment case, holding that the Fourth Amendment does not apply to searches and seizures of noncitizens outside the U.S.[46] The Supreme Court contrasted the Fourth Amendment's reference to "the people" with the Fifth and Sixth Amendments' references to "persons" or the "accused" and refused to apply the Fourth Amendment extraterritorially.[47] In so doing, the Court mentioned the First Amendment, stating:

> While this textual exegesis [examining references to "the people" in various portions of the U.S. Constitution] is by no means conclusive, it suggests that "the people" protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.[48]

In *Pineda Cruz*, the federal government used this language to argue that the detained mothers at Karnes could not raise First Amendment claims because they had not proven that they had "developed sufficient connection with the country" to be considered part of the community.[49] But nothing in *Verdugo-Urquidez* addresses what would constitute "sufficient connection" or suggests that people physically within the United States would not be considered part of the "national community." *Verdugo-Urquidez* is not about the rights of people inside the United States at all. Nor does *Verdugo-Urquidez* address whether freedom of speech (as opposed to other freedoms specified in the First Amendment) is limited to "the people" in the collective sense. As Michael Kagan has emphasized, the portion of the First Amendment protecting freedom of speech does not reference the class of speakers at all—suggesting a broad interest in limiting governmental abuses of power.[50] This interest underscores why the First Amendment should protect the mothers in *Pineda Cruz* from retaliation. As I have written in my previous scholarship, the treatment of immigrants in immigration detention is a matter of pressing public concern and the voices of people who are directly impacted by detention in the U.S. are critical to the public's understanding of these issues.[51] If

the government can silence those whom it chooses to hold in custody without scrutiny, it undermines democratic debate.

The origins of the First Amendment also matter. Verdugo-Urquidez did not end its analysis with this "textual exegesis" and instead went on to examine the history of the drafting of the Fourth Amendment and its purposes.[52] Similar context-specific debates are occurring in the Second Amendment sphere.[53] Any limitations on the reach of the First Amendment must align with its origins and purposes, including its focus on the free exchange of ideas and the right of the public to listen to diverse perspectives on issues of public concern.Moreover, because freedom of speech is "the matrix, the indispensable condition, of nearly every other form of freedom,"[54] there are strong reasons to examine the First Amendment in conjunction with other constitutional provisions that undeniably protect all persons.[55] This suggests not only more fulsome speech protections for anyone present in the territorial U.S. but also a reexamination of the reach of these protections to speakers outside the U.S., as other scholars have suggested.[56]

Perhaps recognizing the folly of its argument in *Pineda Cruz*, the federal government has not actively pursued similar arguments in other First Amendment cases involving immigrant activists in the decade since. It would have been difficult for the federal government to apply such reasoning to the majority of cases in which immigrant activists have alleged retaliation in any event. Immigrant activists who have drawn the attention of federal immigration officials generally have long-standing and substantial ties that have driven their organizing—family, employment, and community, in addition to long residence in the U.S. Even immigrant activists who are more recent arrivals—such as those who are detained within the U.S. pending immigration proceedings—are part of our national community and have viewpoints salient to the public debate. The federal governments and the courts should resist further fragmentation of First Amendment law and apply First Amendment principles robustly to all immigrant activists in the U.S.

Do federal courts have the power to consider, and do noncitizens have the right to raise, First Amendment challenges to retaliatory immigration enforcement?

The Supreme Court has long recognized that "the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out."[57] The First Amendment prohibits retaliation because allowing retaliation would permit the government to punish speech indirectly, when the government has no right to punish speech at all.[58]

To effectuate this right, however, an individual facing First Amendment retaliation requires access to a judicial forum. Federal question jurisdiction provides a judicial forum for constitutional controversies.[59] Indeed, some degree of judicial review over First Amendment claims is guaranteed by Article III and the First Amendment of the U.S. Constitution. The Supreme Court has held that interpreting a statute to deprive federal courts of jurisdiction over constitutional claims would raise serious constitutional concerns.[60] As Akhil Amar has explained, to ensure the Constitution's status as the supreme law of the land, it "would have been insufficient simply to empower, but not oblige, Congress to give federal courts jurisdiction in these cases."[61] Moreover, where the alleged First Amendment retaliation involves a restraint on liberty, other jurisdictional provisions apply. Article I, § 9, cl. 2 (the Suspension Clause) of the U.S. Constitution and the civil habeas statute, 28 U.S.C. § 2241, ensure the review of unconstitutional restraints on liberty.

Despite these background principles, the federal government has argued that immigrant activists—even those whose speech is concededly protected under the First Amendment—have no right to bring a First Amendment retaliation claim and no forum for review.[62] This argument is based primarily on the Supreme

Court's 1999 decision in *Reno v. AADC*, which interpreted a jurisdiction-stripping provision in the Immigration and Nationality Act, 8 U.S.C. § 1252(g), and analyzed whether the plaintiffs—members of the Popular Front for the Liberation of Palestine—could bring a selective enforcement claim to stop the commencement of removal proceedings against them.[63] For the reasons explained below, however, neither 8 U.S.C. § 1252(g) nor the ruling on selective enforcement in *AADC* precludes the review of immigrant activists' First Amendment retaliation claims. Where an immigrant raises a cognizable First Amendment retaliation claim, the U.S. Constitution guarantees review.

As an initial matter, the federal government often reads 8 U.S.C. § 1252(g) more expansively than its text or history suggests. In the 1990s, Congress amended federal immigration law to streamline and, in some cases, eliminate judicial review over certain immigration decisions.[64] As part of this effort, it enacted 8 U.S.C. § 1252(g) to limit review of decisions or actions by federal immigration officials to "commence proceedings, adjudicate cases, or execute removal orders." As the Supreme Court observed in *AADC*, Congress enacted § 1252(g) in the wake of lawsuits challenging federal immigration officials' failure to exercise prosecutorial discretion during these three stages of proceedings.[65] Congress wanted federal immigration officials to maintain their discretion to decide whether or not to halt proceedings at these stages in the process "for humanitarian reasons or simply for its own convenience."[66]

AADC examined § 1252(g) within a particular context. The plaintiffs in *AADC* were placed into removal proceedings and charged with routine immigration law violations and, although later dropped, with charges related to advocacy for "world communism."[67] They brought a selective prosecution challenge to the commencement of their removal proceedings, claiming that federal immigration officials targeted them based on their membership in the Popular Front for the Liberation of Palestine, which the federal government considered to be a terrorist organization.[68] After determining that § 1252(g) prohibited judicial review of decisions to commence removal proceedings, the Supreme Court then considered the plaintiffs' claim that its reading of the statute raised constitutional concerns.[69] The Supreme Court concluded that the plaintiffs had not raised a colorable First Amendment claim, holding that "[w]hen an alien's continuing presence in this country is in violation of the immigration laws, the Government does not offend the Constitution by deporting him for the additional reason that it believes him to be a member of an organization that supports terrorist activity."[70]

The Court could have stopped there but instead announced a general rule against selective enforcement claims in the immigration context.[71] Examining the issue from the context of selective prosecution, the Court reasoned that recognizing such claims would allow unlawfully present noncitizens like the plaintiffs in *AADC* to "to prolong a continuing violation of United States law" and probe the mindset of prosecutors, thereby risking "the disclosure of foreign-policy objectives and . . . foreign-intelligence products and techniques" related to combatting terrorism and national security interests.[72] The Court did not, however, foreclose all selective enforcement claims, recognizing that there may be cases "in which the alleged basis of discrimination is so outrageous that the foregoing considerations can be overcome."[73]

Read in context, *AADC* stands for the proposition that § 1252(g) precludes judicial review of a challenge to federal immigration officials' discretionary decision to commence a proceeding, adjudicate a case, or execute a removal order in the absence of a colorable constitutional claim and that a selective enforcement claim is not colorable in the absence of outrageous discrimination.[74] Notably, *AADC* reached its result by emphasizing national security and terrorism concerns, which are not present in the vast majority of immigration cases. One can therefore distinguish *AADC* from cases that raise different concerns, challenge different actions, or present viable constitutional claims.

For example, only a limited set of actions fall within the purview of *AADC*. *AADC* recognizes that 8 U.S.C. § 1252(g) is tethered solely to the "three discrete actions" referenced in 8 U.S.C. § 1252(g). It therefore does

not alter a court's jurisdiction to review "many other decisions or actions that may be part of the deportation process—such as the decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order."[75] Another action not described in § 1252(g) is the decision to detain. Appropriately, courts have readily found habeas jurisdiction over challenges to retaliatory detention.[76]

Nor does *AADC* address a scenario where a noncitizen is raising a colorable constitutional claim for which no other forum is available.[77] Justice Ginsburg raised concerns about this scenario in her concurrence: "[W]ere respondents to assert a colorable First Amendment claim as a now or never matter[—]were that claim not cognizable upon judicial review of a final order—again precedent and sense would counsel immediate resort to a judicial forum."[78] Selective prosecution is a challenge raised at the beginning of the removal process, which provides some avenue for judicial review (even if the scope of that review is subject to debate). In a "now or never" scenario—for example, a case where retaliation occurs after the removal process is completed, i.e., selective deportation—the interests of the immigrant in having some forum in which to challenge the unconstitutionality of their deportation outweigh the interests of the deporting officials.[79] This "now or never" scenario counsels in favor of a narrow reading of § 1252(g) that does not foreclose review where a colorable constitutional claim (related to the First Amendment or otherwise) is raised.

Specific to the selective enforcement context, *AADC* explicitly leaves open the review of selective enforcement claims based on "outrageous" discrimination. In *Ragbir v. Homan*, the U.S. Court of Appeals for the Second Circuit held that First Amendment retaliation against an immigrant rights activist for his political speech critical of federal immigration policy is a form of outrageous discrimination that fits within the exception in *AADC*.[80] The plaintiff in *Ragbir* was the director of a prominent immigrant rights organization in New York that organized faith communities.[81] He received a final order of removal in 2007 but was given permission to continue to live and work in the U.S. for several years prior to his abrupt detention and imminent deportation and was targeted along with the co-founder of his organization in 2018.[82] The ICE official who authorized the detention of Mr. Ragbir and his colleague expressed resentment towards their public remarks and advocacy.[83] Mr. Ragbir argued that ICE's efforts to deport him amounted to First Amendment retaliation for his protected political speech and to outrageous discrimination under *AADC*.

The Second Circuit agreed that Mr. Ragbir presented a viable First Amendment claim. In laying out the test for outrageous discrimination, the Second Circuit explained that courts should examine "the gravity of the constitutional right affected; the extent to which the plaintiff's conduct or status that forms the basis for the alleged discrimination is actually protected; the egregiousness of the Government's alleged conduct; and the plaintiff's interest in avoiding selective treatment, as balanced against the Government's discretionary prerogative."[84] Applying this test, the court explained that "advocacy for reform of immigration policies and practices is at the heart of current political debate among American citizens and other residents" and therefore "implicates the apex of protection under the First Amendment."[85] The Second Circuit concluded that he raised strong, plausible claims of retaliation for his viewpoint on immigrant rights and the public attention it received.[86] As the Second Circuit held, "[t]o allow this retaliatory conduct to proceed would broadly chill protected speech, among not only activists subject to final orders of deportation but also those citizens and other residents who would fear retaliation against others."[87]

The existence of a valid constitutional claim, which the Supreme Court found lacking in *AADC*, casts serious constitutional doubt on whether Congress could eliminate judicial review. The court in *Ragbir*

could have construed 8 U.S.C. § 1252(g) narrowly to avoid the constitutional concerns by concluding that the statute was designed to constrain review of agency discretion and not of valid constitutional claims.[88] Instead, the court concluded that the statute's prohibition on the review of decisions "to execute removal orders" did not distinguish between constitutional and nonconstitutional claims and thus that there was no room to construe the statute to avoid the constitutional doubt.[89] It thus turned to the more complex issue of whether Congress' enactment of § 1252(g) violated the Suspension Clause of the U.S. Constitution, which ensures some degree of habeas jurisdiction.

The Second Circuit concluded that the Suspension Clause guaranteed review. Mr. Ragbir was "in custody" by virtue of his deportation order[90] and his claims fell within the "constitutionally required scope of the privilege of the writ of habeas corpus" atcommon law.[91] Because the Great Writ had not been formally suspended, and because the parties conceded that Congress had not provided an "adequate substitute" for habeas review, the Second Circuit concluded that stripping jurisdiction over Mr. Ragbir's First Amendment claim violated the Suspension Clause.[92] It ordered the case to be remanded for further consideration.

The focus on the Suspension Clause has led to another line of argument that the federal government has raised in cases of alleged retaliatory deportation: whether habeas relief is available to a person who challenges their deportation. The Office of the Solicitor General filed a petition for certiorari to the U.S. Supreme Court in *Ragbir*. While the certiorari petition for *Ragbir* was pending, the Supreme Court issued a Suspension Clause case, *U.S. Department of Homeland Security v. Thuraissigiam*,[93] and remanded *Ragbir* to consider what impact, if any, *Thuraissigiam* had on the Suspension Clause analysis.[94] The question was never resolved in *Ragbir* because the parties entered into a settlement prior to a further decision.[95]

In *Thuraissigiam*, the Supreme Court held that 8 U.S.C. § 1252(e)(2), a statutory provision that limits judicial review of expedited removal orders, does not violate the Suspension or Due Process Clauses as applied to a noncitizen "at the threshold of initial entry" who sought to overturn his expedited removal order and "obtain additional administrative review" beyond what the statute required.[96] As scholars have observed, *Thuraissigiam* is a troubling case.[97] But there are several reasons why *Thuraissigiam* does not ultimately undermine a conclusion that *Ragbir* reached the right result with respect to the Suspension Clause question.

First, *Thuraissigiam* is narrow in scope. *Thuraissigam* was an "as applied" challenge to the expedited removal of an individual seeking initial entry and a more robust process of review at the border.[98] *Thuraissigiam* thus stands for the narrow proposition that a noncitizen with no ties to the U.S. cannot resort to habeas as a means of "gaining entry" and that due process is not offended by the expedited removal process of such an individual pursuant to statute.[99] Importantly, its Suspension Clause analysis focused solely on the scope of the writ of habeas corpus in 1789 and thus did not consider the ways in which the writ has evolved over time.[100]

Second, several aspects of *Thuraissigiam* help make the case for why judicial review of a colorable First Amendment retaliation claim challenging deportation *is* constitutionally required. In crafting a narrow rule tailored to the border entry context, *Thuraissigiam* carefully preserved long-standing Supreme Court precedent protecting habeas review over the claims of noncitizens "already in the country who were held in custody pending deportation."[101] It also preserved Supreme Court precedent recognizing that habeas jurisdiction empowers courts to consider a variety of remedies to unlawful restraints on liberty.[102] It further underscored the presumption of judicial review and other interpretive canons designed to prevent the elimination of judicial review over deportation.[103] Finally, it recognized, as it must, that there are various sources of jurisdiction over colorable constitutional claims.[104]

INS v. St. Cyr, which *Thuraissigiam* cites, helps to demonstrate why courts should exercise habeas jurisdiction over cases challenging retaliatory deportation. The noncitizen in *St. Cyr* sought a writ of habeas corpus challenging his deportation, arguing "that the restrictions on discretionary relief from deportation contained in the 1996 statutes do not apply to removal proceedings brought against an alien who pleaded guilty to a deportable crime before their enactment."[105] In interpreting the statute to preserve habeas review over such a claim, the Supreme Court emphasized that "at the absolute minimum" the Suspension Clause preserved the writ as of 1789 and recognized "there is historical evidence of the writ issuing to redress the improper exercise of official discretion" even in cases where detention is authorized by statute.[106] It further observed that during the finality era, habeas was "the sole means by which an alien could test the legality of his or her deportation order."[107] At its core, *St. Cyr* recognizes the importance of preserving habeas review of deportation challenges, and *Thuraissigiam* upholds this view.[108]

Whether construing § 1252(g) narrowly,[109] upholding habeas jurisdiction in light of Suspension Clause concerns, or locating a different constitutional source for a jurisdictional guarantee, federal courts have the power to consider colorable claims of First Amendment retaliation. Courts should reject the federal government's attempts to stretch cases like *AADC* and *Thuraissigiam* beyond their narrow facts, lest even outrageous discrimination go unremedied.

Does the existence of a legally valid basis to arrest, detain, or deport a noncitizen preclude a noncitizen from bringing a First Amendment challenge to that action?

A third emerging issue is whether the existence of otherwise valid authority to take an immigration enforcement action eviscerates any potential First Amendment retaliation claim. For example, does the fact that a person has a legally valid deportation order mean that it does not matter whether a federal immigration official engaged in outrageous discrimination by choosing to deport the person because of their protected speech? Does the fact that a person can be lawfully detained mean that it does not matter whether a federal immigration official chooses to detain the person because of their protected speech? The federal government has raised this argument in a number of recent First Amendment retaliation cases involving immigrant activists, urging courts to dismiss challenges based on the existence of valid authority to detain or deport.

Under a typical First Amendment analysis, the fact that a government entity has the authority and discretion to take a particular action does mean that they can take that action for an impermissible reason. For example, in *Perry v. Sindermann*, an untenured, contract professor at a state college sued public officials after his contract was not renewed, arguing that the nonrenewal was on the basis of his protected speech criticizing the college's Board of Regents and violated his due process rights.[110] The Supreme Court addressed whether the lack of a right (contractual or otherwise) to employment renewal necessarily defeats any claim of First Amendment retaliation.[111] The Supreme Court held that it did not:

> For at least a quarter-century, this Court has made clear that, even though a person has no "right" to a valuable governmental benefit, and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interest, especially his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to

> "produce a result which [it] could not command directly." Such interference with constitutional rights is impermissible.[112]

In other words, even if the government has the authority and discretion to take a particular action, it cannot take that action on a basis that infringes on a person's First Amendment rights. In *Sindermann*, it was sufficient that the professor alleged that the adverse action in dispute—the nonrenewal of his contract—occurred on the basis of his criticism of the Board of Regents, which he alleged was protected speech.[113]

In many cases, including cases relating to public employment, the question of retaliatory animus and causality can be complex when the government may have multiple reasons—some permissible, some impermissible—for taking an action. Courts ordinarily have addressed these complexities by applying the burden-shifting test in *Mt. Healthy City School District Board of Education v. Doyle*.[114] Under the *Mt. Healthy* test, a plaintiff must first show that their protected speech was a "motivating factor" in the contested government action.[115] If the plaintiff meets this burden, the government will be liable unless it demonstrates it would have taken the action "even in the absence of the protected conduct."[116]

In the context of retaliatory arrest, however, an even more complex set of questions has emerged. Courts have approached the issue of retaliatory arrests with more caution than employment decisions, given Fourth Amendment considerations and the difficulty of assessing when an arresting officer should be able to consider speech as part of the decision to arrest.[117] In some contexts, the existence of probable cause for arrest—i.e., a legally valid basis for arrest—can displace the *Mt. Healthy* test and defeat a claim for damages based on First Amendment retaliation entirely.

The Supreme Court addressed the issue most recently in two cases where individuals sought damages for retaliatory criminal arrest under 42 U.S.C. § 1983: *Lozman v. Riviera Beach*[118] and *Nieves v. Bartlett*.[119] In *Lozman*, an individual sought damages after he was arrested at a city council meeting, alleging that the arrest was in retaliation for a lawsuit he filed against the city over a local development project and for his vocal criticism of various council members.[120] The Supreme Court differentiated Lozman's claim from the "typical retaliatory arrest claim" involving "an ad hoc, on-the-spot decision by an individual officer."[121] Rather, Lozman alleged "[a]n official retaliatory policy" in which "the government itself orchestrate[d] the retaliation."[122] Under those circumstances, the existence of probable cause was not a categorical bar, since the inquiry focuses on the orchestration of the action rather than the officer's individual decision-making.[123] As such, the typical *Mt. Healthy* test could apply.

In *Nieves*, the Supreme Court returned to the issue of damages for retaliatory arrest but this time in the context of a more typical arrest decision.[124] The plaintiff in *Nieves* sought damages after the police arrested him at a sports festival, allegedly in retaliation for the plaintiff's refusal to speak to one of the officers and his intervention in another officer's discussion with a minor during the event.[125] The Court noted that protected speech can be a legitimate consideration when making split-second arrest decisions and that causality between any impermissible animus an officer might have and the injury would be difficult to prove.[126] The Court further noted that, in the Fourth Amendment context, courts are rarely permitted to probe the subjective intent of police officers and that "[t]o ensure that officers may go about their work without undue apprehension of being sued, we generally review their conduct under objective standards of reasonableness."[127] In light of these challenges, the Court held that the existence of probable cause defeated the individual's claim for damages based on a retaliatory criminal arrest.[128] Only if a plaintiff demonstrates a lack of probable cause would the case then proceed through the *Mt. Healthy* framework.[129]

Drawing from these principles, the federal government has argued that similar rules should apply to the immigration context. In *Bello-Reyes v. Gaynor*, for example, the federal government cited *Nieves* to argue

that a noncitizen could not challenge ICE's decision to revoke his release on bond in retaliation for his speech because he had violated the conditions of his release several months prior.[130] Similarly, in *Ragbir v. Homan*, the federal government argued that a noncitizen could not challenge ICE's decision to deport him in retaliation for his speech because he had received a valid order of deportation several years prior, drawing from case law in the criminal arrest context.[131]

There are several reasons why *Nieves* cannot be so easily repurposed. First, *Nieves* is a § 1983 damages case that addresses individual officer liability for past conduct. It does nothing to alter long-standing First Amendment jurisprudence prohibiting government officials from engaging in retaliation. Justice Gorsuch explained this distinction in his partial concurrence and dissent in *Nieves*:

Both sides accept that an officer violates the First Amendment when he arrests an individual in retaliation for his protected speech. They seem to agree, too, that the presence of probable cause does not undo that violation or erase its significance. . . . If the state could use these laws not for their intended purposes but to silence those who voice unpopular ideas, little would be left of our First Amendment liberties, and little would separate us from the tyrannies of the past or the malignant fiefdoms of our own age. . . . So if probable cause can't erase a First Amendment violation, the question becomes whether its presence at least forecloses a civil claim for damages as a statutory matter under § 1983.[132]

Immigrant activists who challenge the constitutionality of their detention and deportation on First Amendment grounds are not raising questions about individual officer liability. As the U.S. Court of Appeals for the Ninth Circuit concluded when it declined to apply *Nieves* in *Bello-Reyes*, a "petitioner need not identify a particular violator, only that his confinement is unconstitutional."[133] Courts should consider constitutional questions by applying normal constitutional principles, rather than importing exceptions from the context of statutory damages.

Second, even if *Nieves* could apply outside the damages context, it has little applicability to retaliatory immigration enforcement.Federal immigration officers are engaging in civil law enforcement, typically through pre-planned decision-making regarding the targets of an operation or the initiation of removal proceedings. Unlike police officers enforcing criminal law, federal immigration officers are generally not relying on protected speech to decide whether to take action against someone in "split-second judgments" at the scene of a crime.[134] Moreover, many aspects of civil immigration enforcement are not governed by standards like probable cause. Given the struggle to apply Fourth Amendment concerns regarding officer intent to the civil immigration context, both the Ninth Circuit in *Bello-Reyes* and the Second Circuit in *Ragbir* refused to adopt a similar rule in the context of retaliatory detention or deportation.[135] To the extent that a retaliation claim would require a court to probe the reasoning of immigration prosecutors, the Supreme Court already addressed those concerns by limiting any selective prosecution claims to cases of "outrageous discrimination" as outlined in *AADC*.[136]

Third, even if *Nieves* could apply to some forms of retaliatory immigration enforcement, many of the claims raised by immigrant activists would fall into one of two exceptions. The first is the *Lozman* category of cases: retaliation on the basis of official government policy or the orchestration of retaliation. In cases where retaliation stems from a policy or plan, rather than "an ad hoc, on-the-spot decision by an individual officer," there is "a compelling need for adequate avenues of redress," and the normal test under *Mt. Healthy* should apply.[137] The second is a more narrow exception recognized within *Nieves:* retaliation alleged under "circumstances where officers have probable cause to make arrests, but typically exercise their discretion not to do so."[138] The Supreme Court recognized that, in contexts in which officers exercise prosecutorial discretion, "an unyielding requirement to show the absence of probable cause could pose a risk that some police officers may exploit the arrest power as a means of suppressing speech."[139] Prosecutorial discretion is a significant feature of immigration enforcement, with millions of

people being permitted to remain in the U.S. under some form of supervision rather than being detained or deported.[140] Given the relative underenforcement of civil immigration law, allegations of retaliation should not be defeated merely by pointing to federal immigration officials' power to detain or deport. Objective evidence that officers typically exercise discretion is sufficient to meet this exception.[141]

For these reasons, courts should reject the federal government's attempt to expand *Nieves* into the immigration context and, at a minimum, should apply its various exceptions vigorously. Otherwise, federal immigration officials will be given free rein to silence immigrants for their viewpoints on immigration policy, which federal immigration officials should be powerless to do under the First Amendment.

In summary, the First Amendment prohibits the federal government from retaliating against immigrant activists in the U.S. based on their immigrant rights advocacy. This includes a prohibition against retaliatory immigration enforcement in the form of detention and deportation. When such retaliation occurs, immigrants may raise, and federal courts must review, First Amendment claims challenging such actions. Courts should reject the federal government's attempts to limit their authority to review and redress such claims.

Additional Strategies

In addition to defensive litigation, immigrant rights advocates have identified a number of strategies to address potential First Amendment retaliation. These strategies include proactive community trainings and preparedness to mitigate the risk of First Amendment retaliation; documentation, reporting, public education, and political advocacy when First Amendment retaliation occurs; and the pursuit of opportunities for structural reform. Each of these strategies may play a critical role in addressing the possibility of future retaliation and suppression of First Amendment rights.

First, advocates have emphasized the importance of preparing and training communities to address and mitigate the risks posed to immigrants who engage in activism. Any person who chooses to organize or engage in rallies, protests, and other forms of First Amendment activity should be informed about their rights and the risks of such participation. Immigrants who are vulnerable to deportation face a unique set of risks, with respect to both federal immigration enforcement and local policing policies. To help immigrants make informed choices about how to engage in activism, some organizations have prepared trainings and developed know-your-rights materials.[142] When retaliation has been a risk, organizers of events have sought the presence of legal observers and pre-arranged for legal support. The purpose of this preparedness is not to chill participation in speech but to ensure that people are informed and empowered to exercise their rights.

Second, when retaliation against immigrants has occurred, advocates have engaged in careful documentation, reporting, public education, and political advocacy, sometimes in concert with litigation. Organizations have prepared reports, teach-ins, and briefings to educate the public and elected officials about the need to protect immigrant communities from retaliation.[143] Advocates have filed Freedom of Information Act lawsuits to uncover indicia of retaliation for individuals and organizations.[144] Individuals and organizations have submitted complaints to the Department of Homeland Security's Office of the Inspector General and Office of Civil Rights and Civil Liberties to seek internal investigations.[145] Advocates have used these public records, complaints, and reports to demonstrate and map patterns of retaliation as part of litigation and policy advocacy, generating significant media coverage.[146] These efforts have encouraged community organizations, faith leaders, and government officials to condemn the retaliation and participate in lawsuits challenging First Amendment retaliation.[147]

Third, advocates and scholars have identified and proposed a number of structural solutions to address or prevent instances of retaliation against immigrant activists in the future. These include legislative, administrative, and regulatory fixes, including the issuance of prosecutorial discretion guidance; the settlement of pending First Amendment cases; the strengthening of administrative interventions (including giving more oversight and intervention powers to agency watchdogs); regulatory redress; and legislative amendments to restore judicial review.[148] Under the Biden administration, federal officials adopted a small number of these proposals. For example, the DHS issued guidance prohibiting First Amendment retaliation in immigration enforcement and the Department of Justice settled some First Amendment retaliation cases by agreeing to grant temporary forms of protection to immigrant activists.[149] Other promising proposals, such as the adoption of regulatory reforms and the strengthening of oversight agencies, could be adopted in the future.[150]

With the incoming Trump administration, the prospect for such structural reforms may seem unlikely. However, opportunities for change may nonetheless arise. Under the first Trump administration, ICE was willing to settle a lawsuit in *Migrant Justice v. Wolf* that raised several claims, including claims of First Amendment retaliation.[151] As part of the settlement, ICE agreed to provide immigration relief to several members of Migrant Justice and to circulate a 2019 policy memorandum prohibiting First Amendment retaliation by immigration officials.[152] Advocates may find opportunities, including through settlement, to push for policy changes. At a minimum, they can continue to lay the groundwork for more structural solutions for a future administration.

Conclusion

The large number of alleged instances of retaliation against immigrant activists in recent years has shed light on a long-standing problem at the intersection of immigration and First Amendment law. First Amendment principles should not be diminished on the basis of a speaker's immigration status. Many of the legal barriers to protecting immigrant activists from First Amendment retaliation can be overcome if courts carefully cabin past precedent and exercise robust review over colorable claims. In addition, other forms of advocacy can help safeguard opportunities for immigrants to protect their First Amendment rights. At a time when immigration issues are so central to political debate in the United States, our institutions should be amplifying, rather than silencing, the voices of people directly impacted by U.S. immigration policies.

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1 Throughout this paper, I use the terms "immigrants" and "noncitizens" interchangeably to refer to people in the U.S. who do not have U.S. citizenship status.

2 City of Houston, Tex. v. Hill, 482 U.S. 451, 462–63 (1987).

3 "Speech deals with matters of public concern when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community,' or when it 'is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public[.]'" Snyder v. Phelps, 562 U.S. 443, 453 (2011) (internal citations omitted).

4 *See Connick v. Myers*, 461 U.S. 138, 145 (1983) ("[S]peech on public issues occupies the 'highest rung of the hierarchy of First Amendment values,' and is entitled to special protection."). In particular, "speech critical of the exercise of the State's power lies at the very center of the First Amendment." Gentile v. State Bar of Nev., 501 U.S. 1030, 1034 (1991).

5 This paper focuses primarily on the use of interior immigration enforcement power—immigration arrests, detention, and deportation—as a form of retaliation against noncitizens in the U.S. and on efforts to stop the retaliation. This paper does not, therefore, address retaliation by federal immigration officials against U.S. citizens or noncitizens seeking entry from outside of the U.S. Nor does this paper address efforts by individuals to seek damages for past retaliation.

6 *See, e.g.*, Alina Das, *Immigration Detention and Dissent: The Role of the First Amendment on the Road to Abolition*, 56 Ga. L. Rev. 1433 (2022) [hereinafter "Immigration Detention and Dissent"]; Alina Das, *Deportation and Dissent: Protecting the Voices of the Immigrant Rights Movement*, 65 N.Y.L. Sch. L. Rev. 225 (2020-2021) [hereinafter "*Deportation and Dissent*"]. I have served as counsel or co-counsel in several cases raising First Amendment retaliation claims on behalf of immigrant activists, including *Ragbir v. Homan*, *Rojas v. Moore, Avendano-Hernandez v. Decker, Montrevil v. Decker*, *Austin Sanctuary Network v. Mayorkas*, and *M.Q. v. Genalo*, and have filed amicus briefings in other cases raising similar issues.

7 Julia Rose Kraut, Threat of Dissent: A History of Ideological Exclusion and Deportation in the United States (2020).

8 *Id.*

9 Das, *Deportation and Dissent*, *supra* note 6, at 242-243 (describing the role of the plenary power doctrine in immigration law at the intersection of First Amendment rights).

10 Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 491 (1999)(presenting a general rule against selective enforcement claims in the context of removal proceedings but stating "we need not rule out the possibility of a rare case in which the alleged basis of discrimination is so outrageous that the foregoing considerations can be overcome")

11 *See* Homeland Security Act of 2002, Pub.L. No. 107–296, § 471, 116 Stat. 2135.

12 *See* Immigration and Nationality Act, 8 U.S.C. 1101 et seq.

13 *See, e.g.*, Migration Policy Institute, *As #DefundThePolice Movement Gains Steam, Immigration Enforcement Spending and Practices Attract Scrutiny* (June 25, 2020), https://www.migrationpolicy.org/article/defundthepolice-movement-gains-steam-immigration-enforcement-spending-and-practices-attract; *see also* American Immigration Council, The Cost of Immigration Enforcement and Border Security (Aug. 14, 2024), https://www.americanimmigrationcouncil.org/research/the-cost-of-immigration-enforcement-and-border-security.

14 *See* Das, *Deportation and Dissent*, *supra* note 6, at 231-239 (describing examples of retaliation).

15 ImmigrantRightsVoices.org (mapping 1,015 incidents of retaliation against immigrant rights activists during the Trump Administration); Nick Pinto, *Across the U.S., Trump Used ICE to Crack Down on Immigration Activists*, The Intercept (Nov. 1, 2020), https://theintercept.com/2020/11/01/ice-immigration-activists-map/.

16 *See* Das, *Deportation and Dissent*, *supra* note 6, at 234-237 (describing retaliation against Ravi Ragbir, Jean Montrevil, Maru Mora-Villalpando, José Bello, and Claudio Rojas).

17 Memorandum From Alejandro N. Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., to Tae D. Johnson, Acting Dir., U.S. Immigr. & Customs Enf't 5 (Sept. 30, 2021), https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf.

18 *See* Das, *Immigration Detention and Dissent*, *supra* note 6, at 1452-1453 (describing examples of retaliation against immigrant activists reported under the Biden administration); Azadeh Shahshahani and Chiraayu Gosrani, *"Known Adversary": The Targeting of the Immigrants' Rights Movement in the Post-Trump Era*, 72 Emory L.J. 1245, 1249 (2023) (arguing that "retaliation is part and parcel of the deportation and detention machine, such that retaliatory enforcement action remains a threat to immigrants, movement leaders, and organizers" in the Biden administration and beyond).

19 *See, e.g.*, Tina Vásquez, *ICE is Targeting Women in Sanctuary with Obscure Laws and Retaliatory Fines*, Truthout (Dec. 13, 2020), https://truthout.org/articles/ice-is-targeting-women-in-sanctuary-with-obscure-laws-and-retaliatory-fines/.

20 *See, e.g.*, Tania Unzueta, *ICE Serves Deportation Notice on Undocumented Leader for Organizing Detained Immigrants*, Mijente (Jan. 16, 2018), https://mijente.net/2018/01/maruversusice/.

21 *See, e.g.*, Yara Simón, *Activist José Bello Performed an Anti-ICE Poem at Public Forum. Two Days Later, ICE Detained Him.*, Remezcla (July 15, 2019), https://remezcla.com/culture/jose-bellow-anti-ice-poem-dear-america/.

22 *See, e.g.*, Daniel Parra, *Hunger-Striking ICE Detainees Sue Over Conditions at NY's Orange County Jail*, City Limits (Apr. 5, 2023), https://citylimits.org/2023/04/05/hunger-striking-ice-detainees-sue-over-conditions-at-nys-orange-county-jail/.

23 Matt Katz, *ICE Detainee Who Sued His Jailers Was Swiftly Deported. Now He's Missing*. The Gothamist (May 28, 2020), https://gothamist.com/news/ice-detainee-who-sued-his-jailers-was-swifty-deported-now-hes-missing.

24 Brief of 24 Immigrants' Rights Advocacy Organizations as Amici Curiae in Support of Plaintiffs-Appellants at 9–18, Ragbir v. Homan, 923 F.3d 53 (2d Cir. 2019) (No. 18-1597) (asserting that the government's focus on immigrant speech has "chilled and continues to chill speech about the immigration system").

25 *See, e.g.*, Gregory P. Magarian, *Centering Noncitizens' Free Speech*, 56 Ga. L. Rev. 1563, 1575 (2022) (arguing that, by ensuring noncitizens' First Amendment rights, courts can "recapture the essential mid-twentieth century focus on protecting the rights of disadvantaged groups, political dissenters, and other speakers at society's margins" and correct "speech inequality" that favors the powerful); Genevieve Lakier, *Imagining an Antisubordinating First Amendment*, 118 Colum. L. Rev. 2117, 2118 (2018) (describing and critiquing a broad shift in First Amendment jurisprudence that results in protections for the privileged rather than the powerless).

26 The prongs of a First Amendment retaliation claim vary by jurisdiction but generally require (1) protected speech, (2) an adverse action, and (3) a causal connection between the protected speech and the adverse action. Remedies vary based on the context and type of claim and the nature of the injury.

27 U.S. Const. amend. I.

28 Bridges v. Wixon, 326 U.S. 135, 148 (1945) (citing Bridges v. California, 314 U.S. 252 (1941)).

29 U.S. Const. amend. I.

30 *See* Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 339 (2010) ("The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it."); Garrison v. Louisiana, 379 U.S. 64, 74–75 (1964) ("[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.").

31 *See Citizens United*, 558 U.S. at 340 ("Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints.").

32 Complaint, *Pineda-Cruz v. Thompson*, No. SA-15-CV-326-XR (W.D. Tex. Apr. 23, 2015), 2015 WL 1868560; *see also* Michael Kagan, *Do Immigrants Have Freedom of Speech?*, 6 Calif. L. Rev. Circuit 84 (2015) (discussing the lawsuit).

33 Complaint, *Pineda-Cruz v. Thompson*, No. SA-15-CV-326-XR (W.D. Tex. Apr. 23, 2015), 2015 WL 1868560.

34 *Id.* at ¶5.

35 *Id.* at ¶6.

36 Federal Defendants' Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction *Pineda Cruz v. Thompson*, 2015 WL 3922298 (W.D.Tex. May 7, 2015).

37 *See* Michael Kagan, *When Immigrants Speak: The Precarious Status of Non-Citizen Speech Under the First Amendment*, 57 B.C. L. Rev. 1237, 1245 (2016) [hereinafter Kagan, *When Immigrants Speak*] (describing the outcome of *Pineda-Cruz* and critiquing the federal government's position that certain noncitizens' speech is not protected by the First Amendment).

38 Federal Defendants' Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction *Pineda Cruz v. Thompson*, 2015 WL 3922298 (W.D.Tex. May 7, 2015) (citing *Johnson v. Eisentrager*, 339 U.S. 763 (1950), *United States ex rel. Turner v. Williams*, 194 U.S. 279, 292 (1904), and *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990)).

39 *Johnson v. Eisentrager,* 339 U.S. 763, 768-69 & n. 2 (1950) (describing distinction between "alien friends" and "alien enemies").

40 *Id.* at 770.

41 To the contrary, the Supreme Court has applied equal protection principles to protect children with "undocumented status" from state discrimination. *See Plyler v. Doe*, 457 U.S. 202, 224-225 (1982).

42 *See Boumediene v. Bush*, 553 U.S. 723, 762-764, 766 (2008) (applying a context-specific reading of *Eisentrager* and holding that noncitizens held by the U.S. as enemy combatants at Guantanamo Bay had the right to habeas review protected by the Suspension Clause). Another case, *Kwong Hai Chew v. Colding*, touches upon a related issue of constitutional rights and the lawfulness of entry. 344 U.S. 590, 596 (1953). In a footnote, the Court in *Chew* observed that neither the First nor Fifth Amendment distinguishes between citizens and "resident aliens" and stated that "once an alien lawfully enters and resides in this country, he becomes invested with the rights guaranteed by the Constitution to all people within our borders." *Id.* at 596 n.5. While this footnote emphasizes the rights of those who have lawfully entered the U.S. and established their residence here, it does not directly address what protections apply to

people who did not lawfully enter the U.S. or are non-"resident aliens." Notably, unlawful entry is not a categorical bar to various forms of lawful immigration statuses in the U.S., so it is unclear why it would hold weight in a First Amendment analysis.

43 *United States ex rel. Turner v. Williams*, 194 U.S. 279, 292 (1904).

44 *Id.* at 292-294.

45 *See* Adam B. Cox, *The Invention of Immigration Exceptionalism*, 134 YALE L. J. 329, 363 n. 122 (2024) (explaining that *Turner* was decided at a time when the traditional distinction between rights and privileges meant that "Congress could exclude immigrants on the basis of their speech or beliefs without violating the First Amendment—not because those immigrants were outside the protection of the First Amendment, but because they sought a privilege", and observing that this distinction has since eroded as a matter of constitutional law); *see also* Perry v. Sindermann, 408 U.S. 593, 597(1972) ("[E]ven though a person has no 'right' to a valuable governmental benefit, and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interest, especially, his interest in freedom of speech.").

46 *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990).

47 *Id.* at 264-265.

48 *Id.* at 265.

49 The federal government used the term "substantial connection" instead of "sufficient connection" without explanation. *See* Federal Defendants' Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction *Pineda Cruz v. Thompson*, 2015 WL 3922298 (W.D.Tex. May 7, 2015).

50 *See* Kagan, *When Immigrants Speak*, *supra* note 37, at 1248.

51 *See* Das, *Immigration Detention and Dissent*, *supra* note 6.

52 *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990).

53 *See* Kagan, *When Immigrants Speak*, *supra* note 37, at 1246-1249 (discussing the Second Amendment context).

54 Palko v. Connecticut, 302 U.S. 319, 327 (1937).

55 *See* Kagan, *When Immigrants Speak*, *supra* note 37, at 1251 (situating First Amendment rights in broader constitutional values of restraining government power); David Cole, *Are Foreign Nationals Entitled to the Same Constitutional Rights as Citizens?*, 25 T. JEFFERSON L. REV. 367, 370 (2002-2003) ("[B]oth the First Amendment's protections of political and religious freedoms and the Fourth Amendment's protection of privacy and liberty apply to 'the people.' The fact that the Framers chose to limit to citizens only the rights to vote and to run for federal office is one indication that they did not intend other constitutional rights to be so limited."); Michael J. Wishnie, *Immigrants and the Right to Petition*, 78 N.Y.U. L. Rev. 667, 681-712 (2003) (discussing and criticizing case law suggesting that the "the people" in the First Amendment does not necessarily cover noncitizens).

56 *See, e.g.,* Shalini Bhargava Ray, *The Contested "Bright Line" of Territorial Presence,* 56 GA. L. REV. 1511 (2022) (exploring territorial reach of First Amendment protections).

57 Hartman v. Moore, 547 U.S. 250, 256 (2006); Board of County Commissioners v. Umbehr, 518 U.S. 668, 671, 865(1996); Perry v. Sindermann, 408 U.S. 593, 594-595(1972).

58 *See Perry*, 408 U.S. at 597-98.

59 U.S. Const. art. III, § 2, cl. 1; 28 U.S.C. § 1331.

60 *See* Webster v. Doe, 486 U.S. 592, 603 (1988) (holding that, in absence from a clear statement of congressional intent, courts must construe statutes to "avoid the 'serious constitutional question' that would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim") (internal citations omitted).

61 Akhil Amar, *A Neo-Federalist View of Article III: Separating the Two Tiers of Federal Jurisdiction*, 65 B.U. L. REV. 205, 250 (1985); *see also* Daniel J. Meltzer, *Congress, Courts, and Constitutional Remedies*, 86 Geo. L.J. 2537, 2570 (1998) (explaining how Article III constrains Congress' power to restrict judicial review).

62 The government has raised this argument in numerous cases challenging retaliatory deportation over the past decade, including in *Ragbir v. Homan*, *Rojas v. Moore*, *Montrevil v. Decker*, and *M.Q. v. Garland*.

63 Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 473 (1999).

64 *See, e.g.,* Gerald L. Neuman, *Jurisdiction and the Rule of Law After the 1996 Immigration Act*, 113 HARV. L. REV. 1963 (2000).

65 *Am.-Arab Anti-Discrimination Comm.*, 525 U.S at 483-485 ("Section 1252(g) seems clearly designed to give some measure of protection to 'no deferred action' decisions and similar discretionary determinations, providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress has designed.").

66 *Id.* at 484.

67 *Id.* at 473.

68 *Id.*

69 *Id.* at 488 ("[W]e must address respondents' contention that . . . the doctrine of constitutional doubt requires us to interpret § 1252(g) in such fashion as to permit immediate review of their selective-enforcement claims.").

70 *Id.* at 488, 491-492.

71 *Id.* at 488-491.

72 *Id.* at 490-91.

73 *Id.* at 491.

74 Scholars debate the scope and legitimacy of the underlying rationale of *AADC*. However, no reading of *AADC* suggests that courts are permitted to dismiss constitutional claims for lack of jurisdiction without reaching the merits.

75 *Id.* at 483.

76 *See, e.g.*, Bello-Reyes v. Gaynor, 985 F.3d 696, 698 (9th Cir. 2021) (addressing merits of First Amendment challenge to ICE detention); Gutierrez-Soto v. Sessions, 317 F. Supp. 3d 917, 921 (W.D. Tex. 2018) (addressing merits of First Amendment challenge to ICE detention).

77 The majority in *AADC* assumed, without deciding, that a forum for the plaintiff's claim might not be available through the course of removal proceedings or, if available, would come too late to address the chilling effect of a retaliatory prosecution. *Am.-Arab Anti-Discrimination Comm.*, 525 U.S at 488. But because it did not find a colorable constitutional claim, it did not need to address whether the lack of any forum for a colorable constitutional claim would, in and of itself, raise constitutional concerns.

78 *Id.* at 498 (Ginsburg, J., concurring).

79 Selective deportation claims also differ from selective prosecution claims in terms of the burden on the officials involved. While the Supreme Court in *AADC* expressed concern regarding the intrusiveness of inquiries into prosecutorial motive during a prosecution, a selective deportation claim focuses solely on the motives of the deporting officials who are seeking to enforce removal orders that were prosecuted long ago.

80 Ragbir v. Homan, 923 F.3d 53, 78 (2d Cir. 2019), cert. granted, judgment vacated sub nom. Pham v. Ragbir, 141 S. Ct. 227 (2020).

81 *Id.* at 58.

82 *Id.* at 58-59.

83 *Id.* at 60.

84 *Id.*at 69.

85 *Id.* at 69. The court distinguished *AADC*, observing that "national-security and foreign-policy concerns about terrorism were primary in *AADC*" and that the government made no assertion in *Ragbir* that an inquiry into the motivations of the government officials "would compromise intelligence sources and foreign relations." *Id.* at 72. Nor would such an assertion make sense, as "the plaintiff's plausible allegation is that the Government undertook the deportation to silence criticism of the responsible agency." *Id.*

86 *Id.* at 70.

87 *Id.* at 71.

88 *Id.* at 65. The Second Circuit concluded that 1252(g) could not be fairly interpreted to exclude constitutional claims, because Congress amended the statute to state that it applied "notwithstanding any other provision of law (statutory or nonstatutory)". *Id.* The Second Circuit stated, "[W]e are aware of no 'nonstatutory' claim that a petitioner could bring in relation to a deportation proceeding other than one rooted in the Constitution." *Id.* However, the term "nonstatutory" is likely a reference to the variety of administrative claims that petitioners may raise to challenge their deportation, under agency precedent or regulations. Elsewhere in the same provision, where Congress intended to reach constitutional claims, it used the term "constitutional" explicitly. *See, e.g.*, 8 U.S.C. §§ 1252(a)(2)(D), (b)(9).

89 *Id.* at 65.

90 *Id.* at 74-76 (concluding that the fact "that Ragbir faces imminent deportation, which necessarily involves a period of detention—and that he must comply, absent judicial intervention, with the Government's orders 'at any time and without a moment's notice,'" demonstrates "a present, substantial curtailment of Ragbir's liberty.") (quoting *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California*, 411 U.S. 345, 350 (1973)).

91 *Id.* at 76-78.

92 *Id.* at 78.

93 591 U.S. 103 (2020).

94 Pham v. Ragbir, 141 S. Ct. 227 (2020).

95 Nick Pinto, *ICE Settles With Immigrant Rights Leader Who Sued Over First Amendment Violations*, The Intercept (Feb. 24, 2022), https://theintercept.com/2022/02/24/ice-ravi-ragbir-deportation-first-amendment/.

96 U.S. Department of Homeland Security v. Thuraissigiam, 591 U.S. 103, 106-107 (2020).

97 *See generally* Jonathan Hafetz, *The Suspension Clause After* Department of Homeland Security v. Thuraissigiam, 95 St. John's L. Rev. 379, 388-407, 419-445 (2021) (criticizing the Supreme Court's analysis of the Suspension Clause in *Thuraissigiam* and describing how its impact may be limited in future cases); *see also* Brandon Hallett Thomas, *Separation of Powers and* Thuraissigiam*: The Entry Fiction as Judicial Aggrandizement*, 136 Harv. L. Rev. F. 226, 248 (2023); Daniel Kanstroom, *Deportation in the Shadows of Due Process: The Dangerous Implications of DHS v. Thuraissigiam*, 50 Sw. L. Rev. 342 (2021); Lee Kovarsky, *Habeas Privilege Origination and DHS v. Thuraissigiam*, 121 Colum. L. Rev. F. 23, 25 (2021); Gerald Neuman, *The Supreme Court's Attack on Habeas Corpus in DHS v. Thuraissigiam*, Just Security (Aug. 25, 2020) https://www.justsecurity.org/72104/the-supreme-courts-attack-on-habeas-corpus-in-dhs-v-thuraissigiam/; Ahilan Arulanantham & Adam Cox, *Immigration Maximalism at the Supreme Court*, Just Security (Aug. 11, 2020), https://www.justsecurity.org/71939/immigration-maximalism-at-the-supreme-court.

98 *Thuraissigiam*, 591 U.S. at 106-107, 140 (specifying the holding was "as applied" to the facts of the case); *see also id.* at 150 (Breyer, J, concurring in the judgment) ("The question presented is whether, *as applied to respondent*, Section 1252(e)(2) is unconstitutional under the Suspension Clause.") (emphasis in original, internal quotation marks and citations omitted).

99 *Id.* at 137; Hafetz, *supra* note 97, at 399, 419 (observing that *Thuraissigiam* presented the Supreme Court only with a narrow questions regarding the Suspension Clause and should have limited application outside that context).

100 *Thuraissigiam*, 591 U.S. at 118, 126 (explaining that its focus is on the scope of the habeas writ in 1789).

101 *Id.* at 137 (citing *INS v. St. Cyr*, 533 U.S. 289 (2001)).

102 The Supreme Court has held that "release [from physical confinement] need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008); *Hensley v. Mun. Court*, 411 U.S. 345, 350 (1973) (rejecting "interpretations of the habeas corpus statute that would suffocate the writ in stifling formalisms or hobble its effectiveness"); *see also Thuraissigiam*, 591 U.S. at 137 (stating "release is the habeas remedy though not the 'exclusive' result of every writ" and acknowledging "the practice . . .of allowing the executive to justify or cure a defect" or ordering release on "conditions").

103 *Thuraissigiam*, 591 U.S. at 134-135 (citing *Guerrero-Lasprilla v. Barr*, 140 S.Ct. 1062, 1069–1070 (2020); *Nasrallah v. Barr*, 140 S.Ct. 1683, 1690–1692 (2020); and *INS v. St. Cyr*, 533 U.S. 289, 299 (2001)).

104 *Id.* at 138-140 (examining and rejecting noncitizen's due process claims under the Due Process Clause); Hafetz, *supra* note 97, at 440-445 (considering various sources of constitutionally guaranteed judicial review).

105 *INS v. St. Cyr*, 533 U.S. 289, 293 (2001).

106 *Id.* at 301, 342.

107 *Id.* at 306; *see also* Hafetz, *supra* note 97,at 420-440 (explaining "why the Suspension Clause should be interpreted to include evolving uses and understandings of the writ").

108 *Thuraissigiam*, 591 U.S. at 137.

109 Occasionally, the federal government has also pointed to other provisions in 8 U.S.C. § 1252, § 1252(a)(5) and (b)(9), to try to defeat jurisdiction over First Amendment retaliation claims. But Sections 1252(a)(5) and (b)(9) by their own terms apply only to judicial review of questions tied to the validity of a final order of removal. *See, e.g., INS v. St. Cyr*, 533 U.S. 289, 311, 313 (2001) (§ 1252(a) applies to "[j]udicial review of a final order of removal" and § 1252(b) "applies only '[w]ith respect to review of an order of removal under subsection (a)(I)'"); *see also Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018)(explaining that "the applicability of § 1252(b)(9) turns on whether

the legal questions that we must decide 'aris[e] from' the actions taken to remove these aliens", and rejecting as "extreme" a reading that would cover a challenge to prolonged detention). Thus these provisions are generally irrelevant to retaliation claims.

110 Perry v. Sindermann, 408 U.S. 593, 594-595(1972).

111 *Id*. at 596.

112 *Id*. at 597.

113 *Id*. at 598.

114 Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977).

115 *Id* at 275.

116 *Id*.

117 The Supreme Court has voiced similar concerns in the context of a damages action for retaliatory prosecution. *See Hartman v. Moore*, 547 U.S. 250, 262 (2006). In light of a prosecutor's immunity from liability for the decision to prosecute, malicious prosecution claims require a litigant to allege that a "nonprosecuting official acted in retaliation" and then "induced the prosecutor to bring charges that would not have been initiated without his urging." *Id*. To avoid too intrusive an inquiry into the non-liable prosecutor's state of mind, the Court has required a plaintiff to first establish a lack of probable cause to bring a damages case for retaliatory prosecution. *Id*. at 263-266.

118 Lozman v. Riviera Beach, 585 U.S. 87 (2018).

119 Nieves v. Bartlett, 587 U.S. 391 (2019).

120 Lozman, 585 U.S. at 90-91.

121 *Id*. at 99-100.

122 *Id*. at 100.

123 *Id*. at 99-100.

124 Nieves v. Bartlett, 587 U.S. 391(2019).

125 *Id*. at 396-397.

126 *Id*. at 401.

127 *Id*. at 403.

128 *Id*. at 405.

129 *Id*. at 404.

130 *See* Bello-Reyes v. Gaynor, 985 F.3d 696, 698 (9th Cir. 2021) (addressing and rejecting the government's arguments based on *Nieves*).

131 *See* Ragbir v. Homan, 923 F.3d 53, 67 & n.17 (2d Cir. 2019) (addressing and rejecting the government's proposed probable cause test), cert. granted, judgment vacated sub nom. Pham v. Ragbir, 141 S. Ct. 227 (2020) (remanding on other grounds). The U.S. Solicitor General's office sought certiorari of *Ragbir* in part on the basis of *Nieves*, which was issued after the Second Circuit's decision. The Supreme Court declined to grant on that basis.

132 *Nieves*, 587 U.S at 412-413(Gorsuch, J., concurring).

133 Bello-Reyes v. Gaynor, 985 F.3d 696, 701 (9th Cir. 2021).

134 *Nieves*, 139 S. Ct. at 401.

135 Ragbir v. Homan, 923 F.3d 53, 67 & n.17 (2d Cir. 2019) (noting that the probable cause requirement for the Fourth Amendment serves a specific purpose for securing an individual and evidence in the process of investigating a criminal offense, circumstances not readily translatable into the civil immigration context), cert. granted, judgment vacated sub nom. Pham v. Ragbir, 141 S. Ct. 227 (2020) (remanding on other grounds); Bello-Reyes v. Gaynor, 985 F.3d 696, 701 (9th Cir. 2021) (refusing to apply *Nieves* in part because "no equivalent benchmark [to probable cause] exists where ICE is revoking bond" and thus "extending [*Nieves*] to this situation would effectively eliminate almost any prospect of obtaining release on habeas for actually retaliatory, unconstitutional immigration bond revocation"). Notably, when the federal government sought the Supreme Court's vacatur of the *Ragbir* decision based on *Nieves*, the

Supreme Court left the merits of the case undisturbed while remanding solely for further consideration of a separate jurisdictional question.

136 Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 491 (1999). Notably, unlike the selective prosecution claim in *AADC*, claims that challenge retaliatory detention or deportation like in *Bello-Reyes* and *Ragbir* do not require any probing into the motives of immigration prosecutors.

137 Lozman v. Riviera Beach, 585 U.S. 87, 99-100 (2018).

138 Nieves v. Bartlett, 587 U.S. 391, 406 (2019).

139 *Id.* (internal citations and quotations omitted).

140 Michael E. Miller, *They Fear Being Deported. But 2.9 Million Immigrants Must Check In With ICE Anyway*, Wash. Post (Apr. 25, 2019), https://www.washingtonpost.com/local/they-fear-being-deported-but-29-million-immigrants-must-check-in-with-ice-anyway/2019/04/25/ac74efce-6309-11e9-9ff2-abc984dc9eec_story.html.

141 Gonzalez v. Trevino, 602 U. S. 653, 144 S.Ct. 1663, 1667 (2024) (describing the objective evidence standard and rejecting a more heightened requirement).

142 *See, e.g.*, Immigrant Legal Resource Center, 10 Things Noncitizen Protestors Need to Know (May 15, 2024), https://www.ilrc.org/resources/10-things-noncitizen-protestors-need-know; National Immigration Law Center, Know Your Rights: Immigrants' Participation in Protests (Nov. 2020), https://www.nilc.org/wp-content/uploads/2020/11/Protest-Know-Your-Rights-nilc-2020-1.pdf; Make the Road New York and NYU Immigrant Rights Clinic, Immigrant Protest: A Guide for Attorneys Advising Noncitizen Activists in NYC (Jun. 2020), https://maketheroadny.org/wp-content/uploads/2020/06/Immigrant-Protest_June-2020.pdf.

143 *See, e.g.*, U. Wash. Immigration Clinic et al., Targeted But Not Silenced: A Report on Government Surveillance and Retaliation Against Immigration Organizers in the United States (2021); Virtual Briefing: Immigrant Rights Activists Under Attack (Jan. 13, 2021), https://www.youtube.com/watch?v=Nta4HfSFY48; Retaliation Against Immigrant Rights Defenders: A Proposal for the Biden-Harris Administration to Redress First Amendment Violations by Federal Agencies (Jan. 8, 2021), https://www.immigrantrightsvoices.org/#/action; I Stand With Ravi, *Watch: Two Important Talks From the First Amendment Teach-In* (Oct. 27, 2018), https://istandwithravi.org/2018/10/27/watch-two-important-talks-from-the-first-amendment-teach-in/.

144 *See, e.g.*, Mora-Villalpando v. U.S. Immigration & Customs Enf't, No. C18-0655JLR (W.D. Wash. Ju;. 26, 2019); Austin Sanctuary Network v. ICE, No. 20-01686 (S.D.N.Y. Sept. 19, 2022).

145 *See, e.g.*, Robert F. Kennedy Human Rights et al., Letter to Dep't of Homeland Sec. Office for Civil Rights & Civil Liberties Officer Shoba Sivaprasad Wadhia et al, Violation of First Amendment Rights of People Engaged in a Hunger Strike at the Buffalo Federal Detention Facility (July 9, 2024), https://rfkhumanrights.org/wp-content/uploads/2024/07/CRCL-Complaint-7.9.2024-FINAL-PDF-1.pdf; NYU Immigrant Rights Clinic & Cornell First Amendment Clinic, Letter to Dep't of Homeland Sec. Office for Civil Rights & Civil Liberties Officer Katherine Culliton-Gonzalez et al., Retaliatory Immigration Enforcement (July 19, 2021), https://www.law.nyu.edu/sites/default/files/NYU%20Cornell%20DHS%20OCRCL%20Complaint_First%20Amendment%20Retaliation_Final%20Letter%20and%20Index%207%2019%202021%20web%20version.pdf; Cal. Collaborative for Immigrant Just., et al., Letter to Dep't of Homeland Sec. Office for Civil Rights & Civil Liberties Officer Katherine Culliton-Gonzalez et al., First Amendment Retaliation Against Individuals in Immigration Detention in California (Aug. 26, 2021), https://www.aclunc.org/sites/default/files/OCRCL%20complaint.08.26.21%20_0.pdf.

146 *See* Immigrant Rights Voices, www.immigrantrightsvoices.org; *see also* Nick Pinto, *Across the U.S., Trump Used ICE to Crack Down on Immigration Activists*, The Intercept (Nov. 1, 2020), https://theintercept.com/2020/11/01/ice-immigration-activists-map/; Gaby Del Valle, I*CE Keeps Arresting Prominent Immigration Activists. They Think They're Being Targeted.*, VICE News (Aug. 24, 2019), https://www.vice.com/en/article/ice-keeps-arresting-prominent-immigration-activists-they-think-theyre-being-targeted/ (pointing to recent arrests of immigrant activists to document a post-Obama shift in ICE's enforcement priorities); Jimmy Tobias, *Exclusive: ICE Has Kept Tabs on 'Anti-Trump' Protesters in New York City*, The Nation (Mar. 6, 2019), https://www.thenation.com/article/archive/ice-immigration-protest-spreadsheet-tracking/; Tom Jones et al., *Source: Leaked Documents Show the U.S. Government Tracking Journalists and Immigration Advocates Through a Secret Database*, NBC San Diego (Mar. 6, 2019), https://www. nbcsandiego.com/news/local/source-leaked-documents-show-the-us-government-tracking-journalistsand-advocates-through-a-secret-database/3438/; John Burnett, *Immigration Advocates Warn ICE is Retaliating for Activism*, NPR (Mar. 16, 2018), https://www.npr.org/2018/03/16/593884181/immigration-advocates-warn-ice-is-retaliating-for-activism; Maria Sacchetti & David Weigel, *ICE Has Detained or Deported Prominent Immigration Activists*, Wash. Post (Jan. 19, 2018), https://www.washingtonpost.com/powerpost/ice-has-detained-or-deported-foreigners-who-are-also-immigration-activists/2018/01/19/377af23a-fc95-11e7-a46b-a3614530bd87_story.html.

147 In *Ragbir v. Homan*, for example, organizational plaintiffs joined Mr. Ragbir in his lawsuit against ICE, and elected officials, faith leaders, and other community organizations submitted amicus briefs in support of his case. *See* I Stand With Ravi, Legal Filings, https://istandwithravi.org/legal-filings/. Members of Congress also wrote to the Department of Homeland Security condemning First Amendment retaliation against immigrant activists. *See* Congressmember Nydia Velazquez et al., to Dep't of Homeland Security Sec. Kirstjen Nielsen, et al., Letter re: ICE's recent targeting of activists (Jan. 26, 2018) (on file with author).

148 *See, e.g.*, Das, *Deportation and Dissent*, *supra* note 6, at 254-256.

149 Memorandum From Alejandro N. Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., to Tae D. Johnson, Acting Dir., U.S. Immigr. & Customs Enf't 5 (Sept. 30, 2021), https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf (stating t "[a] noncitizen's exercise of their First Amendment rights also should never be a factor in deciding to take enforcement action"); Das, *Immigration Detention and Dissent*, *supra* note 6, at 1472 & n. 190 (discussing the settlement and resolution of certain cases).

150 *See, e.g.*, Michael Kagan, *Regulatory Constitutional Law: Protecting Immigrant Free Speech Without Relying on the First Amendment*, 56 GA. L. REV. 1417, 1430 (2022) (proposing that "[t]he Department of Homeland Security should issue regulations providing that an immigration court must terminate removal proceedings if the respondent can show that the immigration officers either became aware of her or chose to take action against her because of activity that is protected by the First Amendment"); Das, *Deportation and Dissent*, *supra* note 6, at 249-250 (proposing that federal regulations be amended to clarify that a noncitizen may invoke the "departure bar" process to prevent their deportation if they can establish that a governmental body is investigating their allegations of retaliation or seeking their testimony on matters of public concern); *id.*, at 255 (proposing that the Department of Homeland Security's internal investigatory bodies should be expressly empowered to take corrective action in cases of First Amendment retaliation, including through the issuance of subpoenas, orders of release from detention, and stays of removal); *id.* at 255 (arguing that DHS "should direct ICE to amend detention standards, to prohibit disciplinary measures in response to First Amendment activities and to facilitate greater transparency").

151 *See* Stipulation, Migrant Justice v. Wolf, No. 5:18-cv-192 (D.Vt.), https://migrantjustice.net/sites/default/files/MJ-ICE-Settlement.pdf.

152 *Id.*

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Exhibit M

An official website of the United States Government Here's how you know

Secretary of State Marco Rubio Remarks to the Press

REMARKS

MARCO RUBIO, SECRETARY OF STATE
EN ROUTE MIAMI, FLORIDA

MARCH 28, 2025

QUESTION: Can I ask a non-trip question, because I want to know what's happening with this Ukrainian children grant.

SECRETARY RUBIO: Grant?

QUESTION: The Ukrainian children who —

SECRETARY RUBIO: Oh, the data. The data is secured. We secured the data. We'll transfer it to the appropriate party. We've ensured that. And we'll be able to say that next week. We already notified that. If we haven't, we're about to notify Congress. I think we've gotten some letters.

QUESTION: Yeah.

SECRETARY RUBIO: So there's no danger to the data that's been collected on that.

QUESTION: But is the program back on?

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SECRETARY RUBIO: No, no, the program we're not – the program is not funded. It was part of the reductions that were made, but we secured the data and we've ensured that we have it and it can be transferred to any appropriate authorities, and we'll issue a congressional – I don't know if it's a notification or just responses to the letters they've written us.

QUESTION: This is the Conflict Observatory?

SECRETARY RUBIO: Yes.

QUESTION: How is the —

SECRETARY RUBIO: You're not going to hit me with that mike like the President got hit? (Laughter.) Okay.

QUESTION: And when you were answering the – Mr. Secretary, earlier, you said 300 visas? It's actually —

SECRETARY RUBIO: Well, the —

QUESTION: Are they all student visas or —

SECRETARY RUBIO: No, no, no, you guys – you asked – the question was, was there 300? I know that number's been cited. I said it might be more because we're doing them every day, primarily student visas, some visitors visas.

QUESTION: Okay, so just making sure. Just making sure.

SECRETARY RUBIO: I don't know actually if it's primarily student visas. It's a combination of visas. They're visitors to the country. If they're taking activities that are counter to our foreign – to our national interest, to our foreign policy, we'll revoke the visa.

QUESTION: Are all of those related to pro-Palestinian protests or (inaudible)?

SECRETARY RUBIO: I'm trying to remember – there's a lot of them now, because I've gone through every one of them. I think there might be a few that are not, that are related to other groups that are – of people – we've also identified – but this actually is – it should be automatically

revoked. We've also identified people that have criminal charges and even while in the country, and still have active visas. Some are unrelated to any protests and are just having to do with potential criminal activity.

QUESTION: (Inaudible.)

SECRETARY RUBIO: Huh?

QUESTION: (Inaudible.)

SECRETARY RUBIO: Yeah, I have to sign every single one.

QUESTION: And what is the —

SECRETARY RUBIO: Or the autopen. I'm kidding. No autopen. I'm just joking.

QUESTION: And what does it mean when you say against the foreign policy of the United States?

SECRETARY RUBIO: It runs counter to our foreign – that's how we issue visas coming in. I think about it this way. If we knew this information – my standard: If we knew this information about them before we gave them a visa, would we have allowed them in? And if the answer is no, then we revoke the visa.

QUESTION: Can I ask you on a different topic, Türkiye? You had the meeting with the foreign minister a few days ago. I think yesterday they – yesterday or today they expelled the BBC correspondent. They arrested an AP photographer. How concerned are you with how things are going there?

SECRETARY RUBIO: Well, ultimately – and look, we've expressed that we're concerned. We don't like to see the direction that's going. It's an ally. It's a partner in NATO. Anytime you have instability on the ground, you don't like to see it. Obviously, they have internal domestic political considerations. We're not necessarily going to always opine on every single one of them. To the extent we have deeper concerns, we expect to express them at least privately at the outset, certainly in a new administration when we're trying to establish relations. But we watch the same news reports everybody else sees about what's going on. We're certainly concerned about these

protests and some of the reports. But we raised that and – but I haven't seen what – what you referenced in the last day, yeah.

QUESTION: Just on Turkey, in your tweet —

SECRETARY RUBIO: Türkiye.

QUESTION: Yes, Türkiye. In your tweet —

QUESTION: Are you guys going to change that? Are you going to back to Turkey?

SECRETARY RUBIO: When we're in Türkiye we're going to say Türkiye.

QUESTION: In your tweet, the final sentence is basically about the arrest of Istanbul mayor. You're not saying that explicitly, but those are their (inaudible).

SECRETARY RUBIO: Well, I mean, and we talked about that. I mean, their argument is that the mayor is involved in corruption, that this has been a longstanding issue that it's finally got acted upon, and that he is seeking refuge behind his politics. I don't know all the facts about it. Obviously, that's not what the mayor is saying or what the political opposition is saying is that this is a leader that might have won the election had he been allowed to run.

So we're watching it. We've expressed concern. We don't like to see instability like that in the governance of any country that's such a close ally, especially, and it —

QUESTION: After your post, Turkish diplomatic sources actually denied that this had come up and you had expressed your concern. I just wanted to ask you about that.

SECRETARY RUBIO: Well, I did raise it with the foreign minister, and probably exactly in the words that I'm using now, and that is we're watching these reports and obviously it's disturbing to see, and we talked about it in those terms. But as I said, we don't like to see that kind of instability or these things happening inside countries that we hope to partner with on a bunch of things. And President Trump had a very good working relationship with President Erdogan in the first administration. I think they would like to restart that. But they're a NATO ally, and we would like to cooperate with them in Syria and in other places. So I think it's possible to raise concerns

and at the same time understand we have a lot of other things to partner on as well. We have – that's the balance of conducting a mature foreign policy.

QUESTION: Can you speak about the European leaders who said today that they – they oppose lifting sanctions on Russia, they don't think it's time to do that? Are you all considering that? Can you talk about deliberations?

SECRETARY RUBIO: Well, no, so we met with the Russians. Our team was over there this week. They came back and they arrived last night, I think, or early some point yesterday. So we're going to reconvene. I had some calls about it today. We're sort of going to analyze what they're – what they're raising and sort of study what exactly it is. It's a host of sanctions, including sanctions that are not American. They've raised potentially a couple – my readout of it – they're not even American sanctions, so we couldn't lift them if we wanted to. We're going to sort of analyze what our team came back with. We'll present those options to the President. The President will make those decisions. We're not there yet.

QUESTION: Have you received Iran's response to the President's letter?

SECRETARY RUBIO: Have I what? I'm sorry.

QUESTION: Received it, Iran's response.

SECRETARY RUBIO: Yeah, I'm not going to comment on that yet other than to say the President's letter has been publicly reported. I expect there will be a response, and obviously, at that point, the President will decide what steps, if any, he wants to take next.

QUESTION: Can we go back to visa issue just for a second? I mean, a lot of people feel freedom of speech concerns about it. Are you saying that if you come and if you apply for a visa and get a student visa and you don't lie, and you tell the truth and you're not coming to protest or anything, but during the course of your studies, wherever it is in the U.S., you develop views or opinions that are at odds with the administration's foreign policy – say you learn something in your course of study that makes you think that what the policy is wrong – and then you protest it or write something about it, don't do anything violent, is that grounds enough to revoke a visa?

SECRETARY RUBIO: Well, I think there's a little bit of common sense here. You come to the States and then you decide you don't like those paper straws that some of the stores are selling

and you start protesting or complaining about paper straws – I mean, we're obviously not going to yank a visa over that. I think it crosses a line – think about it this way. No one has a right to a visa. These are things that we decide. We deny visas every day for all kinds of reasons all over the world. We deny visas because we think people might overstay. We deny visas because the country they come from are people that historically overstay. We deny visas every day, and we can revoke visas. If you have the power to deny, you have the power to revoke.

I would argue that the – what I would add to it is what we have seen on campuses across the country where students literally cannot go to school, you cannot – buildings are being taken over, activities going on – this is clearly an organized movement. And if you are in this country on a student visa and are a participant in those movements, we have a right to deny your visa. I think it would make sense to deny your visa. We're going to err on the side of caution. We are not going to be importing activists into the United States. They're here to study. They're here to go to class. They're not here to lead activist movements that are disruptive and undermine the – our universities. I think it's lunacy to continue to allow that.

QUESTION: So expressing any kind of view —

SECRETARY RUBIO: And by the way, I've been saying that since I was in the Senate. Now I'm just in a position to do something about it.

QUESTION: Mr. Secretary —

SECRETARY RUBIO: Now that's a broad thing to say – any kind of views. But when you're aligning yourself with groups that are behind these activities, openly aligning yourself with these groups that are behind these disruptive criminal activities in the United States, your visa is going to get yanked.

QUESTION: Mr. Secretary, I don't —

QUESTION: Hamas?

SECRETARY RUBIO: Yeah, there may be others. I mean, if you come here and join Tren de Aragua, we're going to yank your visa too. If —

QUESTION: Mr. Secretary?

SECRETARY RUBIO: And so there may be other movements, but that's partly the movement we've seen on college campuses. Let's be clear: It is a movement that is supportive of the group that just slaughtered babies, like deliberately targeted and slaughtered babies and civilians and took hostages and killed hostages. That's the group they're aligning with.

But beyond that, they are spray-painting buildings. They are taking over buildings. You must have seen these reports in campus after campus where students can't go to class and can't function and the universities don't know what to do about it. When you look at it and you realize that some of the people involved in this are here on student visas, it's crazy. We're not going to keep doing that. We're not. Don't come here. If you're going to do that, go somewhere else. Don't come here.

QUESTION: And I brought up the protests in Hong Kong in 2019, which I covered, because there were also shutdowns of college campuses back then. There were foreign students that were involved. There was graffiti. They stopped traffic at intersections. They shut down subway stations. They were largely peaceful, but there were also these instances that disrupted public life and there were foreign students that were involved there. And so, like, under your rationale, the Hong Kong authorities or the —

SECRETARY RUBIO: Well, every country in the world can deny visas to whoever they want. It's that simple. That's a fact. Whether we like it or not, they can deny visas.

Number two, that movement was not a movement in favor of a group that slaughtered babies and innocents. That's not what that – that movement, they were people who were complaining because there was no democracy, but I mean and they were upset about the direction Hong Kong was headed and the Chinese law that was being imposed. But they have – every country in the world has a right to deny you a visa. I'm not entitled to a visa. You're not entitled to a visa. Nobody is entitled to a visa in any other country. They can determine it and they can revoke it at any time they want.

Now, let's – I think it's important is that there's a clear distinction between protesting against the democratic order and protesting in favor of groups that advocate the slaughter and murder of innocent people, which is what many of these groups are supportive of. Beyond that, these groups are not just taking over – these are not sit-ins we're talking about. We are talking about buildings that have been vandalized, defaced, that where they – for months on end in some

cases. We're just not going to continue to allow it. I don't understand what people don't get. A visa is a gift. It's a voluntary thing. We decide to give you a visa. We deny visas all over the world every day for a variety of reasons, and that means we can also revoke those visas. No one is entitled to a visa.

QUESTION: I guess some of the examples have come up like a student at Tufts University, like all they did was write an op-ed for the student newspaper advocating for a certain point of view. They're not – as far as we can tell, they haven't openly advocated for Hamas.

SECRETARY RUBIO: Well, we will – those – as they go, or if they seek to self-deport they can do that, because that's what we've done. We're basically asking them to leave the country. That's why they've been detained. They can do so tomorrow. Buy an airplane ticket and leave. No problem.

QUESTION: Mr. Secretary?

SECRETARY RUBIO: But I would add to this that I would caution you against solely going off of what the media has been able to identify, and those presentations, if necessary, will be made in court.

QUESTION: But for example, in that – the Turkish students, the Tufts student's case, I asked you today did she have – has she committed, like, or has she carried out any of those things that you just listed?

SECRETARY RUBIO: The activities presented to me meet the standard of what I've just described to you: people that are supportive of movements that run counter to the foreign policy of the United States. If necessary and a court compels us, we'll provide that information. But ultimately it's a visa. Judges don't issue student visas. There is no right to a student visa. We can cancel a student visa under the law just the same way that we can deny a student visa under the law. And we will do so in cases we find appropriate.

The overwhelming majority of student visas in this country will not be revoked, because the overwhelming majority of people that are coming to this country to study are not involved and associated or aligned with organizations that seek to do damage in this country, and that, frankly, organizations that hate the United States Government and hate our way of life. So I just think it's

crazy to continue to provide visas so people can come here and advocate for policies that are in direct contradiction of our national interest.

QUESTION: Right, but are the schools raising these issues with you? Are these – are there out —

SECRETARY RUBIO: Oh, I'm sure they're —

QUESTION: Are these outside groups that they're raising —

SECRETARY RUBIO: Oh, I don't know. I mean, I'm sure they are. I mean —

QUESTION: Like, how does it come to – come to your desk? Yeah.

SECRETARY RUBIO: Oh, bringing it to us? Well, we're not – we're not going to talk about the process by which we're identifying it because obviously we're looking for more people.

QUESTION: Have you seen the video of her being detained?

SECRETARY RUBIO: I haven't. But look, detention is simple. Your visa is expired, your visa is revoked, you have to leave.

QUESTION: But it's six hooded figures with masks on their face who don't identify themselves until they already grabbed her wrist. It's quite horrifying.

SECRETARY RUBIO: Yeah, I mean, unfortunately our agents – I mean, I'm not – that's a DHS or ICE, so I don't know what their practices are. But our agents have had to protect their identity because they've found themselves targeted – targeted for violence, targeted for operations against them. I would say most of these protesters are wearing masks too, and they're not in law enforcement.

QUESTION: Can I ask you a different topic? U.S.-funded media. Radio Martí is something that I believe you've supported in the past. What do you think of the cut in funding for that entity?

SECRETARY RUBIO: Well, first of all, they're not part of the – they're not – we don't control that. That's a separate entity that does it. My understanding is that Martí has actually started rebroadcasting today, and a few others. I think the executive order called for them to be – all

these agencies to be reduced to the statutory minimum. And I think the goal ultimately over time, as I understand it, is to reform these entities so that they provide news that, frankly, favors and advances the national interest of the United States. We have plenty of independent media outlets, including all of you, and then we are interested in media outlets that present America's point of view from our foreign policy standpoint. And so that review will be ongoing, but obviously that's outside the State Department. I don't control those.

QUESTION: What about the cuts (inaudible) —

SECRETARY RUBIO: I wish I did, though, but I don't. Not yet, anyway. Maybe we'll see, but I don't know.

QUESTION: What about cuts to some of the other programs in Cuba that were supporting dissidents, that were supporting political prisoners?

SECRETARY RUBIO: Yeah, well, some of them were not. Some of them will be restudied over time. I think ultimately we're trying to find programs that are effective. No one's been —

QUESTION: But no, it – as you know, there's (inaudible) in general always in Cuba right now.

SECRETARY RUBIO: Yeah, but there's – I – there's a bunch that were – that we approved that are on the – not even got waivered, just got restarted and we're doing them. There's others that we have suspended because we didn't think we were getting the return on the investment. That money may be repurposed to a program that works better for the same cost.

QUESTION: You mentioned that Marines have said – Marines at Guantanamo Bay have said that the Tren de Aragua members there —

SECRETARY RUBIO: Oh, yeah.

QUESTION: — were more violent than al-Qaida members.

SECRETARY RUBIO: Not just more violent, very well organized. They were able to communicate with each other, the hand signals, all kinds of – I mean, this is a prison gang, so it doesn't surprise me. That's how the Tren de Aragua originates from, so it doesn't surprise me that they're very effective in that setting.

They're also very dangerous to keep in our country. When you keep prison gangs in your country, they grow, they metastasize. MS-13 was actually a group that was started by Salvadoran – either Salvadoran refugees and/or actually people born in the U.S. of Salvadoran descent in prisons. MS-13 did not originate in El Salvador; they originated in U.S. prisons and spread down and back to El Salvador. Prison gangs are very dangerous because they recruit and then they – they almost create academies within the prisons that then metastasize and spill out to the general population.

QUESTION: Have you spoken to the Marines down in Guantanamo, or did they (inaudible)?

SECRETARY RUBIO: I spoke to one that was in Guantanamo because I know them through a family friend, but I've also spoken to both Pete Hegseth about this and, if I'm not mistaken, Secretary Noem as well. And they both – when I asked them, "Is this true?" they both confirmed that's what their officers and people on the ground were telling them. So actually I heard this from a personal acquaintance, and then I actually had it affirmed to me by two members of the cabinet.

QUESTION: (Inaudible.)

QUESTION: (Inaudible) some of the people sent down to El Salvador to the prison weren't actually gang members, but that, for example, there was a (inaudible) with a tattoo (inaudible) supporting autism, people with autism, but it looked like a gang tattoo to the immigration agent and then (inaudible) mistakes made. How do you address that?

SECRETARY RUBIO: Well, ultimately that – all of that was the work of the Department of Homeland Security. They've identified them. I have confidence in the assessments that they've made. They're – but I can't speak to any one of the individual cases because we're not involved in compiling them. But I have no reason – in fact, I have confidence that they compiled a good list. And if we have an opportunity to send more, we will – gang members, MS-13, whatever we can send.

QUESTION: (Inaudible) isn't it an issue of due process? I mean, was that raised with President Bukele? Do these people have a right to appeal in some way?

SECRETARY RUBIO: Every single one of them was deportable for reasons even beyond the Alien Enemies Act. The MS-13 as well. They were all deportable. Many of these people had orders of

deportation already and were either in custody or had been recently apprehended. So every single person that was sent there was deportable.

Unfortunately, if they're of Venezuelan descent, up until this week the Venezuelans were not picking anybody up. They were not allowing anybody to go back. They're the only country in the hemisphere that was refusing to accept anyone. They have restarted those suddenly, and hopefully they'll continue and then we won't have to use El Salvador.

QUESTION: So why use the Alien Enemies Act if they were deportable anyway? Because that just seems to be (inaudible) inviting a challenge to it.

SECRETARY RUBIO: No, I think the expedited nature of it. These gangs were organized. They were – they were presenting very real and immediate risks in a number of communities in our country in an organized fashion. We have reason to believe that they were actually being pushed towards the United States in large numbers by the regime in Venezuela. You saw just yesterday one of them arrived in Venezuela and was greeted on the tarmac as a hero. This is an individual that was arrested for – caught on video – attacking police officers in Times Square, (inaudible) to law enforcement after doing so. So we believe that in many ways the Venezuelan regime has encouraged that flow of these groups towards the United States to create harm in our country.

QUESTION: The reason I ask is that we know (inaudible) Thursday before we left on Friday (inaudible) spoken to President Bukele twice, and this was all arranged, and —

SECRETARY RUBIO: I've spoken to him a number of times.

QUESTION: I know, but this —

SECRETARY RUBIO: Not just the only time you were around.

QUESTION: Well, no, no, no, this was the (inaudible).

SECRETARY RUBIO: Yes.

QUESTION: This was the Thursday – Thursday night.

SECRETARY RUBIO: Yes.

QUESTION: So now we're into Friday, and it became clear with this transfer of diplomatic notes from El Salvador and the stuff that the State Department was doing to get the money ready – 20 grand per person per year for this initial tranche of (inaudible). And it made clear that the President was going to go in and sign the AEA declaration, and yet it didn't come out until after, so Saturday. Why? Was that —

SECRETARY RUBIO: Well, about the AEA declaration, that came from the White House. My conversations with President Bukele were as a follow-up and to finalize in a verbal agreement we had reached in my visit to El Salvador on my first trip as the Secretary, so it was just sort of following up on that and how we were going to proceed with it. We were ready now to execute at some point, and we were working through those arrangements with them. And that's what those calls were about. It was just sort of to finalize what we had agreed on.

QUESTION: So you don't think that the White House delayed (inaudible)? Because the President did sign the AEA declaration on Friday.

SECRETARY RUBIO: Yeah.

QUESTION: (Inaudible) it wasn't (inaudible)?

SECRETARY RUBIO: I can't speak to the timing of why they released the one they did. I can tell you – and I think you were on that trip – that the agreement to house criminal aliens was reached with President Bukele back in February.

QUESTION: Yes.

SECRETARY RUBIO: And so we spoke – I've spoken to him since then, but obviously this – those days that I was there we did because we had a couple of open questions that we wanted answers to and that he wanted answers to, and we were finalizing that.

QUESTION: Mr. Secretary, on Russia, about a month ago when we were in Riyadh, you were first starting on speaking with them, and you said something. You said soon enough we're going to find out whether they're acting in good faith or not, we just need to test it out. So a month later where do you stand? Are they (inaudible) —

SECRETARY RUBIO: Well, I'm not prepared to pass judgment on it. They're meeting with us. They're talking to us. They're making proposals. They're agreeing to ceasefires but with conditions that we need to analyze.

QUESTION: So is that dragging their feet, actually?

SECRETARY RUBIO: I wouldn't – I'm not prepared to characterize it as one or the other. What I've said almost from the very beginning is, I mean, this war is complex. As you can see, it's now going on three years. And I never said it was going to be simple. There's a lot of work to be done with both sides, in particular the Russian side, which we haven't talked to in years. So —

QUESTION: How long do you anticipate these negotiations to continue?

SECRETARY RUBIO: We're going to – we're trying to achieve peace. We're committed to trying to achieve peace as long as it takes. That doesn't mean that I can guarantee you that there's going to be an agreement in a week or a month. I just can't put a timeframe on it because it doesn't depend on us. It depends on the Russians and it depends on the Ukrainians. It also depends on our partners in Europe who have sanctions that will have to be taken into account, I believe, as part of any final deal.

But I always think it's progress when at least specifics are being agreed to even though they may not be agreeable to both sides, because we get to determine sort of the negotiating posture and what the impediments are to peace. So I think when you negotiate, when you sit down with people and they – and you talk about these things, they have to memorialize these things in documents, at least it begins to give definition to what the impediments to peace are.

As far as willingness, that'll be tested when the time comes to sign or if – if we've dealt with impediments and there's still resistance from one side or the other, then we'll know. But we're not at that stage yet.

QUESTION: Do you anticipate this moving soon beyond the technical level and back to higher-level talks?

SECRETARY RUBIO: Well, I think you have to make more progress on a technical level at this point, but we'll see. We're going to analyze it. As I said, when they arrive back from Saudi Arabia I want to sit and talk to our team that was on the ground and get a better sense how those

negotiations went, because a lot of it isn't just what was written and what was said over 12 hours. And by the way, we met with the Ukrainians twice as well, so we want to get that perspective, which we met with them on Sunday and again on Tuesday, and the Russians on Monday. So I need to hear from them directly a little bit more about how it went, and then we'll present that. We'll meet with the team and we'll present that to the President, and then decide on a path of what the next steps are.

QUESTION: Can I ask you a different topic? Sudan. We've seen certainly an upsurge in violence. The army says they have kicked out from the presidential palace. You've seen the strike on the market. Is there anything diplomatically that the U.S. can (inaudible)?

SECRETARY RUBIO: We're engaged in conversations with a number of countries, with Ethiopia, with Kenya, in just over the last 72 hours where we've been raising that. And we're very concerned that we're going to backslide to where we were a decade or less ago, and so we don't want to see that. And so we're trying to figure out and we've been engaging with our partners about soliciting their ideas about what can we do on this matter to – what contributions can the United States make to stabilize it now. There are a number of places we're doing that. We're doing that with DRC-Rwanda as well. So there are a couple of places like that that we find ourselves sort of asking our regional partners how do they believe we can be most helpful and engaging, and with our partners outside the region as well. We've spoken – I spoke to the foreign minister of the UK yesterday about this topic.

QUESTION: (Inaudible) Iran and the (inaudible) letter (inaudible)?

SECRETARY RUBIO: Oh, he just asked me that, but you couldn't hear.

QUESTION: Oh, sorry.

SECRETARY RUBIO: No, that's okay. I just have to – now I have to remember the answer, because it has to be identical. (Laughter.)

QUESTION: You have to (inaudible).

QUESTION: Give us the details.

SECRETARY RUBIO: It's been publicly reported that the – that the President sent a message. I anticipate a response on that, and – but we have nothing else to announce on that. Is that pretty much what I told you? All right.

QUESTION: Can I ask —

SECRETARY RUBIO: All right. Well, the game is going to start. That's why. (Laughter.)

QUESTION: What brought about your hatred for ecotourism?

SECRETARY RUBIO: I don't hate ecotourism. It's just —

QUESTION: You said —

SECRETARY RUBIO: No, no, no, no. I said I'm not a fan of ecotourism, but I'm not against it. People like to do that stuff. But like, to me, a vacation does not involve snakes and spiders. So that's my view. Maybe that'll change. I don't know.

MS BRUCE: All right.

SECRETARY RUBIO: All right. Thanks, guys.

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Secretary of State Marco Rubio Remarks to Press

REMARKS

MARCO RUBIO, SECRETARY OF STATE
SHANNON, IRELAND

MARCH 12, 2025

SECRETARY RUBIO: All right, who's got a question?

QUESTION: I do.

SECRETARY RUBIO: I knew you would have a question.

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QUESTION: So – Michael Gordon, *Wall Street Journal*. Sir, the Russians are still making gains on the battlefield. There's been no public response to the developments in Jeddah. Are you concerned they're playing for time? Have you had any contact with them? What's been their response officially and are they willing to accept the ceasefire unconditionally?

SECRETARY RUBIO: Well, I mean, we don't know the answer to the last question. That's what we want to know, whether they're prepared to do it unconditionally. We'll have contact with them today. There's already been contacts at different levels with counterparts, different members of the administration, and that'll continue. But as far as the Russian reaction to it, that's really the question here, and that is – this is a few hours old. We're going to bring it to them directly. We're going to say that Ukraine is prepared to stop all battlefield activity and begin the immediate process of negotiating an enduring end to the war, and we'll see what their response is.

If their response is yes, then we know we've made real progress and there's a real chance of peace. If their response is no, it'll be highly unfortunate, and it'd make their intentions clear. So that's what we're hoping to hear from them, and obviously, as I said, this was not pre-arranged with them, so they're – they're probably processing the news the same as the rest of the world. And so we hope to have a positive answer from them. The ball is truly in their court.

QUESTION: Mr. Secretary —

QUESTION: Mr. Secretary, Nike Ching with Voice of America. What would be a good G7 joint statement on Russia and on China?

SECRETARY RUBIO: Well, I think the perfect statement would be that the United States has done a good thing for the world in bringing this process forward, and now we all eagerly await and – the Russian response and urge them strongly to consider ending all hostilities so people will stop dying, so bullets will stop flying, and so a process can begin to find a permanent peace. I think the first step in all this is the acceptance that there is no military solution to this conflict. Neither side can militarily achieve their maximalist gains – their maximalist goals. I mean, they're just not going to achieve them through the military side. The only way this conflict can end is through negotiation. That's the only way you're going to have peace is through negotiation.

And so we need to start that process. And it is hard to start a process when people are shooting at each other and people are dying. And so our hope is that we can stop that, all these hostilities,

and get to a negotiating table where both sides – over some period of time with a lot of hard work – can find a mutually acceptable outcome that, in the case of Ukraine, obviously secures their long-term prosperity and security.

QUESTION: Mr. Secretary, could you just update us on Mr. Witkoff's plans for Moscow and whether he'll be meeting with President Putin?

And then separately, if you wouldn't mind elaborating on something that Mr. Waltz said yesterday about the specifics that you discussed with Ukrainians about what the end of the war would look like, you had mentioned we're not going to get maps out and draw lines, but did you actually talk about territorial concessions?

SECRETARY RUBIO: Well, we – we had conversations. As far as Steve's trip, I'm not here to – I can't – I'm not going to make any announcements about specific dates, times, or even confirm such a trip. Suffice it to say there is going to be multiple points of contact with the Russians to gauge are they willing to do this or not. And as far as the conversations that were yesterday, yeah – when you sit down with a counterpart like Ukraine, we're not going to negotiate this publicly, we're not going to actually put out there sort of what we talked about, because in any negotiation there's certainly an element where you don't want one side to be giving away all of this leverage from a public perspective. We had a broad conversation about what it would – but I think the bulk of our conversation was what a negotiation process would look like in terms of not the specific conditions, but rather the timing of it, sort of the steps they would like to see taken.

The Ukrainians made very clear that this isn't just about ending a war. They need to get their prisoners of war back; they need to get the children back. They'd like to see an exchange of prisoners of war; they'd like to see their children back. So there's all sorts of things tied to the, humanitarian assistance is important as well. There are areas of Ukraine that have been badly damaged that require immediate assistance. So these are the sorts of things that we talked about as being inclusive in the negotiation process.

So really the bulk of our conversation, when we got to that stage of it, was discussing the kinds of items that need to be on a negotiation agenda if and when we hopefully get there.

QUESTION: He also mentioned security guarantees, which is something that there has been some reluctance for the administration to elaborate on. Have – are you committing to security —

SECRETARY RUBIO: Well, I think the point – no – the point to understand is that we're looking at securing their long-term – what we want to see – like any country in the world, Ukraine wants their long-term security. They want to make sure that this doesn't happen again. We all do. What is the point of spending all this time to get a ceasefire hopefully and then a negotiated end to the war only to see it re-spark up again in about six years, four years, three years? No one's – we're not interested in that, and they certainly aren't, either.

So I think the question really is more about a deterrence. Can Ukraine create a sufficient deterrent against future aggression, against future attack, against future invasion? Because every country in the world has a right to defend themselves, and no one can dispute that. So that will most certainly have to be part of the conversation. But again, I don't think there's – there isn't a peace to secure until you have a peace.

QUESTION: Not just – not —

SECRETARY RUBIO: There's no way to have an enduring peace without the deterrence piece being a part of it.

QUESTION: Can I just follow up on that particular point?

SECRETARY RUBIO: Yes.

QUESTION: Because the joint statement talks about European partners being involved in the peace process, but that's only attributed to the Ukrainian delegation. There doesn't appear to be U.S. support for that line —

SECRETARY RUBIO: Well, I think what it says in the statement is that they raised the need for the Europeans. But I have already said publicly the Europeans have issued a series of sanctions against the Russian Federation, and I would imagine that in any negotiation – if we get there, hopefully – with the Russians that they will raise these European – the European sanctions that have been imposed upon them. So I think that the issue of European sanctions are going to be on the table —

QUESTION: But it —

SECRETARY RUBIO: — not to mention what happens with the frozen assets and the like. And so I think it's self-evident that for there to be a peace in Ukraine, at the end of that process there is going to have to be some decision by the Europeans about what they are going to do with these sanctions and so forth. And so that's why I think they have to be necessarily involved in this regard. Now, whether they're involved at the front end of it or at the back end of it, it'll have to play itself out. And then obviously there is also all sorts of security promises that European countries have made to Ukraine, that that will also be, I imagine, a part of this conversation as we move forward.

QUESTION: But —

SECRETARY RUBIO: So we don't disagree with that statement. I think the statement just reflects that they raised it.

QUESTION: But do you back European peacekeepers in Ukraine, which is something Russia has categorically —

SECRETARY RUBIO: Well, we'll see. I mean, there's different ways to – there's different ways to construct a deterrent on the ground that prevents another war from starting in the future. We're not going to go in with any sort of preconceived notion. The bottom line is it needs to be something that makes Ukraine feel as if they can deter and prevent a future invasion. How that looks and how that's put together, that's what we're going to be talking about, if we can get to that stage.

Again, right now we're just trying to get to the stage where there's actual diplomacy happening. Here's what we'd like the world to look like in a few days: neither side is shooting at each other, not rockets, not missiles, not bullets, nothing, not artillery. The shooting stops, the fighting stops, and the talking starts. That's what we want to see. What happens during that talking and how that evolves, I think we're going to have to be flexible and nimble and creative and patient and work hard at it and hopefully turn it into something that's concrete.

You've covered – many of you have covered foreign policy for years. That's how these things happen, and they're not easy, and sometimes they're difficult to predict which way they're going to go in terms of the specifics of it. But we just want to get to that stage. That would be, for lack

of a better term, a good problem to have, to have to figure out how to negotiate a peace because we're actually negotiating a peace while the shooting has stopped.

QUESTION: Is the mineral deal essentially the security guarantee that you guys envisioned?

And then a second question is: President Trump appealed to a lot of Americans during his campaign on free speech arguments and not suppressing speech, especially from the government, but your revocation of the green card to many is seen as one of the most anti-speech actions a secretary can take with his powers. How do you respond?

SECRETARY RUBIO: Yeah, I mean, the first question was again the —

QUESTION: Is the minerals deal a version of the security guarantee?

SECRETARY RUBIO: The minerals deal, yeah. Well, I think that a minerals deal is something that I think is beneficial for both countries. Certainly one of the things that provides for Ukraine's long-term prosperity and security is vibrant economic growth and development. If their GDP is – begins to grow and – that gives them a tremendous amount of leverage and power and the ability to fund their own defenses. So I think certainly any economic development for Ukraine is positive for their own future.

Obviously if the United States has a vested economic interest somewhere, we're tied to them on an economic front, we're in partnership with them on something, we will have an interest in the future of Ukraine as well. I wouldn't couch it as a security guarantee, but certainly if the United States has a vested economic interest that's generating revenue for our people as well as for the people of Ukraine, we'd have a vested interest in protecting it if it were to be challenged or threatened.

On your first point, when you enter the – this is an important point, and I'm glad you asked this question. When you come to the United States as a visitor – which is what a visa is, which is how this individual entered this country, on a visitor's visa, okay – you are here as a visitor. We can deny you that visa. We can deny you that – if you tell us when you apply, "Hi, I'm trying to get into the United States on a student visa, I am a big supporter of Hamas, a murderous, barbaric group that kidnaps children, that rapes teenage girls, that takes hostages, that allows them to die in captivity, that returns more bodies than live hostages" – if you tell us that you are in favor of a group like this, and if you tell us when you apply for your visa, "And by the way, I intend to come

to your country as a student and rile up all kinds of anti-Jewish student, anti-Semitic activities, I intend to shut down your universities" – if you told us all these things when you applied for a visa, we would deny your visa. I hope we would. If you actually end up doing that once you're in this country on such a visa, we will revoke it. And if you end up having a green card – not citizenship but a green card – as a result of that visa while you're here and those activities, we're going to kick you out. It's as simple as that.

This is not about free speech. This is about people that don't have a right to be in the United States to begin with. No one has a right to a student visa. No one has a right to a green card, by the way. So when you apply for a student visa or any visa to enter the United States, we have a right to deny you for virtually any reason, but I think being a supporter of Hamas and coming into our universities and turning them upside down and being complicit in what are clearly crimes of vandalization, complicit in shutting down learning institutions – there are kids at these schools that can't go to class. You pay all this money to these high-priced schools that are supposed to be of great esteem and you can't even go to class, you're afraid to go to class because these lunatics are running around with covers on their face, screaming terrifying things. If you told us that's what you intended to do when you came to America, we would have never let you in. And if you do it once you get in, we're going to revoke it and kick you out.

QUESTION: Can I ask you about the Canada trip coming up? The President has taunted, if you will, Canada, calling it the 51st state, calling Prime Minister Trudeau the governor —

SECRETARY RUBIO: Well, he said it should become the 51st state from an economic standpoint. He says if they became the 51st state, we wouldn't have to worry about the border and fentanyl coming across because now we would be able to manage that. He's made an argument that it's their interest to do so. Obviously the Canadians don't agree, apparently, but —

QUESTION: Do you agree with it? Should there be – are you going to discuss that, becoming the 51st —

SECRETARY RUBIO: Well, that's not what we're going to discuss at the G7, and that's not what we're going to be discussing in our trip here. So it – they are the host nation, and I – I mean, we have a lot of other things we work on together. We defend North America through NORAD and the airspace of our continent together, so – not to mention the issues of Ukraine and other

commonalities. So we're going to be focused in the G7 on all of those things. That's what the meeting is about. It is not a meeting about how we're going to take over Canada.

QUESTION: But more broadly —

QUESTION: But are you concerned at all about the reception that you might be getting, particularly at the event?

SECRETARY RUBIO: I don't know, should I be? What do you know that I don't know?

QUESTION: They're unhappy.

QUESTION: I don't know, you've got the tariffs in the last 12 hours, you've just seen this escalating trade war – not just with Canada but, with the exception of Japan, all the other members of the G7.

SECRETARY RUBIO: Yeah, so what's your point?

QUESTION: Well —

QUESTION: Are you worried about alienating the Canadians, that they wouldn't work with the United States?

SECRETARY RUBIO: Yeah, I mean, they've invited us to come. We intend to go. The alternative is to not go. I think that would actually make things worse, not better. So – it's a G7 summit.

QUESTION: One alternative could be not to —

SECRETARY RUBIO: Huh?

QUESTION: The alternative could be not to have tariffs or not to have the language that the President —

SECRETARY RUBIO: No, those are policy decisions. And so at the end of the day, the President's made those decisions. He's explained why. It's not just against Canada, it's not just against Mexico, it's not just against G7 countries. He's imposed steel and aluminum tariffs now on

virtually the entire world, and the reason why is not to punish those countries; it's because he has outlined the need to develop a domestic capability. If you don't have steel and aluminum, you can't build warships, you can't build airplanes, and you are not an industrial economy. There are things we have to be able to protect and there's a lot of unfair trade practices, a lot of countries out there who subsidize their industries so that they can gain global market share, so they subsidize the industries, they're operating at a loss. Meanwhile, our industries are trying to compete fairly, and that's why you don't have steel plants and that's why you can't produce the aluminum. And that really threatens our national security in the long term.

So these are national security concerns when it comes to steel and aluminum and some of these other products. But ultimately the President feels strongly – and I personally agree – that we have made some decisions when it comes to trade policies that have led to the de-industrialization of America and have left us deeply vulnerable to any sort of interruptions in global supplies and/or it being used to extort us, not to mention our inability to produce things that we need for our own economy and for our own defense.

So that's what those policies are about. Every country in the world we expect will act in their national interest. The United States forgot that. President Trump is reminding us of that and getting us back to that, and I think it is quite possible that we could do these things and at the same time deal in a constructive way with our allies and friends and partners on all the other issues that we work together on. And that's what I expect out of the G7 and Canada.

QUESTION: Can I just ask on Russia? Did you have – or Waltz – have any contact with Zelenskyy while you were in Saudi Arabia? And then —

SECRETARY RUBIO: No, I didn't. I don't believe Mr. Waltz did either, but I did not. But that was the team he selected, and it was appropriate. It was his closest advisor, it was their foreign minister, it was their head of security. So we felt that that was the counterparts they sent and to deal with us, and that's obviously pretty common in these sorts of things. Generally the heads of state meet heads of state and appropriate counterparts meet others. He – I imagine he had to get back, and he's – he – the president of a wartime country, so he's – but we did not have any contact with him there. But I wouldn't read – read anything into it other than he selected his team for these talks and the President selected his, so —

QUESTION: And was there any discussion with the Ukrainians about how a ceasefire, if Russia agrees, would be enforced? How would the U.S. ensure parties —

SECRETARY RUBIO: Yeah, well, the interesting thing about modern warfare is there – it's easier than ever to monitor and – simply because there's so many eyes on the ground and there's also all sorts of overhead commercial satellite and the like. It would be pretty hard to hide drone strikes, it would be hard to hide missile strikes, ballistic strikes, artillery. So we feel like that is something that could be monitored. Obviously, if in fact the Russians say yes – let's hope they say yes. If they say yes, one of the things we'll have to determine is who do both sides trust to be on the ground to sort of monitor some of the small arms fires and exchanges that could happen. But those are practices that have become common in these, and I don't think that would be difficult to set up. We didn't get into specifics, but obviously the need to monitor a ceasefire is clear to everyone.

QUESTION: Sir, just a quick follow-up on this question.

QUESTION: Can I get a last question? Last question?

MS BRUCE: One more question. One more. This is it.

QUESTION: The —

SECRETARY RUBIO: Yeah, because we're fueling up and have to get back on the plane.

MS BRUCE: Right.

QUESTION: Last question, sir.

SECRETARY RUBIO: Yeah, yeah.

QUESTION: The – you haven't – this administration has not hesitated to put a lot of pressure on Ukraine. You reduced their intelligence support in the middle of a shooting war, you temporarily cut off their arms, criticized them publicly – not you, but leadership in public. Are you truly prepared to apply pressure on Russia should it be recalcitrant and not agree to the terms of the ceasefire? There's no been no concrete action that this administration has taken to punish Russia since it's come to office.

SECRETARY RUBIO: Well, a couple points. To be clear, as far as I am aware, the United States has not provided armaments to Russia. The United States is not providing assistance to Russia. Every single sanction that has been imposed on Russia remains in place. Every single sanction the President inherited has – remains in place.

QUESTION: Trump inherited, previous administration.

SECRETARY RUBIO: Right, but – well, I mean, they're pretty sanctioned up. I mean, there's a lot of sanctions on already. So my point being is that we've – there's been no steps taken to relieve any of these things. These things continue to be in place. But we don't think it's constructive for me to stand here today and begin to issue threats about what we're going to do if Russia says no. Let's hope they say yes.

At the end, let's understand. I remind everybody and bring you back to the point: The President's desire here is to bring about a lasting and enduring peace in Ukraine. He wants the shooting and the fighting to stop – not just for 30 days, not just for 60 days, but permanently. To do that, both sides have to come to the table. We are happy – we are happy that the Ukrainians have agreed to do so. Now it is up to Russia to say yes. If Russia says yes, that's very good news, and we will begin that process and do everything we can to move that process forward. If they say no, then obviously we'll have to examine everything and sort of figure out where we stand in the world and what their true intentions are. I think it'll be – if they say no, it'll tell us a lot about what their goals are and what their mindset is.

But I don't want to go into that before they've even answered us by issuing statements that are abrasive in any way. Our hope is that – when we met with them last, they expressed a willingness under the right conditions, without elaborating on the right conditions, to bring an end to this conflict. That was our question when we met with them. I think I shared it with you that were on our trip. The point of meeting with them was to find out is this a war they wanted to end or is this a war they just wanted to continue in perpetuity until they achieved whatever goals they have in mind, and they expressed a willingness, under the right circumstances, which they did not define, to bring an end to this conflict.

So we have Ukraine ready to come to the table. Now we need to get Russia to come to the table. If they do and the shooting stops, I think that's a very good day in the world. Obviously no one here is pretending that that negotiation's going to be easy or fast or simple, but at least we've

gotten to that point. If their answer is no, then obviously we'll have to deal with that and we'll have to at that point make decisions on that basis. We're not there yet. Hopefully the answer is yes.

MS BRUCE: Thank you, everyone.

SECRETARY RUBIO: Okay, thanks, guys.

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Exhibit O

Marco Rubio
@marcorubio

Very simple

President Trump isn't Biden

If you are coming to U.S. to join pro-terror riots we will deny you a visa

And if you do that after lying your way into our country we will cancel your visa & send you home

11:02 AM · Mar 15, 2025 · **2M** Views

5.6K 17K 103K 1K

Case: 25-2162 Document: 44-3 Page: 293 Date Filed: 08/20/2025

Exhibit P

Transcript: Secretary of State Marco Rubio on "Face the Nation with Margaret Brennan," March 16, 2025

Updated on: March 16, 2025 / 3:28 PM EDT / CBS News

The following is the transcript of an interview with Secretary of State Marco Rubio that aired on "Face the Nation with Margaret Brennan" on March 16, 2025.

MARGARET BRENNAN: Let's get straight to it this morning with Secretary of State, Marco Rubio, who joins us from Miami, Florida. Mr. Secretary for our audience, just to explain, this Red Sea area is a really important transit point for global shipping. The Houthis out of Yemen have been disrupting transit there for some time. President Trump cited these concerns when he announced the strikes. I'm wondering, how long will this campaign last, and will it involve ground forces?

U.S. SECRETARY OF STATE MARCO RUBIO: Well, first of all, the problem here is that this is a very important shipping lane and in the last year-and-a-half, the last 18 months, the Houthis have struck or attacked 174 naval vessels of the United States. Attacking the U.S. Navy directly 174 times, and 145 times they've attacked commercial shipping. So we basically have a band of pirates, you know, with guided precision anti-ship weaponry and exact- exacting a toll system in one of the most important shipping lanes in the world. That's just not sustainable. We are not going to have these people controlling which ships can go through and which ones cannot and so your question is, how long will this go on? It will go on until they no longer have the capability to do that.

MARGARET BRENNAN: Well, what does U.S. intelligence tell us at this point? Because the U.S. had been construct- conducting strikes for some time, but has not stopped the Houthis–

SECRETARY RUBIO: No.

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MARGARET BRENNAN: –So what's going to be different right now? Do you have more fidelity in the intelligence that would make this more successful?

SECRETARY RUBIO: Well, those strikes were a retaliation strike. So they launched one missile, we hit the missile launcher, or we sent something to do it. This is not a message. This is not a one off. This is an effort to deny them the ability to continue to constrict and control shipping, and it's just not going to happen. We're not going to have these guys, these people with weapons, able to tell us where our ships can go, where the ships of all the world can go, by the way, it's not just the U.S. We're doing the world a favor. We're doing the entire world a favor by getting rid of these guys and their ability to strike global shipping. That's the mission here, and it will continue until that's

carried out. That never happened before, the Biden Administration didn't do that. All the Biden Administration would do is they would respond to an attack. These guys would launch one rocket, we'd hit the rocket launcher. That's it. This is an effort to take away their ability to control global shipping in that part of the world. That's just not going to happen anymore–

MARGARET BRENNAN: and it could–

SECRETARY RUBIO: –So, this will continue until that's finished.

MARGARET BRENNAN: It could involve ground raids?

SECRETARY RUBIO: Well, those are military decisions to be made, but I've heard no talk of ground raids. I don't think there's a necessity for it right now. I can tell you that as of last night, some of the key people involved in those missile launches are no longer with us, and I can tell you that some of the facilities that they use are no longer existing, and that will continue. The- look, it's bottom line, easy way to understand it, okay, these guys are able to control what ships can go through there. They've attacked the U.S. Navy 174 times. They've attacked the United States Navy. We're not going to have people sitting around with the missiles attacking the U.S. Navy. It's not going to happen, not under President Trump.

MARGARET BRENNAN: The President also referenced Iran in his statement. Iran provides some support for the Houthis as you know. Put this in context for me, because U.S. intelligence has been suggesting for some time that Israel has the desire and intent to conduct an attack on Iran's developing nuclear program in the coming months. President Trump has extended an offer for negotiations. Have you heard anything back from Iran? Is this strike in Yemen a signal to Iran?

SECRETARY RUBIO: This strike in Yemen is about their ability, the ability of the Houthis, to strike global shipping and attack the U.S. Navy, and their willingness to do it. 174 times against the U.S. Navy, 145 sometimes against global shipping. That's what the strike is about. What we can't ignore, and the reason why the President mentioned Iran is because the Iranians have supported the Houthis. They provided them intelligence, they provided them guidance, they provided them weaponry. I mean, there's no way the Houthis, okay, the Houthis would have the ability to do this kind of thing unless they had support from Iran. And so this was a message to Iran, don't keep supporting them, because then you will also be responsible for what they are doing in attacking Navy ships and attacking global shipping.

MARGARET BRENNAN: They also get support from Russia, potentially, which you leveraged sanctions in regard to, but I want to ask you about tariffs because you were just in Canada this past week. China is Canada's second biggest export market, Mexico's third. In this ongoing trade back-and-forth, the U.S. is having, isn't there a risk that China will ultimately be the winner? If it's too costly to deal with the United States, won't they benefit?

SECRETARY RUBIO: Well, actually, China and Canada are involved in a mini trade war right now. In fact, the Chinese have imposed a bunch of tariffs, reciprocal or retaliatory tariffs on Canada after Canada imposed tariffs on them. So here's the way everyone needs to understand this, okay? The president rightfully believes that the balance of global trade is completely off gilt- kilter. For 30 or 40 years, we have allowed countries to treat us unfairly in global trade, much of it during the Cold War because we wanted them to be rich and prosperous because they were our allies in the Cold War, but now that has to change. You look at the European Union. The European Union's economy is about the same size as ours. It's not a low wage economy. It's very comparable to ours in terms of its composition and so forth. Why do they have a trade surplus with us? So what the President is saying is two things.

Number one, there are critical industries like aluminum, like steel, like semiconductors, like automobile manufacturing, that he rightfully believes, President Trump rightfully believes, the U.S. needs to have a domestic capability and the way you protect those industries and build that capability is by ensuring that there's economic incentives to produce in the United States. The second is global, and that is, we are going to put tariffs on countries reciprocal to what they impose on us. And so this is a global, it's not against Canada, it's not against Mexico, it's not against the EU, it's everybody. And then from that new baseline of fairness and reciprocity, we will engage, potentially in bilateral negotiations with countries around the world on new trade arrangements that make sense for both sides. Fairness, but right now, it's not fair. We're going to reset the baseline, and then we can enter into these bilateral agreements, potentially, with countries so that our trade is fair. What's not going to continue is, of course, these countries are upset–

MARGARET BRENNAN: So this is all just about leverage to get bilateral, not free trade- not North American Free trade deals–

SECRETARY RUBIO: No, it's not leverage–

MARGARET BRENNAN: re- renegotiation–

SECRETARY RUBIO: – No, no, it's not leverage, it's fairness. It's resetting baseline fairness. And then from there, we can work on deals and- and so forth, because they'll have products we don't make, we have products they don't make. That's where trade works the best. It has to be free, but it has to be fair, and right now it's only free on one side, and it's not fair for the other side–

MARGARET BRENNAN: Well you know, sir, that–

SECRETARY RUBIO: –It's an unsustainable position.

MARGARET BRENNAN: –the ad hoc nature of these policy announcements and pull backs are causing concern in the marketplace, as we saw this past week. So I heard you describe what seemed like a strategy to get to negotiations on a bilateral front. You also seem to negotiate- say this was national security minded. But then we also see comments by the President of like, 200 percent tariffs on champagne. That's not a critical industry for the United States, that seems more emotional.

SECRETARY RUBIO: No, that means that's- that's called retaliation that's what happens in these trade exchanges. They're going to increase tariffs on- they already have high tariffs. They're going to add more to their tariffs? Fine, then we'll have to find something to- I mean, you tell me? I mean, Canada is going after whiskey and orange juice and you know I mean–

MARGARET BRENNAN: In retaliation.

SECRETARY RUBIO: Yeah, exactly. So that sounds pretty petty to me as well. So what's the difference? The point is, I get it. I understand why these countries don't like it, because the status quo of trade is good for them. It benefits them, they like the status quo. We don't like the status quo. We are going to set a new status quo, and then we can negotiate something, if they want to, that is fair for both sides. But what we have now cannot continue. We have de-industrialized this country. De-industrialized the United States of America. There are things we can no longer make and we have to be able to make in order to be safe as a country and in order to have jobs. That's why we had a rust belt, that's why we've suffered all these important jobs that once sustained entire communities wiped out by trade that basically sent these factories, these jobs, this industrial capability, to other places that cannot and will not continue. I don't- President Trump, this is no mystery, he's been talking about this since the 1980s actually, even before he was a political figure. This is going to happen, and it's going to happen now.

MARGARET BRENNAN: I want to ask you about Russia. You said envoy Steve Witkoff's meeting with Vladimir Putin that happened last week would answer the fundamental question of whether we're moving towards a ceasefire, or whether Putin is using a delay tactic? You spoke with Sergey Lavrov, the Foreign Minister, yesterday. Is this a delay tactic?

SECRETARY RUBIO: Well, I think that was a pro- promising meeting. As I've said repeatedly, we're not going to negotiate this in the public. Hopefully we'll have something to announce at some point fairly soon. I can't guarantee that, but I certainly think the meeting was promising, the exchange was promising. I don't take away from Steve's meeting, from Ambassador Witkoff's meeting, negativity. There are some challenges. This is a complex, three-year war that's been ongoing along a very long military front, with a lot of complexity to it. So no one's claiming that it's easy, but I want everyone to understand, here's the plan. Plan A is, get the shooting to stop so that we can move to Plan B, phase two, which is have everybody at a table, maybe not- maybe with some shuttle diplomacy, to figure out a way to permanently end this war in a way that's enduring and it respects everybody's needs and so forth. No one is saying that that second part is easy, but we can't get even to that second part until we get past the first part. It's hard to negotiate an enduring end of a war as long as they're shooting at each other, and so the president wants a ceasefire. That's what we're working on, assuming we can get that done. That won't be easy in and of itself. We move to the second phase, which is negotiating something more enduring and permanent. That will be hard. It will involve a lot of hard work, concessions from both sides, but it has to happen. This war cannot continue. The president has been clear about that, and he's doing everything he can to bring it to an end.

MARGARET BRENNAN: Okay, we'll talk about that later in the program as well with Envoy Witkoff. I want to ask you about a decision you made to revoke a student visa for someone at Columbia University this past week. The Wall Street Journal editorial board writes, "the administration needs to be careful, it's targeting real promoters of terrorism not breaking the great promise of a green card by deporting anyone with controversial political views." Can you substantiate any form of material support for terrorism–

SECRETARY RUBIO: Yes.

MARGARET BRENNAN: –specifically to Hamas, from this Columbia student–

SECRETARY RUBIO: Yes.

MARGARET BRENNAN: –or was it simply that he was espousing a controversial political point of view?

SECRETARY RUBIO: Well, not just the student, we're going to do more. In fact, we- every day now we're approving visa revocations, and if that visa led to a green card, the green card process as well and here's why, it's very simple. When you apply to enter the United States and you get a visa, you are a guest, and you're coming as a student, you're coming as a tourist, or what have you. And in it, you have to make certain assertations and if you tell us when you apply for a visa, I'm coming to the U.S. to participate in pro-Hamas events, that runs counter to the foreign policy interest of the United States of America. It's that simple. So, you lied. You came- if you had told us that you were going to do that, we never would have given you the visa. Now you're here. Now you do it. You lied to us. You're out. It's that simple. It's that straight forward.

MARGARET BRENNAN: But, is there any- but is there any evidence of a–

SECRETARY RUBIO: Yes. Sure.

MARGARET BRENNAN: –link to terrorism, or is it just his point of view?

SECRETARY RUBIO: Yeah, they take over. I mean, do you not- I mean, you should watch the news. These guys take over entire buildings–

[CROSSTALK]

MARGARET BRENNAN: We covered it intensely. I'm asking about the specific–

SECRETARY RUBIO: –They vandalized colleges. They shut down colleges–

SECRETARY RUBIO: –well then you should know that this is–

MARGARET BRENNAN: –justification for the revocation of his visa–

SECRETARY RUBIO: Well, this specific individual was the spokesperson–

MARGARET BRENNAN: –was there any evidence the materials support for terrorism?

SECRETARY RUBIO: –was the negotiator- on negotiating on behalf of people that took over a campus? That vandalized buildings? Negotiating over what? That's a crime in and of itself, that they're involved in the being the negotiator, the spokesperson, this that the other. We don't want- we don't need these people in our country that we never should have allowed them in in the first place. If he had told us, I'm going over there, and I'm going over there to become the spokesperson and one of the leaders of a movement that's going to turn one of your allegedly elite colleges upside down, people can't even go to school, library buildings being vandalized. We never would have let him in. We never would have let him in to begin with. And now that he's doing it and he's here, he's going to leave, and so are others, and we're going to keep doing it. We're here- and by the way, I find it ironic that a lot of these people out there defending the First Amendment speech, alleged free speech rights of these Hamas–

MARGARET BRENNAN: Yes.

SECRETARY RUBIO: –sympathizers, they had no problem, okay, pressuring social media to censor American political speech. So it's, I think it's ironic and hypocritical. But the bottom line is this, if you are in this country, to promote Hamas, to promote terrorist organizations, to participate in vandalism, to participate in acts of rebellion and riots on campus. We never would have let you in if we had known that and now that we know it, you're going to leave.

MARGARET BRENNAN: Is it only pro-Palestinian people who are going to have their visas remote- revoked, or other points of view as well?

SECRETARY RUBIO: No, I think anybody who's here in favor- look, we want to get rid of Tren de Aragua gang members. They're terrorists too. We, the president, designated them, asked me to designate and I did, as a terrorist organization. We want to get rid of them as well. You're- we don't want terrorists in America. I don't know how hard that is to understand. We want people- we don't want people in our country that are going to be committing crimes and undermining our national security or the public safety. It's that simple, especially people that are here as guests. That is what a visa is. I don't know what we've gotten it in our head that a visa is some sort of birthright. It is not. It is a visitor into our country, and if you violate the terms of your visitation, you are going to leave.

MARGARET BRENNAN: Okay. Secretary Rubio, like to have you back. Talk to you about a lot more on your plate another time, but we have to leave it there.

SECRETARY RUBIO: Thank you.

MARGARET BRENNAN: Face the Nation will be back in a minute.

Exhibit Q

An official website of the United States Government Here's how you know

Secretary of State Marco Rubio with Hugh Hewitt

INTERVIEW

MARCO RUBIO, SECRETARY OF STATE
VIA TELECONFERENCE

MARCH 19, 2025

QUESTION: Joined now by Secretary of State Marco Rubio. Mr. Secretary, welcome back. It's good to have you. Congratulations on assuming the top – the seventh floor.

SECRETARY RUBIO: Thank you. It's – I think we're starting our tenth week or our ninth week. I've lost count at this point, but a lot has happened in that period of time. But it's a great honor to be able to do this and to work for a president that I think is making history every day.

QUESTION: Well, Mr. Secretary, you've been on this program since 2010, I think probably more than a hundred times, and you may remember my basic worldview is that America's biggest adversary is China, People's Republic of China; that General Secretary Xi is a tough, ruthless man. He's in an alliance with the fanatics in Iran and they present a real and present danger with us. Do you share that worldview? Can a diplomat say that?

SECRETARY RUBIO: Well, I think it's certainly the biggest challenge we face. Look, here's the way I characterize it, because you're right, I mean, we need to have relations with these countries. But I think the story of the 21st century is going to be about what happened between the U.S. and China. I think I said this during my confirmation hearing. I think the Chinese believe that they are on a path towards becoming the most powerful nation on Earth, that it's in

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matter of time, and they seek to manage that rise in a way that – and avoid disruptions along the way if possible.

And look, if in fact they end up out-competing us, out-innovating us, outworking us, what have you, that's one thing. But for us to sort of unilaterally allow them to do that rise while not playing by the same rules, then that would be on us. I think that's what's happened for the better part of 20 years. There was this assumption that some made that if – that we should allow China to continue to cheat in rules of trade and commerce and intellectual property and that kind of thing, and if we let them do it, that eventually they'd become rich, and when they became rich they'd become just like us. Well, that's not what happened. They became rich, but they're not just like us.

So I would say they're a rich and powerful country. They're going to be a rich and powerful country. We need to engage with them because it's irresponsible not to, but we also don't want to live in a world where we depend on China for things that we need.

QUESTION: Yesterday, *The Wall Street Journal* reported that General Secretary Xi is upset about the deal you made in Panama about the canal, and today it was announced that Hong Kong Enterprise is going to delay opening a car plant in Mexico in retaliation for the attempt to get the canal back. Do you care? Are we going to get the canal control back in American hands?

SECRETARY RUBIO: Yeah, look, we didn't give the canal to China, as the President says. President Trump's been very clear: We built that canal, we turned it over to – he didn't agree with that decision, but we turned it over to Panama. We wake up one day and Chinese influence is all over the canal. They – Hong Kong-based companies, which obviously have to respond to Chinese law, control all the key ports on – the key ports on both sides, the infrastructure deeply ingrained there benefited the Chinese, and that's just not sustainable and it can't continue. We made our view very clear that we believe the treaty has been violated. We had a great visit. There's a lot of follow-up to be done, but the President has been abundantly clear about it, and that is that the Panama Canal cannot be an outpost for the Chinese, because we built it and we intend to have influence over it, and because we didn't turn it – like I said, we didn't turn it over to the Chinese. We turned it over to Panama, and that's not the way it's played out.

QUESTION: So it's obviously a flashpoint. Flashpoints are best discussed at a summit. Is there a summit in the offing between President Trump and General Secretary Xi, either here or there?

SECRETARY RUBIO: Well, I think that meeting is eventually going to happen. There isn't one scheduled. I think that time will come. Obviously, as you know – and you've followed these things for a long time – and there needs to be a reason behind it. It has to – we have to know what they're meeting about and what the result of the meeting is going to be. But there's no doubt that that will happen. The President has in his first term – he'll do it again now – I mean, he'll meet with any foreign leader, basically, if there's a good reason to do so. He's – and look, I think that meeting will happen. But there's none scheduled at this moment.

QUESTION: Now, when the President talked to me – it was President-elect last, in January – and we talked about Jimmy Lai, and he told me he would get Jimmy Lai out of jail. Have you had any conversations with your Chinese counterparts about getting Mr. Lai out of jail? Because he's going to die pretty soon unless we get him out of that Hong Kong prison.

SECRETARY RUBIO: Yeah, it's a priority. We've raised it in every possible form and they know that it's important to us, and I think there are other countries as well that are very involved in raising this issue. And that needs to happen, and we're going to continue to raise it. Obviously, with some of these things you want to be careful what we say in the media. We don't want to jeopardize any efforts. But I think it's important to know that it's not something we've forgotten about and that it remains a priority, and I think other countries around the world are making the same point as well to the Chinese.

QUESTION: Very good. Now, the Iranian fanatics sell a lot of oil to China. That's the connection. I want to move to the attack on the Houthis this weekend. First of all, have the Houthis attacked us, or are they just putting out press releases over the last three days? Because they put out a lot of press releases that they're shooting at the *Truman*, and I understood Trump to say if they did that, the bombs would fall on Iran. What is the situation, Mr. Rubio?

SECRETARY RUBIO: Well, they've – look, they've – they say they attack. I mean, they launch and then they get shot down 100 miles away before it even is a threat, so DOD's had no problem defending. They're certainly not doing right now what they were doing at the peak of this thing, when they were attacking our Navy 150 times and global shipping 170 times. Maybe I got those numbers inverted, but nonetheless unacceptable.

And the one thing about President Trump is when he says things, he means it. And his – this effort is not a one-day thing. It's been going on now every night. It's been sustained, and it'll

continue until they no longer have the capability to threaten not just the U.S. Navy but global shipping. At the same time, the President's been clear. Iran is going to be held responsible for any assistance they continue to provide the Houthis. The President had a post earlier this morning where he outlined that Iran is still helping the Houthis – maybe not as openly, maybe not as much as they were in the past, but they're openly helping them. But they're still helping them, and that's unacceptable, and that needs to change.

So I won't get out ahead of the President other than to say I don't think I need to convince any of your listeners that when President Trump says something, he doesn't – he means it. Like, if he says something's going to happen, it'll happen.

QUESTION: (Inaudible) a couple of times. You deal with MBS and MBZ, and you deal with the Israelis. If it comes to blows, will we act in an alliance against Iran, do you think, or will we act alone?

SECRETARY RUBIO: Well, I think the President's been clear. He's prepared to do whatever it takes to prevent Iran from ever having a nuclear weapon. He's been abundantly clear. Now, he's a president that wants to promote peace. If you asked him, he would tell you he would much prefer to work this out diplomatically without a war. And that's his preference. That will always be his preference. But if you force him to choose between a nuclear Iran or taking action, the President's been clear: He will take action. Whether other countries seek to join us in that endeavor or simply cheer us on, sometimes quietly from the sidelines, that's another matter. But it certainly will not determine the steps we take, because we view a world with Iran having – and the ayatollahs, these religious fanatics, having nuclear weapons – that's just not acceptable.

QUESTION: I agree. Do we have the weaponry necessary to destroy their sites where they're conducting the illegal development programs, Mr. Secretary?

SECRETARY RUBIO: Well, let me just say on that – and that's probably a question better directed to DOD – but I'm confident enough to say that if the President makes the decision that we need to take action to prevent Iran from having a nuclear capability, we have the ability to do that, and to go further and perhaps even threaten the regime. But look, again, I'm at the State Department, right? We promote peace, not war. But obviously, the President's been clear that's what he prefers as well. So I always tell everybody I'd love to handle it through the State Department, but if we can't, then I have to turn these things over to Pete Hegseth over at the

Department of Defense. And – but we'd prefer to deal with it at the State Department, but you need a willing partner to do that.

QUESTION: Now, Mr. Secretary, I want to turn to the deportation flights. I'm on record as saying this is a case of first impression to my constitutional lawyer eyes. It's a non-justiciable political question. This judge should dismiss this case. And if they want to appeal to the D.C. Circuit, by all means let them try, but he should punt because he shouldn't be telling – that's my political opinion. Did you discuss with the President before the flights took off that we would have trouble with the courts as a result of this?

SECRETARY RUBIO: Well, we shouldn't have trouble with the courts. I mean, that developed in the middle of all this Yemen stuff going on at the same time on Saturday. So let me just back up for a second and say this. This is, to me, a conduct of foreign policy. We have a regime in Venezuela that refuses, absolutely refuses, to take its nationals, and they have an obligation to take their nationals. So we had to make an arrangement with another country, El Salvador and President Bukele, an arrangement that I made personally and followed up on again last week in conversations. And once those commitments were made – and they included, by the way, MS-13 criminals that he wanted to put on trial in his country for crimes committed in El Salvador – we had made a foreign policy commitment that we were going to keep.

It is my view that judges do not have the right to conduct the foreign policy of the United States. Go beyond the immigration issues that people focus on. These are alien enemies in our country. They're an organized group undermining the national security of the United States, and that needed to be dealt with. We made an arrangement with an international partner.

QUESTION: Let me pause here and give a signal to the stations down the road that I'm going to continue talking with Secretary Rubio and come back right away, so don't go anywhere. I'm talking with Secretary Rubio about the deportation.

Now, Mr. Secretary, when you talked to President Bukele, did you make an agreement —

STAFF: We're going to break. We're going to break.

QUESTION: I'm going to talk to him during the break (inaudible). When we had those conversations, did you receive any assurance from him that he would segregate the Venezuelan terrorists from the MS-13 gangs in the other prisons?

SECRETARY RUBIO: Well, we didn't have to make that agreement. We told them who we were going to send because the agreement is this: There's two different groups here. There are people that he wants because they committed crimes in El Salvador, and they're in the United States, and we agreed to return them so he can put them on trial for and deal with their justice system on the crimes they committed. And then we have Tren de Aragua, organized gang members and alien enemies inside the United States who are being housed by him in an excellent prison system that he has at a fraction of the cost of what it would cost to house them here in the United States. It is a matter that we've made, it's a foreign policy matter, and it's one that we weren't going to go back on because we make arrangements with foreign leaders – that's the conduct of foreign policy, and we can't have judges running the foreign policy.

QUESTION: I agree. I think you're going to win that case going away. Here's my political concern, because I used to cover gangs and the prisons of L.A. quite a lot. If you mix them up, they kill each other. I don't want to deport terrorists to a place where they'll be killed by other terrorists. Are you confident that they will be protected from other terrorists or other gang members who are their rivals in the cartel business?

SECRETARY RUBIO: Well, ultimately I can tell you that I have confidence that El Salvador runs an excellent prison system. That's why we engaged them on this process. They had capacity to assume them. They've done this before. They wiped out the MS-13 gang in El Salvador —

QUESTION: Yeah.

SECRETARY RUBIO: — in the way that they did it. So I think that my understanding is how they're going to handle it is he needs to handle them separately anyways, because the MS-13 guys that he's getting back are people that need to stand for justice for the crimes they committed in El Salvador. So that's a different process from the people we sent them, some of whom, frankly, are just alien enemies. So I don't know exactly how he's going to house them, but ultimately I – these are two separate tracks. They just happen to be as part of the same flights.

QUESTION: All right. Now, Mr. Secretary, I want to go back to Israel for a moment. It is clear to me that some of our foreign adversaries are using the internet to try and drive a wedge between Israel and the United States, and that antisemitic tropes are everywhere and they're trying —

SECRETARY RUBIO: Yeah.

QUESTION: — to split the indivisible alliance, the one – I think they're the equal of any ally that we have. Have you seen that? Does it concern you? Do you think there's any danger to our alliance?

SECRETARY RUBIO: Well, I don't think there's any danger to our alliance. I think there's most certainly people out there that are pursuing these. Some are because they – they want the clicks, they want the followers, whatever it is may be that's driving it. And I don't know who in specific, but I mean, they're out there doing that. And there are those, frankly, that hate Israel and hate the United States. And we've seen that engage itself and embed itself, for example, in what supposedly are supposed to be our elite universities in this country. And instead we have people on faculty and in the student body that are actively out there every single day not just protesting against Israel, but committing acts of vandalism and violence and rioting and all kinds of disruptive behavior on this matter.

So I think it's very disturbing to see that play out because, at its core, I believe, is antisemitism.

STAFF: One minute.

QUESTION: So they also – it brings us to the deportation proceeding against Mr. Nahil, which, again, is a non-justiciable political question that you have the authority under 8 1227 to do. Do you expect to win that case and do (inaudible) —

SECRETARY RUBIO: I do.

QUESTION: — other people like him?

SECRETARY RUBIO: Well, I do and we are. And we're going to continue to do it. Bottom line is if you told us that these are the things you were going to do when you came to the United States, we never would have given you – we should never give you a visa. If this is what you do once you get into the United States on a visa, we're going to revoke your visa, whatever status you have, and we're going to kick you out of the country. We don't want that – those elements in our country. So not only have we done it, we're going to continue to do it. And we're going to – and we're going to improve the way we screen people for their visas, by the way. It's amazing some of these people ever got in here to begin with.

QUESTION: I – I've got one more question for you, Mr. Secretary —

STAFF: Ten seconds.

QUESTION: — and it's got to do with China. I want to finish where we began. In his book – I'm talking with Secretary of State Marco Rubio if you're joining us. In his book on China, Henry Kissinger said Mao did not believe in deterrence. Do you think General Secretary Xi Jinping believes in deterrence, and can we deter him from attacking Taiwan?

SECRETARY RUBIO: I think that's a tough question because it's so fundamental to his identity and to what he wants to be part of his legacy. I do think you can delay and deter by making the price of taking Taiwan higher than what he perceives to be the benefit, but let's be clear. They believe the benefits are definitional for his – he wants that to be the defining crown jewel of his time in power. So it's a very delicate situation there. Our policy remains the same. We do not believe that there should be any violent and/or extortion-based change to the status.

QUESTION: Yeah, the Shanghai Communique said 100 years before anything would happen, and it's been only 50 years. The TSCM president meeting with President Trump in the Roosevelt Room was a big deal. I mean, that was a very big deal. Is that a signal of our resolve to stand by Taiwan?

SECRETARY RUBIO: Our policy is the same as it's been; it's been consistent. We believe that they status of Taiwan should not be changed by force or by extortion or compelled in any way. That's the policy of the United States; that remains the policy of the United States. That's been the policy of President Trump, and that will continue to be his policy. And when he makes policy decisions, he means them.

QUESTION: I will let you go with that. Secretary Rubio, keep coming back. Always a pleasure to talk with you. I appreciate your clarity and candor. Good luck in this very important mission that you're on.

SECRETARY RUBIO: Thank you.

TAGS

China | El Salvador | Immigration | Iran | Office of the Spokesperson

Organized Crime and Gangs | Panama | The Secretary of State | Taiwan

Exhibit R

An official website of the United States Government Here's how you know

Secretary of State Marco Rubio and Jamaican Prime Minister Andrew Holness at a Joint Press Availability

REMARKS

MARCO RUBIO, SECRETARY OF STATE
OFFICE OF THE PRIME MINISTER
KINGSTON, JAMAICA

MARCH 26, 2025

Cookie Settings

PRIME MINISTER HOLNESS: Good afternoon. It is my great pleasure to welcome United States Secretary of State, the Honorable Marco Rubio, to Jamaica. Now, I have known Secretary of State Rubio for some time, and I've always been very impressed by his deep knowledge of the region. Jamaica is deeply honored that you have chosen to visit us first on your official visit to the English-speaking Caribbean. This visit so early in your term confirms the strength of historic friendship and strategic partnership between Jamaica and the United States, one built on shared values, democratic ideals, and people-to-people ties. Our nations have long been united by a common commitment to freedom, prosperity, and security, and your visit today reaffirms this bond.

Today, we engaged in productive and constructive discussions focused on strengthening this partnership and expanding opportunities for collaboration. During our meeting, we addressed several critical areas of cooperation. Security, one major area, we reaffirmed our commitment to enhancing cooperation in combating transnational crime, ensuring the collective safety of our citizens, and mutually secured borders. We discussed a global war on gangs, and there is already significant policy alignment with both countries in this regard. The United States has been instrumental in supporting Jamaica's efforts to bolster its marine domain awareness and intelligence surveillance capabilities, which are crucial in our fight against organized criminal networks.

We discussed expanded and repurposing development assistance towards our shared goals, including security. This will exponentially expand our cooperation in fighting lottery scammers, transnational organized crime, trafficking in guns, and building safer communities. We are committed in ensuring our partnership delivers results in driving down criminality and trafficking in this hemisphere.

On Haiti, we look forward to continued partnership with the United States as we seek to work with the Haitian leadership and stakeholders to address the ongoing crises in Haiti. The extraordinary humanitarian, civil, and national security challenges in Haiti pose an acute threat to Haitians, to regional stability, and indeed to its close neighbors, including Jamaica. We agreed that we must do everything we can to stabilize the security situation in Haiti so that they are better able to build capacity and address their political and humanitarian challenges.

On trade, recognizing the United States as Jamaica's largest trading partner, with bilateral trade surpassing $3 billion in 2023, we explored avenues to further expand trade relations between

our two countries. The renewal of the Caribbean Basin Economic Recovery Act was raised as a matter of critical importance to trade for ourselves and for all CARICOM member-states.

We also explored means to attract increased U.S. investment into Jamaica's emerging sectors. With our stable macroeconomic framework and positive growth trajectory, Jamaica is open for enhanced U.S. investment across multiple sectors, including energy and nearshoring. In terms of logistics, the discussion touched on working with U.S. companies to leverage Jamaica's location as a premier transshipment hub in the Americas, and this will further bolster Jamaica's work as a major logistics hub for global trade.

On labor issues, the United States and Jamaica have enjoyed an 80-year-old history, relationship in terms of bilateral labor agreements, where we provide short-term skilled and semi-skilled labor in sectors such as agriculture and hospitality. We discussed ways to expand and enhance these agreements, including skills development partnerships to upskill and reskill Jamaican workers.

On our Travel Advisory, we discussed significant progress that we are making in bringing down all major crimes, and that Jamaica today is safer than at any time in the last two decades. In fact, crimes against visitors represent less than 0.01 percent of the more than 3 million visitors to Jamaica annually. We are committed to working collaboratively to ensure that travel advisories reflect the current realities and promote travel to Jamaica. I am confident that the dialogue initiated today will lead to tangible outcomes benefiting both our peoples and contributing to mutual stability and prosperity.

Indeed, our concern for enhanced regional and hemispheric security and prosperity was recognized as a shared one. I wish my CARICOM colleagues who are now in Kingston productive meetings as well with the Secretary this afternoon. Jamaica remains committed to fostering a partnership with the United States, one grounded in mutual respect, shared values, and a collective ambition for a stronger and a more resilient future.

I extend my sincere gratitude to Secretary Rubio and his delegation for their visit and for the productive and forward-looking discussions we have had. We look forward to building upon this foundation, deepening our collaboration, and taking our partnership to new and greater heights for the lasting benefit of both our nations.

Ladies and gentlemen, I thank you very much for joining us, and I now give the floor to —

SECRETARY RUBIO: Thank you.

PRIME MINISTER HOLNESS: — Secretary Rubio for his press statement.

SECRETARY RUBIO: Well, Mr. Prime Minister, first of all, thank you for the very warm welcome. On Tuesday was – I completed my ninth week on the job. So I told you I'd be here early; I think that's pretty early. And I'm glad to be here so soon. Thank you to the foreign minister as well for welcoming me, and all the work we do together, and to the people of Jamaica.

The ties, I would say, between the United States and Jamaica don't need to be explained. They're incredibly strong. And in particular, my home state of Florida, we were commenting close to – 800,000 to a million Jamaican expatriates who call the United States home. And I asked, was that just in Florida? (Laughter.) Because a very vibrant community that's contributed so much to the place that I've called home for so long.

And so we have a shared history that's tied together by people. I also would say that some substantial percentage of Americans have traveled here at some point in their lives. And that also binds countries together. Nothing binds countries and cultures more closely together than people. And we certainly have that in common, and we want to continue to make sure that we build on that.

We did touch on a couple of topics. The first is trade. The world, as has been closely followed, the President is in the midst of realigning American global trade policy, primarily to reset global trade in a way that's fair to the U.S. after 20 or 30 years of what we believe is unfairness – not when it comes to Jamaica, but broader. And from that will come real opportunities to create new alignments and new trade arrangements and new trade opportunities, and I believe Jamaica is one of those places that together we both stand to benefit.

In particular, we discussed supply chains. And we ask ourselves: Why, if so many of these products are destined for the North American market, why are so many of the productive capacities located halfway around the world? And there's a lot of different reasons why that's happened. But it makes all the sense in the world to see more productive capacity, more manufacturing, more industry, relocated into our hemisphere. We certainly have the labor and the population and the desire to do so in our hemisphere. It's closer to the end markets.

And so we want to pursue opportunities to make that possible, and clearly I think Jamaica is one of those places that could benefit; and the prime minister has that vision for the country, and

the creation of not just jobs, but jobs that pay even better than the jobs that maybe some could find now. So it's an opportunity, I think, would be mutually beneficial, and we're going to actively seek and look for ways to make that possible.

I also think there's extraordinary opportunities for investment. And we talked about it, whether it's – particularly in energy. The United States is going to be producing a lot of liquefied natural gas, which is a very clean fuel that we have in abundance and that we seek to export. And it's also critical, by the way. You cannot have manufacturing without reliable and affordable energy. And so it's one of those things that I think potentially we could continue to partner on along with other things, whether it's mining opportunities off the seabed – in essence, to utilize all of the resources of the country in a responsible way that protects your environment, that protects your natural beauty, but at the same time is generating income and opportunity of employment for the people. Ultimately, that's – governments have two prime responsibilities: the safety and prosperity of their people. And your prime minister and his government is very focused on those two priorities.

We did talk about tourism because obviously it's a significant part of your economy. And we pledged we were going to go back and re-evaluate the travel advisories as they currently stand to ensure that they do reflect the reality of the new numbers, what the numbers show. Because you've made very impressive progress in your general numbers overall when it comes to the murder rate and so forth, but in particular with those travel advisories are designed to American travelers. And I think we need to analyze that and just ensure that the status we're currently in accurately reflects the status quo and takes into account the progress you've already made this year and made last year, year over year, which I think is one of the highest numbers in terms of reductions that we've seen of any country in the region.

We have to talk about security, and I think that the prime minister has phrased it in a way that I think is very beneficial, and that is – he used the term "global war on gangs." Maybe we'll find some other phraseology in the United States to describe it, but we're talking about the same problem. It's amazing, if you look across the region – and really, many parts of the world – how many of the threats we face in the world now that once came from a ideological terrorist organization or from a nation state, are now coming from non-governmental criminal organizations, who in some cases are more powerful than the governments in some of these countries. And we've confronted this issue. It's a challenge in Mexico. It's a challenge on the border between Venezuela and Colombia. It is the challenge in Haiti, and it's been a challenge

here. And it's a multifaceted challenge. They are transnational for a number of reasons. One, as an example, is – and we've acknowledged this in our conversations that lead back to my time in the United States Senate – how many of the guns and the weapons that are being used by gangs to commit acts of violence here in Jamaica are purchased in the United States and then shipped here. And we want to commit to doing more to stopping that flow at the same time as we do more to commit to increasing your capacity. That's the other thing I underlined.

What we're talking about here when we talk about American assistance is America helping Jamaica build its own capacity, its own ability to confront these challenges and solve these problems because security is a baseline for everything. And to that end, we have some good things to announce today here.

We've – the JOLT Fusion Center that is starting up again, and that's been even further strengthened. That's going to help address lottery scamming. We can announce this synthetics detection equipment for Jamaica's forensic labs; another counter-gang recruitment program that we seek to launch as a result of our visit here today; and announce something that I think is really important, and that is software, intelligent software, for the law enforcement here in Jamaica to combat gangs – things like night vision goggles as well, technology. And we look to do more. And on that end, let me touch on a topic that we talked about just a little bit. Well, I'll touch on what the topic – then I'll get to this final one.

On – you mentioned upskilling and helping, how can we – it's a topic we hadn't touched on directly extensively before. We talked about it today. We seek to go back and find ways that we can partner to create opportunities for skills training so that if those companies – and we can attract those companies if we can attract – whether it's a logistics center or manufacturing – to come to Jamaica. There's a workforce that's been equipped with the skills needed.

Now, we face this challenge domestically as well. We need to do that ourselves. But there may be things that we can do in collaboration with one another. And this touches on the issue of aid – very controversial in the United States, but it's one of the reasons why I wanted to come here today because it in many ways highlights exactly what our vision for aid moving forward is.

The United States is not getting out of the aid business. We are going to be providing foreign aid. The difference is we want to provide foreign aid in a way that is strategically aligned with our foreign policy priorities and the priorities of our host countries and our nation states that we're partners with. In essence, how that would work, how it has worked in the past, is USAID or

some other entity would come into a country and say, this is what we think you need. And then they go out and hire an NGO that maybe are the ones that convinced them that that's what you need, and they give them a bunch of money and they come into the country and they do things. Some of these programs are fine. They're nice things. Other times, not so much. Nonetheless, that's how it used to be.

How we want it to be in the future is that our embassies are involved with the host government, our hosts, the – our partners. And we ask them, what are your needs? And we provide assistance geared towards the needs of the nation states that are hosting us and that we're partnering with. At the end, our partner in Jamaica, our partner all over the world, is the government. It's the host government, who have a clear vision for the future. And to the extent that our foreign aid can be helpful, it is in furtherance of what the people of your country have elected you to carry out.

Here there are a lot of things. We've just described some of them. What should our foreign aid be geared towards? It should be geared towards looking for opportunities to increase skills training, looking for opportunities to attract investment and business and trade, and looking, obviously, for opportunities to expand on your own domestic intelligence capabilities. We are going to have foreign aid that is aligned to our foreign policy, and our foreign policy is going to be aligned to our mutual shared interests with the partners that we have all over the world.

And I can tell you, Jamaica's an incredible partner to the United States. It's very cooperative on a number of fronts. And we will continue to work together, and we're going to work closer than we've ever worked before because we are now going to have U.S. programs for foreign aid that are going to be aligned with the vision that you've elected your leaders to carry out for your country. And that benefits us both.

And so I thank you for the opportunity to visit with you here today and talk about these things. I'm excited that we're going to be able to follow up on a lot of them and show real progress. The message that I've wanted to send in my travels – I've had to travel a couple of other places, but I've been to the hemisphere now twice – is very simple, and that is that the United States wants to ensure that when countries are cooperative and work with us and partner with us and constantly seek ways to engage us, that that leads to positive results and outcomes.

We – it's not – you can call it rewarding, but what it really means is it has to be a mutually beneficial relationship. And we want countries in the world, and we want countries in the region,

to identify being close to the United States as something that is beneficial and helpful – helpful to develop, helpful to grow, and frankly helpful so that one day many countries can serve – and I think – and Jamaica is already doing this – as a model of what other countries would seek to emulate, whether it's on security, on trade, on investment, on skills acquisition and improvement. These are the things that we want America – relationship with our partners to look like. And I can think of no better friend in the Caribbean and frankly in the Western Hemisphere than Jamaica and your government, Mr. Prime Minister.

And so we thank you for this chance to visit with you so early. And as I joked a couple times, but I'll say it again – I think I told it to the cameras already – I wanted to come here early so when I come for the second and third time, they don't accuse me of only wanting to go to Jamaica. (Laughter.) And – but in many ways, it really truly feels like home and – where I am in South Florida, and I thank you for your hospitality and this opportunity. (Applause.)

MINISTER DIXON: Good afternoon, Prime Minister Holness and Secretary Rubio. Thank you both for your remarks just now. We have several members of the media from Jamaica and the United States in the room with us this afternoon, but we'll only be taking four questions. And I ask that those who have been selected, that you please stand as you ask your question. And our first question is going to be from John Hudson of *The Washington Post*.

QUESTION: Thank you. Thank you very much. Mr. Secretary, a Republican congressman —

SECRETARY RUBIO: He came with me. Don't say I don't take you to nice places, all right? (Laughter.)

QUESTION: But thank you for the hospitality. Beautiful weather, beautiful country. Much appreciated.

SECRETARY RUBIO: I'm sorry. Yeah.

QUESTION: Mr. Secretary, Republican Congressman Don Bacon weighed in on the Signal chat breach saying the White House is, quote "in denial that this was not classified or sensitive data. They should just own up to it and preserve credibility." Do you think that's true? Also, here in Jamaica, there are USAID employees at our embassy, like so many others around the world, on administrative leave, not carrying out the work of the American people. Do you worry that the DOGE effort won't ultimately end up benefiting U.S. taxpayers?

And Prime Minister, violence and instability remains in Haiti. What would you like to see from the United States in terms of being a productive force. And a State Department envoy yesterday called the presence of Cuban doctors in Jamaica and elsewhere human trafficking. Do you agree with that?

Thank you.

SECRETARY RUBIO: Let me take the first – I've already – I mean, I've already addressed the aid one, but let me address it again. This is not about getting rid of aid; this is about restructuring how we're going to do aid. And when you restructure, there's some disruption and – but it has to happen. By the way, this is not an idea – this is an idea Condoleezza Rice wanted. This is an idea multiple secretaries of state throughout time have tried to achieve, and we intend to achieve it, because we think it makes all the sense in the world. So I recognize it; there's disruption involved when you make reform and you make change. But it's necessary, because our foreign policy and our foreign aid have to be aligned.

Foreign aid is an instrument of foreign policy, okay. It is not a global charity. Jamaica is not asking for charity; they're asking for development assistance so they can become stronger at their security needs and the other things of this nature. That's what they're asking for. They're not asking for a handout. They're asking for a hand up, help to build their capabilities so that they become a self-reliant partner and frankly could end up – and already are helping other countries. Jamaica now is contributing to the effort in Haiti, as an example. So these are the kinds of things we want to see in our foreign aid. So look, our goal was not to disrupt anyone's life. Our goal was to restructure the way we deliver foreign aid so that it is aligned with our foreign policy and with what we're trying to carry out at our respective missions around the world.

On the first question, let me just say on the Signal thing, this thing was set up for purposes of coordinating how everyone was going to call – when these things happen, I need to call foreign ministers, especially of our close allies. We need to notify members of Congress. Other members of the team have different people they need to notify as well, and that was the purpose of why it was set up. Obviously, someone made a mistake. Someone made a big mistake and added a journalist. Nothing against journalists, but you ain't supposed to be on that thing. So they got on there, and this happened. I've been – so I can speak to myself and my presence on it. I think my role – I – on it was – just speaking for my role, I contributed to it twice. I identified my point of contact, which is my chief of staff, and then later on – I think three hours

after the White House's official announcements had been made, I congratulated the members of the team.

I have been assured by the Pentagon and everyone involved that none of the information that was on there, though not intended to be divulged – obviously that was a mistake and that shouldn't have happened and the White House is looking at it – but that none of the information on there at any point threatened the operation or the lives of our servicemen. And in fact, it was a very successful operation, and it's an ongoing operation. But that was the intent behind it, and again, I think the Pentagon has made it clear that nothing on there would have endangered the lives or the mission. And the mission has been very successful.

QUESTION: Was it classified, the information?

SECRETARY RUBIO: Well, the Pentagon says it was not. And not only did it say it was not – they make very clear that it didn't put in danger anyone's life or the mission. The – there was no intelligence information. And understand – when this story first broke, they were sort of alluding to were there war maps, were there this – there was no war plans on there. This was a sort of description of what we could inform our counterparts around the world when the time came to do so.

Again, look, I think the White House is looking at this entire thing. How did that journalist get on there? Was this the appropriate – and I think they'll be reforms and changes made so this never – this – well, it's not going to happen again; it can't. But I want everybody to understand why this thing was even set up in the first place and also understand very clearly the mission was successful, and at no point was it in endangered. And that's coming from the highest-ranking officials at the agency that was in charge of the actual operation, which is the Pentagon.

PRIME MINISTER HOLNESS: In terms of Haiti, the United States has been an incredible partner – in fact the lead partner – in ensuring that resources and organization is brought to the crisis in Haiti. In terms of what more could be done, I think we are at a phase in Haiti where there has to be a rapid expansion of the Haitian National Police, the HNP, in terms of the manpower and resources, because ultimately the HNP has to take on the gangs. The present holding situation that we have is not necessarily moving the situation forward as we would all like, so there will have to be a significant expansion in resources in support of the HNP to enable them to take on the gangs.

In terms of Cuban doctors in Jamaica, let us be clear: The Cuban doctors in Jamaica have been incredibly helpful to us. Jamaica has a deficit in health personnel, primarily because many of our health personnel have migrated to other countries. We are, however, very careful not to exploit the Cuban doctors who are here. We ensure that they are treated within our labor laws and benefit like any other worker. So any characterization of the program by others certainly would not be applicable to Jamaica. We are ensuring that our program complies with all the international laws and standards to which we are a party to.

MINISTER DIXON: All right, our next question will come from Tauna Thomas from Nationwide News Network. Please stand.

QUESTION: Secretary Rubio, my question is – or questions in relation to the matter of the Cuba medical cooperation program as well. So the medical mission has been a cornerstone of health care in Jamaica and the Caribbean for over 50 years according to our foreign minister. How does the U.S. reconcile its stance on this program with the region's reliance on Cuban medical professionals, and what alternatives does it propose to ensure health care stability?

SECRETARY RUBIO: Yeah, well – yeah, I think the first thing is to separate the medical from the labor issues that we are pointing to, okay? This is not about doctors. This is not about the provision of medical assistance. We have no problem with medical assistance and we don't have a problem with doctors. We have a problem – and I'm not speaking about Jamaica; they've – they're – we discussed this today about following international labor standards and the like. But I'm just talking about this program in general, how it's operated around the world.

And how it's operated around the world is that basically the doctors are not paid. In many other parts of the world, the doctors are not paid. The doctor – you pay the Cuban Government; the Cuban Government decides how much, if anything, to give them; they take away their passports; they basically operate as forced labor in many places. Now, there are places that have better labor standards. Perhaps Jamaica is one of those, and that's fine. But I'm describing generally what the program has been. It has operated in that way in many parts of the world and placed these people in tremendous danger.

And so we – I think we can all agree that the trafficking in labor, be they doctors or farm workers, is not something that we would want to be supportive of, and we find that to be an egregious practice on the part of the Cuban regime. Now, every country operates their program differently, and obviously, because of our relationship with Jamaica we're going to – we're going

to engage with them on that and talk about it further and have a better understanding. Perhaps none of this applies in the way it's handled here. But generally that's the problem with the program. It's not that they're Cuban doctors, it's that the regime does not pay these doctors, takes away their passports, and basically it is in many ways forced labor. And that we cannot be in support of. Again, not speaking, about here in particular, but in general about the program.

MINISTER DIXON: Okay, our next question's going to come from Will Lowry from The National News.

QUESTION: Thank you so much for taking my question, Mr. Secretary. I just want to circle back to John's question re: the Signal chat. Are —

SECRETARY RUBIO: Ah, the Signal chat, yes. (Laughter.)

QUESTION: But of course. Are you planning on making the Europeans pay for U.S. operations against the Houthis given that their businesses seem to benefit more from opening of these shipping lanes as discussed in that chat?

And then moving to Russia-Ukraine, I was wondering if you could elaborate on the Black Sea ceasefire deal and whether – how it's progressing. President Zelenskyy has already questioned Russia's seriousness, saying, quote, "They are… trying to distort agreements and, in fact, deceive both our intermediaries and the entire world."

SECRETARY RUBIO: Okay. So on the first question about – look, here's the problem, okay? These guys, these Houthis, these are pirates, okay? This is a band of – it's a gang, in essence, that's gotten control of a certain part, but these are a religious fanatic gang. And these guys have missiles and they've launched 174 attacks against U.S. Navy ships, 150-something attacks on commercial vessels. They are literally saying they control – they've set up a toll system in the Red Sea. These ships can go, these ships cannot; they don't blow up the Chinese ships, they don't blow up somebody, but they blow up all the other ships. This is not sustainable.

And so I think the point that I've made publicly is we are doing a great favor to the world, the United States is doing a great favor to the world, going after these guys' capability of doing this. How can we live in a world where a group like this has advanced weapons, okay, and can shut down a shipping lane and increase the cost of shipping that we're all paying for? Everything we buy, all the stuff is embedded in the cost and in the price of these things is how much it costs to ship it. And so that's just not a sustainable thing. We can't allow it.

So I think the point I would make is not we're going to make anybody pay – it's everybody should recognize we are doing the world a great favor going after these guys, because this can't continue. This is unsustainable. What's next? Some gang's going to show up somewhere else and shut off another shipping strait, a shipping lane? That's not practical. It cannot happen.

So what was your first question? I was so fired up about that one that I forgot the other one.

QUESTION: The Black Sea ceasefire —

SECRETARY RUBIO: Oh, yes, that one – easy ones. Well, look, I think yesterday – our negotiators are en route or perhaps they've already arrived, after spending – I think they met with the Ukrainians twice, the Russians once. What we have here is an agreement in principle on a Black Sea ceasefire. We got two things from that. The first is we have more detailed definition of what the energy ceasefire entails, and the second is the principle, concept of a Black Sea ceasefire. Obviously, after our meeting, as part of their release, the Russians detailed a number of conditions that they want to see met in order to do that. So we're going to evaluate that. Some of those conditions include sanctions that are not ours; they belong to the European Union.

So we're going to be gathering and sort of when our folks get back, sitting down, going through the proposals, getting their impressions of the conversations so we can more fully understand what the Russian position is or what their ask is in exchange, and then we'll present that to the President who will ultimately make a decision about what – the next step here. I think it's a good thing that we have both the Ukrainians and the Russians talking about ceasefires, be they energy or be they potentially in the Black Sea, but obviously this is hard and difficult work. This is a protracted three and a – almost three-and-a-half-year war now, or three-year war. It has a lot of framework of sanctions that have been built globally now that that would – that have to be looked at as part of an ultimate end to a conflict. There's a lot of things that have to be worked through, and I certainly think the only way you're going to make progress on these things is by engaging with both sides, understanding their asks, their demands, and seeing what's possible.

So we're going to have a chance now to sort of sit down as a team and evaluate, when they arrive, in detail how the meetings went with the Ukrainians, how the meetings went with Russia, what are the Russians asking for, what are the Ukrainians asking for, compare all that, and then make a decision on that basis about what comes next in this process. In the end, the goal here

is peace. The goal is to end a war where people are dying. And I think everyone should be happy that the United States is engaged in a process of ending a war and bringing about peace.

It's not going to be easy. It won't be simple. It'll take some time. But at least we're on that road and we're talking about these things, and we're going to test it and see what's possible. We think we owe that to the world, and the President, I continue to say, is the only leader in the world right now – President Trump – who's in a position to even get these two nations to a city to talk about these things, albeit in rooms far apart from one another when these talks were going on. But nonetheless they're talking; it's the first time in a while that we've seen any conversation about this. But we have a lot of work yet to be done, and we'll know more after we get the readout from our teams.

MINISTER DIXON: Okay, our last question will come from Andrea Chisholm from Television Jamaica.

QUESTION: Thank you. Secretary Rubio, given changes to U.S. immigration policies, there are some Jamaicans who are afraid to travel back to Jamaica even though they are legitimate green card holders. What assurances can you give to those individuals that they would have no difficulty returning to the United States?

SECRETARY RUBIO: Well, yeah, green card —

QUESTION: And very quickly, sir.

SECRETARY RUBIO: Green card or residency? I mean permanent residents you're asking me about?

QUESTION: Permanent, yes.

SECRETARY RUBIO: Yes, okay. Okay.

QUESTION: And secondly, what problems, if any, does America have with China's investment in Jamaica?

SECRETARY RUBIO: Well, look, I mean, China's a rich and powerful country. Our problem is not investment, okay? Our problem is predatory practices. That's what we're concerned about. What we have seen all over the world is that China comes in and says, here's a bunch of money

for a project they never build. They've been – they bring their own workers to do the work; they don't hire the locals, they bring their own workers. And oftentimes it comes attached with a huge loan that can never be repaid, and now they hold it over your head forever. That's our concern. Our concern is unfair practices, too, where they come in, their government-subsidized companies underbid everybody because they're subsidized, but then they come back and charge whatever they want because now they've got the contract.

So these are the things that we remain very concerned about. Again, not specifically about Jamaica but in general. And so that's what we'll continue to highlight.

On the first point, I would say – let me talk about if you're a green card holder, you're not illegally in the United States. You're a green card holder, you are legally in the United States. What the President has said – and I don't know how anybody can disagree with this – every country in the world has immigration laws. And immigration laws, if you don't enforce them, you don't have immigration laws. Over the last few years we've had what, 13, 14, 15 million people enter the United States unlawfully and irregularly. No country in the world can assume that. By the way, that's not unique to us, right? Even here in Jamaica you've faced challenges of migration. And it's not that we don't sympathize with people that are leaving difficult circumstances, it's that no society can absorb mass migration from anywhere in the world. You just can't do it. And we're facing that challenge. That's not specific to Jamaica; I'm just speaking in general.

And so the President is doing something that, frankly, hasn't been done in a long time. He's enforcing our immigration laws, and that's what we're doing. So if you're a green card holder, you're not illegally in the United States. I think the challenge is for those who are illegally in the United States, we have to have immigration laws, they have to be followed. I mean, that – I don't know why that's an unreasonable demand. And frankly, I mean, Jamaica is not a major source of illegal migration, to be frank. It's not even in the top 10 or top 20 for that matter, I don't think.

So – but that said, we are enforcing our immigration laws. Because here's what happens if you don't: You'll get another 12 million people. And if tomorrow Jamaica announced anybody who wants to come can come in, you're going to get a lot of people too and it's going to be very disruptive. So we need to have immigration laws and we need to enforce them, and that's what we are – that's what the President is doing. That's what he promised voters he would do, and that's what we're going to continue to do. But if you're a green card holder, you're legally in the United States unless – unless – and I say this because a lot of these people come – unless you're some student visa holder who is a sympathizer of some terrorist organization and is running

around in our streets like a lunatic, burning down buildings and attacking students at universities, if you're one of these lunatics that's going to put on a mask over your face and break into a student union center and harass students and – we wouldn't have let you in in the first place.

If you had told us that was – if you told us, I'm going to America not just to study at your university but to tear up your campus, we would have never let you in. And if you do that once you come into the United States, we're going to kick you out. We're going to do that. And I don't care – I don't care what terrorist organization you're supporting, we're going to kick you out. If you're a gang member, we're going to kick you out, okay? If you're one of these violent gang members that's coming to the United States, then we're going to kick you out. That we're going to do. There's no doubt about it. But that, the President's very committed to that. And – but if you're a green card holder and you're not any of these things, you're going to be fine.

MINISTER DIXON: Prime Minister Holness and Secretary Rubio, as we close today's press conference, we want to thank you for your engagement here today. We thank all of the members of the media and all of the other guests who are here and we wish you safe travels and a happy rest of the day. Thank you.

SECRETARY RUBIO: Thank you.

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Secretary of State Marco Rubio and Surinamese President Chandrikapersad Santokhi at a Joint Press Availability

REMARKS

MARCO RUBIO, SECRETARY OF STATE
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MARCH 27, 2025

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MODERATOR: Good afternoon, President of the Republic of Suriname, His Excellency Chandrikapersad Santokhi; His Excellency Minister of Foreign Affairs of the United States of America, Mr. Marco Rubio. Welcome, everybody, dignitaries, ladies and gentlemen of the press. A warm welcome to this press moment in the context of the visit of the Secretary of State of America.

President Santokhi, I give you the floor.

PRESIDENT SANTOKHI: Thank you, Madam. Good afternoon to all of you. May I once again extend my warm welcome to the Secretary of State, His Excellency Marco Rubio, and his delegation. And I wish to acknowledge the accompanying media from the USA and also the Surinamese and other international media, and I thank you for being here for this opportunity.

Ladies and gentlemen, I have warmly welcomed the Secretary of State of the United States of America Marco Rubio and his delegation to the Republic of Suriname. And I may add that this is his first visit to the Caribbean, specifically Jamaica, Guyana, Suriname, and within a very short time after taking office.

Secretary of State Rubio, your visit provides a good momentum and opportunity on the way forward for our bilateral relationship. Suriname has a longstanding and strategic partnership with the United States of America. During our meeting, we have discussed opportunities for strengthening and expanding our bilateral relation and cooperation and furtherance of our partnership regionally. In the interest of further expanding the relationship, mainly in the field of trade and investment, we will work together to attract American investors to Suriname.

After all, cooperation with America and American business leads back to the beginning of the 19th century, and we currently have significant investment from the American companies, particularly in the oil and gas industry but also in the gold sector. And I look forward to the participation of the U.S. delegation in the upcoming edition of the Surinamese Energy, Oil, and Gas Summit and Exhibition, SEOGS, which will be held in Paramaribo in June of this year.

The importance of energy security in the Caribbean region was also addressed and discussed with Suriname, but also with Guyana, which are playing a crucial role. Both countries will become important partners for the Caribbean and the Western Hemisphere.

My thanks to Minister Rubio for including my country, Suriname, in his first visit to the Caribbean and for the support he has promised Suriname regarding the energy security and further intensifying the relationship, which will be in benefit of both our countries and both our people. Thank you.

SECRETARY RUBIO: Thank you, Mr. President. We first of all thank you for the very warm greeting. And I just began my 10th week as the Secretary of State, so I am happy to be able to make this visit so quickly. I want to extend my gratitude for the invitation, for the hospitality, and for the chance to interact with you – such a closer partner the country is, and you in particular have been, for the United States, and that's a partnership we want to build on.

Let me begin by extending my congratulations to your minister of foreign affairs, who will also be secretary general at the Organization of American States. It's an important organization that we want to see take on new vibrancy and new energy, and we look forward to working with you. It's something that the country should be very proud of. I think it signals the growing importance, relevance, the growing presence that as a nation you have on the regional stage and beyond. And so I wanted to extend that congratulations.

I also want to acknowledge the foreign policy of the United States, I think, over the last 20 years needs revision. It has largely ignored opportunities. When we have found close partners, we have often in our foreign policy neglected those opportunities, and we spent a lot of time on problems instead and on countries and leaders that give us a hard time. We're going to change that. We want to change that. President Trump wants to change that.

President Trump wants to make it clear that if you are a friend and ally, a partner of the United States, there are benefits for your country and for your people in doing so, and we want to enter it in terms of partnership. That's the way we view it. And so we wanted to take a particular interest in visiting and reaffirming our ties to both leaders and countries who have been strong partners, and you have been a very strong partner of the United States.

We recognize the difficulties you faced not so long ago when you came into office and had to take on a large debt, an economy that was underperforming. And these things take a little bit of time, but now you've reached and are reaching a point of stability, and now the exciting moment is ahead. Now is the opportunity to build upon that, build upon the pillars of successful nation-states, which is security and stability, so then you can reach prosperity.

And that's the path you're on, and I know it's a difficult path. I know it's a path that requires a little bit of patience, but it's an important path and the path you've put your country on and that we want to help you sustain and be on for the years to come, because you have an opportunity to do something very special here. You really do.

You have – most countries, when they experience growth in a mineral sector or in the energy sector, they often don't plan for it. They plan for generating the revenue, but they don't plan how that revenue is going to benefit the people. And you have taken the time, and your government has taken the time and put in the time, to construct a plan so that these things aren't just going to generate revenue; they're going to generate prosperity; they're going to generate opportunity.

That is the role of government. That is the role of forward thinking. That is the role of planning for the future. And you're doing that, and you're doing it in a way that, if done correctly and sustained, you stay on this path, you're going to have a country that's going to transform in this generation, and it's going to mean something extraordinary for future generations. And we just want to be a partner. We discussed in our private meeting that, unfortunately, we are witnessing in the region how oftentimes insecurity, instability, and poverty becomes contagious; it spreads and it impacts other countries.

But the reverse is true as well: Stability, security, and prosperity can also become contagious, and you have an opportunity not simply to change the destiny of the people of your country but in other ways and in direct ways really help impact the security, stability, and prosperity of the region. And we just want to be helpful. We believe it is in our national interest to have a Caribbean region that is safe and stable and prosperous, and you're at the vanguard of that in what you are doing.

And so we are just here to encourage you to continue to do that because we are going to do everything we can to ensure that American companies and American firms and investors who are looking for opportunities understand there's real opportunities here with the work you've put in to take on corruption, to take on – to establish strong rule of law and stability, so companies know if we invest in a sector it's going to generate revenue, jobs, and opportunity for the people of Suriname, but we also know that 5, 10, 15 years from now we're going to be safe in our investment because we have a country that has a strong democracy, has a stable rule of law, and has welcoming leaders who understand its importance for the people and for the future.

And that's what we commit to doing, for looking to opportunities to build on all of this. We've spoken about such – some of the mechanics of preventing drug trafficking organizations from ever getting a foothold here, of preventing these transnational crime gangs from ever getting a foothold here. We want to be your partner in stopping that from ever happening so you never, ever – now or in the future – face the problems that some other countries are facing.

And we've also talked about responsible ways, because you don't just want to – and you have the right vision for this. You don't simply just want to access the natural resources of a country. You want to do it in a way that's responsible, that protects the natural beauty of the land and preserves it so that future generations can enjoy it as well, and you have a unique and golden opportunity to do it. We're excited by your vision for it. We encourage the people of the country to sustain that vision, and we look forward to being your partner. We thank you for everything we've done together already and what hopefully we'll be able to continue to do in the years to come, certainly as long as I'm in this role.

So I thank you for this very warm welcome and I'm excited about the opportunity. And my understanding, Mr. Ambassador, I am only the fourth Secretary of State to visit?

AMBASSADOR FAUCHER: That's correct. Yeah.

SECRETARY RUBIO: But how many have visited twice? (Laughter.)

PRESIDENT SANTOKHI: That's up to you.

SECRETARY RUBIO: All right, so we have a new – we've just set a new goal. We've set a new goal, and hopefully we can come back again and reaffirm that. It – I am – I look forward to doing that.

PRESIDENT SANTOKHI: Thank you.

MODERATOR: Thank you very much, Your Excellencies. I give now the floor to Ivan Cairo from *De Ware Tijd*.

QUESTION: Good afternoon.

SECRETARY RUBIO: Good afternoon.

QUESTION: Thank you for this opportunity.

Mr. Rubio, you just brushed on the topic of security. What can Suriname expect in regards to drug trafficking and combatting drug trafficking? Because for years there has been discussions that DEA will put up their office again in Suriname. Is this discussed?

And also in regard to security, there was an agreement between Suriname and the United States, the Shiprider Agreement. Will that – will that be revitalized – the police cooperation with the police of Las Vegas? How is that in your policies? And the cooperation between the National Army of Suriname and the South Dakota military enforcements, how will that be or will that come into play the next coming years? Maybe the president could also chime in to that. Thank you.

SECRETARY RUBIO: Thank you. Well, on the first, I can't speak for the South Dakota National Guard, but I can tell you it's very cold in South Dakota, and so I think they'd probably like coming here and being helpful. How much does it snow here?

PRESIDENT SANTOKHI: Well, we can import it. (Laughter.)

SECRETARY RUBIO: Well, they're trying to get away from the snow. (Laughter.)

But you mentioned the DEA office. That's something we're going to take back as well. But here's what we want to do. Let me explain. The goal – we're having this debate in the United States about foreign aid, and this is one of the reasons why I wanted to come to the Caribbean because – and meet with all these countries.

For too long, our foreign aid has been driven by what we think you need. We tell you, okay, these are the five things we're going to do for you. Well, those aren't the five things you want. We're changing that. We want to make sure that we're providing the assistance that the countries need, and we want this power back over to our embassies under the State Department so we're providing the assistance you need.

Let me tell you the second. The best foreign aid programs are the ones that come to an end because they have achieved their purpose. The purpose of foreign aid is not for the United States to be here for 25 providing law enforcement. The purpose of the United States is to help you build the capacity so you will be able to do it sustainably forever. Our job is to help you become self-sustained in this regard; and not only self-sustaining, but the goal is ultimately to

help you be able to do this so well that you're now teaching other countries how to do it. You now become the country that helps others do it as well, and we think we can help with technology, with personnel, with best practices. We've talked about some of this already. We want to continue to build on that, because what we don't – what you don't want to see for a country is a place where drug trafficking organizations and gangs say that's a place where we can run guns, that's a place where we can move drugs, because they don't have the resources available to stop us.

Then you become a magnet for that sort of activity, and nothing will set you back on economic growth and prosperity faster than that. When these vicious gangs get into a country, they start shooting each other and anyone who's standing in between, and it destabilizes society. You never want to reach that point, and we want to help you prevent that. We want – when these drug dealers look at the world, we want them to say I don't want to go through Suriname because their police departments and their law enforcement is so strong they'll catch us; let's go somewhere else, or let's go into another line of work. And that's what we want to see.

So we are open to any programs we can do to build the capacity – which is already extensive; this partnership's very close. I mean, we cooperate on all of this already. We just want to keep building on it so that you can build a capacity where not only do you do it for yourself, but you're maybe helping other countries in the future do it because you've become so good at it. That's what we want to focus on; that's what we want to do.

PRESIDENT SANTOKHI: Yes, thank you, Secretary. Just to add some more information, yes, the topic of having the DEA office in Suriname again was discussed, and that will be further considered by the U.S. Government. The topic on the security agreement, as you mentioned, the Shiprider Agreement – we do have a new agreement, which has been approved already by the government, and that agreement has been submitted to the parliament, and we are waiting for the approval. But after the approval, that agreement will be a very strong mechanism to get more support from the U.S. Government in terms of technical support but also material support in the interdiction program, particularly those criminal organizations who are making use of our territory by illicit dropping of illicit (inaudible) but also illicit landing. With the new mechanism and with the technical assistance of the U.S. agencies, we'll bring an end to this threat, which is very dangerous for our nation but also the neighboring countries.

MODERATOR: Thank you very much, Your Excellencies. And now it's time for Ed Wong from *The New York Times*.

QUESTION: Hi, thank you, Mr. President, Mr. Secretary, for taking questions from us. Mr. Secretary, first to you. You've traveled throughout the region. As you know, China has a growing presence throughout the Caribbean and Latin America. You carried out an effort to limit a Hong Kong company's presence in the Panama Canal, and you talked with some reservations about Chinese projects yesterday in Jamaica. I was wondering, is it the aim of the Trump Administration to try and have the two superpowers reach an accommodation or an understanding where each power limits their military, diplomatic, and economic presence in the backyards of the other powers, meaning spheres of influence for each power?

And then related to China, in 2019 you supported legislation to support – to have the U.S. Government support the protesters in Hong Kong, the pro-democracy protesters. And mostly the protests were peaceful, but also occasionally they disrupted public life. And so based on your rationale for deporting campus protesters in the U.S., would you now support the Chinese Communist Party or Hong Kong authorities deporting foreigners who took part in those protests in 2019?

SECRETARY RUBIO: Yeah, the first question is silly, because the people that we're getting rid of in our country are vandalizing – they're not protesters; they're taking over college campuses, they're harassing fellow students. We let them in our country to study. We gave them a visa because they said, I want to go to your university, I want to get a degree. They didn't say, I want to go to university and I want to vandalize your library, and I want to chase Jewish students down the street, and I want to wear a mask over my face like if it's Halloween and terrorize people. We didn't give them a visa to do any of that.

So we don't want those people in our country. They're not – they're not demonstrating for – they're going beyond demonstration. They are going and they are creating a ruckus. They are creating riots, basically, on campus. And it's making – it's unfair for students. Some of these schools are some of the most expensive schools we have in America. People pay a lot of money to go to these schools. They borrow money to go to these schools, and you can't even go to class because some lunatic who's covering their face is running through campus, spraypainting things, harassing people. And they're in my country as a guest. We want them out. Every one of them I find, we're going to kick them out.

On your second – on your first question, I don't – we don't talk about spheres of influence. The United States in an Indo-Pacific nation. We have relationships with Japan, South Korea, the Philippines. We're going to continue those relationships. My problem with China is twofold. The first is we haven't – in many cases, we don't have American companies that have shown an interest in investing in a country, so they don't show up. You leave them with no option. My second problem is in a lot of these countries, the Chinese companies go and they do a terrible job. Not a bad job, a terrible job. I just came from Guyana, where we had to drive on a road the Chinese built that – you're on the trip with us.

QUESTION: Yes.

SECRETARY RUBIO: Did you have to go on this road?

QUESTION: Yeah, it was bumpy.

SECRETARY RUBIO: We almost all had concussions, because the plane – the road was so bad – it was terrible – they paid these people to build this road, and then they bring their workers. They bring their workers; they don't hire you, they bring their workers in to do all the work. And then – or they want you to borrow a bunch of money and then they hold it over your head.

So what I want is for countries to have an alternative to that. What we want is for countries to have an alternative to that. We – if you're going to build a road, I want you to, like, have a real road. They were better off with a dirt road then the road we were just on. And it's not the fault of the current administration in Guyana; that was a road that was built before. But they did a terrible job. If you did that job in America, someone would sue you for a lot of money, okay? It was a bad road. So we want to be able to ensure that we are providing alternatives to what we think is bad work by the Chinese that never finishes on time, is always overbudget, and brings their own workers, don't even hire the locals.

And one more point I would make in this regard. There are certain sectors, okay, when it comes to telecommunications and so forth, where I'm just honest with people. If you're going to have a telecommunications system that is controlled by Chinese companies, you're going to have trouble having American investors come in. Because they don't want all their stuff stolen. They don't want all their stuff yanked out by some back door that the Chinese have installed in their telecommunications system. Again, we've had to face that too in America, because Huawei was

deploying in America as well. Again, we have to have an alternative, though. There has to be somebody else that comes along and says, we can do it too, and we won't spy on you when we do it.

So our goal is twofold: create these options; but not just options that don't – that – to China; options to work that involves bad workmanship, overbudget, with debt attached, and using their own workers instead of yours. That's the alternative we want to provide in any endeavor we can.

QUESTION: Mr. President, do you have any comments on cooperation with China in this hemisphere?

PRESIDENT SANTOKHI: Well, I think the position which has been addressed by Secretary of State Rubio is quite clear what the position of United States of America is. Our position as a country is that we are developing our countries with international cooperation with a lot of countries – more than 170 countries we are cooperating. All these cooperations are based on pragmatism, based on the needs and the national interest of the countries.

So in relation to China, what we are doing as a country is that we do have several areas of development. We are looking for investors. We are inviting investors. And just what the minister has said, not all the countries are showing up. There are sometime more countries which are showing up for their interests and their projects. So we need to keep that aspect also into consideration.

My invitation to the minister was we need the private sector of the United States. A lot of those projects which are implemented in Suriname by Chinese companies – those projects were granted through international procedures, and through international bidding procedures our local companies, our local content (inaudible), are excluded. And most of these projects were financed by the Inter-American Development Bank, the World Bank, and our view is that soon you will have more opportunities for the Surinamese companies, more and more Surinamese companies will evolve.

And on the other side, we hope that more United States company will offer themselves and come to Suriname. We'll offer them all the incentives, and I think Suriname is a very close country to the United States of America. They don't have to look for opportunities in the Far East or in Africa. Here we are. Here we have the oil and gas, and we are very happy to welcome the

opportunity. We are very happy to welcome Halliburton, we are very happy to welcome Schlumberger, and we see more and more U.S. companies coming to Suriname to invest, and they are very welcome.

MODERATOR: Thank you very much, Your Excellencies. We have come to an end to this press moment. We thank you for being here. Thank you very much, and this is the end. See you next time. Bye.

TAGS

Bilateral Relations and Engagement | Bureau of Western Hemisphere Affairs | Economic Growth and Prosperity | Energy | Energy | Office of the Spokesperson | Official International Travel | The Secretary of State | Security and Defense | Suriname

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EXHIBIT 1

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Alice Miller
Chief Counsel
Numa Metoyer
Deputy Chief Counsel
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
830 Pinehill Road
Jena, Louisiana 71342
TEL: (318) 992-1850

☒ DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
JENA, LOUISIANA

IN THE MATTER OF:	)	
	)	In Removal Proceedings
MAHMOUD KHALIL	)	
	)	A [redacted]
	)	
Respondent	)	

Immigration Judge: Comans — Next Hearing 4/11/2025

The U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement ("Department") submits the following documents in the above referenced case in support of allegation five and the charge under INA section 237(a)(4)(C)(i).

Uploaded on: 04/02/2025 Case 2:25-cv-00621-JRG-RSP Document 3-3 Filed 04/02/25 Page 345 of 1548 PageID #: 1548
Case: 25-2162 Document: 4-3 Page: 345 Filed: 08/20/2025

Tabs	Documents
A	Letter The Secretary of State Washington From: Marco Rubio Subject: Notification of Removability Determinations under Section 237(a)(4)(C) of the Immigration and Nationality Act (INA)

Respectfully submitted on April 9, 2025,

NUMA V METOYER III

Digitally signed by NUMA V METOYER III
Date: 2025.04.09 13:47:41 -05'00'

Numa Metoyer
Deputy Chief Counsel
Department of Homeland Security
U.S. Immigration and Customs
Enforcement 830 Pinehill Road
Jena, Louisiana 71342

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CERTIFICATE OF SERVICE

On the date below, I have provided a copy of the Department of Homeland Security Document Submission to the respondent and/or the respondent's counsel via:

☐ Central Louisiana ICE Processing Center
830 Pinehill Rd,
Jena, Louisiana 71342

☑ the Executive Office for Immigration Review (EOIR) Court & Appeals System (ECAS), in accordance with 8 C.F.R. 1003.31. The electronic case record in ECAS includes a Form EOIR-28 Notice of Entry of Appearance, which indicates the respondent is represented by counsel for this proceeding. Pursuant to 8 C.F.R. 1003.32, filing the foregoing via ECAS will effectuate service of the motion upon the respondent.

☐ River Correctional Center
26362 Highway 15
Ferriday, LA 71334

☐ OTHER:

NUMA V METOYER III
Digitally signed by NUMA V METOYER III
Date: 2025.04.09 13:48:24 -05'00'

Numa Metoyer
Deputy Chief Counsel Department of Homeland Security Immigration and Customs Enforcement 830 Pinehill Road Jena, Louisiana 71342

4/9/25
Date

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TAB A

EOIR — 4 of 6

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Case 2:25-cv-02162-JEF Document 44-3 Filed 08/20/25 Page 348 of 1551 PageID: 1551

THE SECRETARY OF STATE
WASHINGTON

SENSITIVE BUT UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE

MEMORANDUM FOR THE SECRETARY OF HOMELAND SECURITY

FROM: Marco Rubio

SUBJECT: (SBU) Notification of Removability Determinations under Section 237(a)(4)(C) of the Immigration and Nationality Act (INA)

(SBU) I am writing to inform you that upon notification from the Department of Homeland Security's Homeland Security Investigations (DHS/ICE/HSI) on March 7, 2025, I have determined that [redacted] and Mahmoud Khalil (DOB: [redacted]; POB: Algeria), both U.S. Lawful Permanent Residents (LPRs), are deportable aliens under INA section 237(a)(4)(C). I understand that ICE now intends to initiate removal charges against them, based on assurances from DHS/ICE/HSI.

(SBU) Under INA section 237(a)(4)(C)(i), an alien is deportable from the United States if the Secretary of State has reasonable ground to believe that the alien's presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States. Under INA section 237(a)(4)(C)(ii), for cases in which the basis for this determination is the alien's past, current, or expected beliefs, statements, or associations that are otherwise lawful, the Secretary of State must personally determine that the alien's presence or activities would compromise a compelling U.S. foreign policy interest.

(SBU) Pursuant to these authorities, I have determined that the activities and presence of these aliens in the United States would have potentially serious adverse foreign policy consequences and would compromise a compelling U.S. foreign policy interest. These determinations are based on

SENSITIVE BUT UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE
Classified by: Secretary of State Marco Rubio
E.O. 13526, Reason(s): 1.4 (justification sections)
Declassify on: Month DD, YYYY

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Case 2:25-cv-12602-LJM-DRG ECF No. 1-3, PageID.44 Filed 08/20/25 Page 3 of 7 PageID: 1552

information provided by the DHS/ICE/HSI regarding the participation and roles of [redacted] and Khalil in antisemitic protests and disruptive activities, which fosters a hostile environment for Jewish students in the United States. My determination for [redacted] is also based on [redacted] citations for unlawful activity during these protests. The public actions and continued presence of [redacted] and Khalil in the United States undermine U.S. policy to combat anti-Semitism around the world and in the United States, in addition to efforts to protect Jewish students from harassment and violence in the United States. Consistent with E.O. 14150, America First Policy Directive to the Secretary of State, the foreign policy of the United States champions core American interests and American citizens and condoning anti-Semitic conduct and disruptive protests in the United States would severely undermine that significant foreign policy objective.

Attachments

Tab 1 – DHS Letter on [redacted]
Tab 2 – HSI Subject Profile of [redacted]
Tab 3 – DHS Letter on Mahmoud Khalil
Tab 5 – HSI Subject Profile of Mahmoud Khalil
Tab 5 – 8 USC 1227(a)(4)(C)

April 20, 2025

VIA ECF – FILED UNDER SEAL

Honorable Michael E. Farbiarz
United States District Judge
District of New Jersey
U.S. Post Office & Courthouse
Newark, New Jersey 07101

Re: Khalil v. Trump, et al., No. 2:25-cv-1963 (MEF) (MAH)

Dear Judge Farbiarz:

Petitioner respectfully writes to provide urgent information to the Court regarding Petitioner and his family which is relevant to this Court's consideration of Petitioner's pending Motion for Release ("Bail Motion"), ECF 93.[1] At approximately 8 a.m. ET, Petitioner's wife went into labor and she has been admitted to a hospital in New York City to give birth to their family's first child. As this Court is aware, the impending birth of their child – which had been anticipated to occur on April 28 – was a central ground upon which Petitioner sought bail from this Court, so he can be present to emotionally and physically support his wife and their newborn child during this pivotal moment for their family. As the birth is happening eight days earlier than expected, Petitioner's request has become obviously urgent.

Petitioner's counsel emailed the New Orleans Field Office Director for ICE Enforcement and Removal Operations at approximately 11:35 a.m. ET today, to request a two-week long furlough for Petitioner so he can be with his wife and his newborn child. Still, given the uncertainty of that request, and the meritorious and now even more urgent nature of his Bail Motion, Petitioner respectfully reiterates his request that the Court grant that motion as soon as possible.

Respectfully submitted.

/s/ Baher Azmy

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CENTER FOR CONSTITUTIONAL RIGHTS
Baher Azmy
Samah Sisay*
Diala Shamas*
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[1] Petitioner has filed this request under seal given the need for the family's privacy and security and will file the appropriate motion seeking leave of court pursuant to D.N.J. Local Rule 5.3.

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Counsel for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963
(MEF-MAH)

THIRD AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT

INTRODUCTION

1. This case concerns the government's targeted, retaliatory detention and attempted removal of a student protestor because of his constitutionally protected speech. Petitioner Mahmoud Khalil is Palestinian, a lawful permanent resident of the United States, and a recent graduate student at Columbia University. Over the last year and a half, Mr. Khalil has been a mediator, an active participant in, and at times the public face of, student protests on Columbia's campus related to Israel's military campaign in Gaza. The Trump administration has made no secret of its opposition to those protests and has repeatedly threatened to weaponize immigration law to punish noncitizens who have participated.

2. On or before March 8, 2025, Respondents adopted a policy ("the Policy") to

retaliate against and punish noncitizens like Mr. Khalil for their participation in protests concerning Israel's military campaign in Gaza. Under the Policy, Respondent Marco Rubio, the Secretary of State, would make determinations that the protestors' presence or activities in the United States would have potentially serious foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest. These determinations would then permit the Department of Homeland Security to seek to detain and deport the protestors.

3. Pursuant to the Policy, Respondent Rubio, the Secretary of State, purportedly made such a determination as to Mr. Khalil (the "Rubio Determination"). Secretary Rubio made this determination based on Mr. Khalil's lawful activity protected by the First Amendment: his participation in protests and his statements regarding Palestine and Israel.

4. Neither Secretary Rubio nor any other government official has alleged that Mr. Khalil has committed any crime or, indeed, broken any law whatsoever.

5. Pursuant to the Rubio Determination, the Department of Homeland Security decided to arrest Mr. Khalil, detain him, and place him in removal proceedings. On the evening of March 8, 2025, agents from the Department of Homeland Security ("DHS") arrested Mr. Khalil with no prior notice at his home and initiated proceedings to remove him from this country. After repeatedly transferring him across jurisdictions, the government ultimately detained Mr. Khalil in Louisiana, a thousand miles from his attorneys and his wife, who is a U.S. citizen and due to give birth next month.

6. During his arrest, the agents stated first that Mr. Khalil's "student visa" was being "revoked." After learning that he was in fact a lawful permanent resident, they instead stated that status was being "revoked" too.

7. It later came to light that the Department of Homeland Security was charging Mr. Khalil with being removable based on Section 237(a)(4)(C)(i) of the Immigration and Nationality Act (the "Foreign Policy Ground") and the Rubio Determination.

8. The Rubio Determination and the government's subsequent actions, including its ongoing detention of Mr. Khalil in rural Louisiana, isolating him from his wife, community, and legal team, are plainly intended as retaliation and punishment for Mr. Khalil's protected speech and intended to silence, or at the very least restrict and chill, his speech now and in the future, all in violation of the First Amendment. Indeed, contemporaneous and subsequent statements by administration officials expressly characterize the invocation of this rarely used provision as punishment for Mr. Khalil's lawful and protected speech. The Rubio Determination and Mr. Khalil's unjustified detention also violate his due process rights. Finally, the government's unlawful Policy of targeting noncitizens for removal based on protected speech is arbitrary and capricious and contrary to law in violation of the Administrative Procedure Act, and viewpoint discriminatory in violation of the First Amendment. Accordingly, this Court should vacate the Rubio Determination and the Policy, order Mr. Khalil's immediate release, and set aside the government's unlawful policy.

PARTIES

9. Petitioner Mahmoud Khalil is a Palestinian, born in a refugee camp in Syria, who holds Algerian citizenship. He is married to a U.S. Citizen, a soon-to-be father, a lawful permanent resident of the United States with no criminal history, and a Palestinian human rights activist on Columbia University's campus. In May 2025, he will graduate with a master's degree in public administration from the Columbia University's School of International and Public Affairs ("SIPA"), where he has been a student since January 2023. Mr. Khalil and his wife, who is eight months

pregnant, live in Columbia's residential housing in New York City.

10. Respondent Donald J. Trump is named in his official capacity as the President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of State and Department of Homeland Security. Respondent Trump's address is the White House, 1600 Pennsylvania Ave. NW, Washington, D.C. 20500.

11. Respondent William P. Joyce is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a custodian of Petitioner. Respondent Joyce's address is New York ICE Field Office, 26 Federal Plaza, New York, New York 10278.

11a. Respondent Yolanda Pittman is named in her official capacity as the Warden of Elizabeth Contract Detention Facility, also referred to as Elizabeth Detention Center. As Warden, she is responsible for the operations of Elizabeth Detention Center, including overseeing the people in the facility's custody, and as such she is a custodian of the Petitioner. Respondent Pittman's office address is Elizabeth Detention Center, 625 Evans St, Elizabeth, New Jersey, 07201.

12. Respondent Caleb Vitello is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a custodian of the Petitioner. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

13. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

14. Respondent Marco Rubio is named in his official capacity as the United States Secretary of State. In this capacity, among other things, he has the authority to determine, based on "reasonable" grounds, that the "presence or activities" of a noncitizen "would have serious adverse foreign policy consequences for the United States." Following such a determination, DHS may initiate removal proceedings under 8 U.S.C. § 1227(a)(4)(C)(i) (INA § 237(a)(4)(C)(i).) In addition to his legal responsibilities under Section 237(a)(4)(C)(i), he routinely transacts business in the Southern District of New York and as such is a custodian of the Petitioner. His address is United States Department of State, 2201 C Street, NW, Washington, D.C. 20520.

15. Respondent Pamela Bondi is Attorney General of the United States. In this capacity, she routinely transacts business in the Southern District of New York; is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(g) (2007); and as such is a custodian of the Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.

JURISDICTION & VENUE

16. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C.

§ 2241, Article I, § 9, cl. 2 (the Suspension Clause) and Article III of the U.S. Constitution, the Administrative Procedure Act, 5 U.S.C. § 701 et seq.; and 28 U.S.C. § 2201 (Declaratory Judgment).

17. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.

18. Venue is proper in the District of New Jersey under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. At the time Mr. Khalil filed his original petition, he was physically detained in this judicial district at the direction and under the authority of the Respondents at the Elizabeth Contract Detention Facility, in Elizabeth New Jersey. Respondent Yolanda Pittman is the director of Elizabeth Contract Detention Facility, where Mr. Khalil was physically held at the time of the time of filing, and resides in the District of New Jersey. Respondent William P. Joyce is the Acting Field Office Director of the New York Field Office, whose officers under his authority initially arrested Mr. Khalil, communicated that he was being taken to 26 Federal Plaza in New York, arranged for Mr. Khalil's detention in this District, transported Mr. Khalil to and from this District, and directed the ICE Online Detainee Locator to show Mr. Khalil's location as 26 Federal Plaza in New York, which was the location specified for Mr. Khalil at the time of filing. Respondents Pittman and Joyce also denied Petitioner's requests to call his attorney or family members during the period immediate preceding, during, and following the filing of this petition, including during Mr. Khalil's transport to, detention in, and transport from this District.

FACTS

Mr. Khalil's Background

19. Petitioner Mahmoud Khalil is Palestinian, but he grew up in a Palestinian refugee camp in Syria because his grandparents were forcibly removed from their ancestral home in

Tiberias, Palestine. When war broke out in Syria, his family was again displaced and are now dispersed throughout Europe and West Asia.

20. Mr. Khalil entered the United States on a student visa in or around December 2022 to pursue a Master's degree in Public Administration from the Columbia University's School of International and Public Affairs ("SIPA"). Mr. Khalil completed his program in December 2024, and has an anticipated graduation date of May 2025.

21. Mr. Khalil became a Lawful Permanent Resident in 2024. Mr. Khalil and his wife, a U.S. citizen, are expecting their first child next month, in April 2025. Together, they live in an apartment building owned and operated by Columbia University.

Mr. Khalil's Student Activism and Speech on Matters of Public Concern

22. As a Palestinian, Mr. Khalil has felt compelled to be an outspoken advocate for Palestinian human rights and, since October 2023, has spoken repeatedly about Israel's military operation in Gaza. Mr. Khalil has called Israel's actions in Gaza a genocide and criticized Columbia University for, in his view, financing and in other ways facilitating such violence. Mr. Khalil is committed to peaceful protest and being a voice for his people.

23. That commitment has taken on many forms. For example, in April 2023, Mr. Khalil became co-president of the Palestine Working Group at the School of International and Public Affairs (SIPA), where he helped organize educational events and lectures on Palestine. In the fall of 2023, Mr. Khalil became president of the Palestinian Student Society at Columbia (DAR), which "serves to engage with and celebrate Palestinian culture, history, and identity."

24. Additionally, Mr. Khalil has acted as a mediator and negotiator, facilitating dialogue between Columbia University's administration and its students. In this role, Mr. Khalil has advocated for his peers to be treated humanely and fairly by the university, while helping to ensure student safety and the smooth functioning of the university. For example, in the Spring of

2024, Mr. Khalil facilitated negotiations between members of the Gaza Solidarity Encampment[1] and the university administration. Indeed, Mr. Khalil was approached to take on this role because of his prior work at a British Embassy overseas, an internship with the United Nations in New York, as well his established relationships with the university administration.

25. Mr. Khalil stated in a CNN interview in Spring of 2024 that "as a Palestinian student, I believe that the liberation of the Palestinian people and the Jewish people are intertwined and go hand-by-hand and you cannot achieve one without the other." Mr. Khalil also explained that the student movement "is a movement for social justice and freedom and equality for everyone."[2]

26. Mr. Khalil's prominence as an outspoken student activist, along with Columbia University's position as a national focal point of student protests against Israel's military campaign in Gaza over the past year and a half, has propelled Mr. Khalil into the public eye. His visibility has been further amplified through his continued participation in interviews with national and international media outlets, including the BBC and CNN, as well as local press conferences.

27. Mr. Khalil's speech regarding international law, the obligations that the U.S. and Columbia University have under that law, the human rights of the Palestinian people, and related matters is speech protected by the First Amendment, including because it is speech on matters of public concern and is political speech at the core of the protection of the First Amendment.

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[1] *See* Isha Banerjee, *Timeline of the Gaza Solidarity Encampment*, Columbia Spectator (May 2, 2024), *available at* https://www.columbiaspectator.com/news/2024/05/02/timeline-the-gaza-solidarity-encampment/.

[2] Chelsea Bailey, *Who is Mahmoud Khalil? Palestinian activist detained by ICE over Columbia University protests*, CNN (March 11, 2025), *available at*: https://www.cnn.com/2025/03/11/us/mahmoud-khalil-columbia-ice-green-card-hnk/index.html. Chelsea Bailey, *Who is Mahmoud Khalil? Palestinian activist detained by ICE over Columbia University protests*, CNN, *available at*: https://www.cnn.com/2025/03/11/us/mahmoud-khalil-columbia-ice-green-card-hnk/index.html.

28. Like many student activists advocating for Palestinian rights, Mr. Khalil has endured immense scrutiny and personal attacks by private actors, including doxing and harassment. But until recently, he understood that because of the First Amendment, the government would not be able to retaliate against or punish him for his speech, or silence him by locking him up or banishing him from the country, even if powerful government officials disagreed with what he had to say.

The Federal Government's Hostile Campaign Against Palestinian Rights Advocacy: A Concerted Effort to Silence Protected Political Speech

29. In the fall of 2023, students from diverse racial, ethnic, religious, and socioeconomic backgrounds—including Mr. Khalil—began to mobilize on their campuses, many criticizing what they characterized as their universities' and the United States government's unwavering support for Israel's policies. These protests included Jewish students who sought to convey the message that such policies were "not in our name." In response, opponents of these students' messages—including President Donald J. Trump—frequently characterized peaceful protest and any speech in favor of Palestinian rights as inherently supportive of Hamas and antisemitic. For example, in several instances, he President Trump described a Jewish lawmaker who had criticized Israeli Prime Minister Benjamin Netanyahu as "a proud member of Hamas" and "a Palestinian," using "Palestinian" as a slur.[3]

30. During his campaign for re-election, President Trump repeatedly vowed to revoke the visas of international students engaged in pro-Palestinian protests or who publicly criticized

[3] Niha Masih, *Trump draws condemnation for using 'Palestinian' as a slur against Schumer*, Washington Post (March 13, 2025), https://www.washingtonpost.com/politics/2025/03/13/trump-schumer-palestinian-slur/. Indeed, in his first term, President Trump also issued Executive Order 13899, titled "Combating Anti-Semitism," which, among other things, adopted a definition of antisemitism that includes plainly protected criticism of Israel and its policies. *See* 84 Fed. Reg. 68779 (Dec. 11, 2019) (including as an example of antisemitism "drawing comparisons of contemporary Israeli policy to that of the Nazis").

Israel's actions.

31. For example, at a rally in Las Vegas on October 28, 2023, Trump pledged to "terminate the visas of all of those Hamas sympathizers, and we'll get them off our college campuses, out of our cities, and get them the hell out of our country."[4]

32. While the Gaza Solidarity encampments at college campuses took place in the Spring of 2024, Trump promised campaign donors that he would deport pro-Palestinian student demonstrators to get them to "behave." Upon information and belief, at a round table event in New York, he stated, "One thing I do is, any student that protests, I throw them out of the country. You know, there are a lot of foreign students. As soon as they hear that, they're going to behave."[5]

33. Similarly, in a social media post on his official X account on October 15, 2023, then-Senator Marco Rubio, referring to ongoing student protests in support of Palestinians, stated the U.S. should "cancel the visa of every foreign national out there supporting Hamas and get them out of America."[6]

President Trump Issues Executive Orders to Target Speech of Noncitizen Protestors

34. Shortly after assuming office on January 20, 2025, President Trump signed two executive orders aimed at fulfilling the above campaign promises: Executive Order 14161, titled "Protecting the United States from Foreign Terrorists and other National Security and Public Safety

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[4] Andrea Shalal and Susan Heavey, *Trump administration to cancel student visas of pro-Palestinian protesters*, Reuters (Jan. 29, 2025), available at: https://www.reuters.com/world/us/trump-administration-cancel-student-visas-all-hamas-sympathizers-white-house-2025-01-29/.29, 2025), available at: https://www.reuters.com/world/us/trump-administration-cancel-student-visas-all-hamas-sympathizers-white-house-2025-01-29/

[5] *Trump told donors he will crush pro-Palestinian protestors*, Washington Post, available at: https://www.washingtonpost.com/politics/2024/05/27/trump-israel-gaza-policy-donors/.

[6] Twitter, *available at*: https://x.com/marcorubio/status/1713652113098539120. In the CNN interview he included as part of the same post, then-Senator Rubio stated that "people marching at universities" were "supporters of Hamas" and "need to go."

Threats," signed on January 20, 2025, and Executive Order 14188, titled "Additional Measures to Combat Anti-Semitism," signed on January 29, 2025.

35. Executive Order 14161 states that it is the United States' policy to "protect its citizens" from noncitizens who "espouse hateful ideology." It further articulates the administration's desire to target noncitizens who "advocate for, aid, or support designated foreign terrorists and other threats to our national security," those who hold "hateful" views, and those who "bear hostile attitudes toward [America's] citizens, culture, government, institutions, or founding principles." The order's broad framing of "hostile attitudes" towards the American government could encompass any form of political dissent, including Palestinian rights advocacy.

36. Executive Order 14188 states that, in order to "combat campus anti-Semitism," the administration will target for investigation "post-October 7, 2023, campus anti-Semitism." The order adopts a definition of antisemitism that includes constitutionally protected criticism of the Israeli government and its policies.[7] In a fact sheet accompanying Executive Order 14188, the White House described the measure as "forceful and unprecedented," specifically targeting "leftist, anti-American colleges and universities." It framed the order as a "promise" to "deport Hamas sympathizers and revoke student visas," sending a clear message to all "resident aliens who participated in pro-jihadist protests" that the federal government "will find you… and deport you."

The Government Responds to Groups Identifying Noncitizen Protestors for Deportation By Adopting the Unlawful Policy

37. In response to these Executive Orders and as part of an escalating attack on the core political speech at issue, prominent groups at Columbia University opposed to Palestinian rights protests began publicizing names of individuals they wanted the government to deport. Specifically,

[7] *See supra* note 3 (describing definitions adopted in Executive Order 13899, titled "Combating Anti-Semitism," 84 Fed. Reg. 68779 (Dec. 11, 2019), and reaffirmed in Executive Order 14188).

these groups compiled lists of students who had engaged in Palestine-related advocacy and, upon information and belief, submitted these lists to ICE's tip line.[8]

38. For example, Betar USA—a self-described "Zionist activist organization"[9]—has published lists of Columbia student protestors, urging ICE to deport them under the executive orders. In a statement to a media outlet, Betar stated that it had "already submitted names of hundreds of terror supporters to the Trump administration."[10]

39. Betar identified Mr. Khalil, specifically, as one of its targets for deportation, including him on their "deport list." On January 29, the organization posted on social media that ICE is "aware of his home address and whereabouts" and confirmed that they "have provided all his information to multiple contacts."[11]

40. Media reports in March of this year described widespread fear of retaliation for pro-Palestine speech among noncitizen students, noting that the executive orders "already appear to be chilling political activism."[12]

41. Then, the week beginning Monday, March 3, 2025, ICE was spotted on Columbia's campus, increasing fears and further chilling students' ability to speak freely.

42. That same week, pro-Israel activists reportedly met with members of Congress as well as Secretary of State Rubio, specifically seeking Mr. Khalil's deportation.[13]

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[8] https://theintercept.com/2025/02/15/columbia-alumni-israel-whatsapp-deport-gaza-protesters/

[9] https://betarus.org/; https://www.middleeasteye.net/explainers/betar-who-is-far-right-jewish-american-group-blood-gaza

[10] Nicholas Liu, *A pro-Israel group says it gave the Trump administration a list of students to deport*, Salon.com (Jan. 31, 2025), *available at* https://www.salon.com/2025/01/31/pledged-to-deport-pro-palestine--and-a-pro-israel-group-has-already-made-a-list/.

[11] https://x.com/Betar_USA/status/1884796686020550930. This social media post falsely accused Mr. Khalil of saying inflammatory statements. *See id. See also* https://zeteo.com/p/scoop-emails-show-mahmoud-khalil-ask-columbia-protection-ice

[12] https://www.npr.org/2025/03/03/nx-s1-5307187/trump-executive-order-visa-pro-palestinian-foreign-students-protests-hamas-hezbollah-israel

[13] https://forward.com/news/703018/mahmoud-khalil-columbia-cuad-ice/

43. On March 7, 2025, Mr. Khalil emailed the Columbia University interim president writing that, "I haven't been able to sleep, fearing that ICE or a dangerous individual might come to my home."[14]

44. On or before March 8, 2025, Respondents adopted the Policy by which they would retaliate against and punish noncitizens like Mr. Khalil for their participation in protests concerning Israel's military campaign in Gaza. Under the Policy, Respondent Rubio, the Secretary of State, would make determinations that the protestors' presence or activities in the United States would have potentially serious foreign policy consequences for the United States and would compromise a compelling United States foreign policy interest. These determinations would then permit the Department of Homeland Security to seek to detain and deport the protestors

DHS Arrests Mr. Khalil as a First Implementation of the Policy and a "Blueprint" for Future Investigations and Deportations of Prominent Student Activists

45. On the evening of March 8, 2025, at approximately 8:30 p.m., Mr. Khalil and his wife were returning to their apartment from an Iftar[15] dinner at a friend's home.

46. When Mr. Khalil and his wife arrived at their apartment building, two individuals in plain clothes followed them into the lobby of the apartment building, which is owned and operated by Columbia University.

47. The individuals approached Mr. Khalil and asked, "Are you Mahmoud Khalil?" When Mr. Khalil answered in the affirmative, the men identified themselves as being with the Department of Homeland Security ("DHS") and announced that they had to take Mr. Khalil into custody. Mr. Khalil heard them announce on a radio, "he's here," at which point Mr. Khalil noticed two other individuals approach from inside of the building. Based on their location, they would

[14] https://zeteo.com/p/scoop-emails-show-mahmoud-khalil-ask-columbia-protection-ice
[15] Iftar is the name of the evening meal eaten at sunset by Muslims to break their fast during the holy month of Ramadan.

have required a key or otherwise been given permission to enter the building.

48. Mr. Khalil asked whether the agents had a warrant and they said that they had one on the phone and that they would show it to him. However, the agents never showed him a warrant. Mr. Khalil asked why they were here and they asserted that Mr. Khalil's visa was revoked. Mr. Khalil explained that he has a green card. At this point, the agents were creating a barrier between Mr. Khalil and his wife. The agents threatened Mr. Khalil's wife that she would also be arrested if she did not comply.

49. Mr. Khalil called his attorney, Amy Greer. Attorney Greer spoke with an agent who identified himself as Special Agent Elvin Hernandez. Agent Hernandez stated they had an administrative warrant and that Mr. Khalil's student visa had been revoked by the U.S. Department of State and therefore they were detaining him. Despite several requests by Mr. Khalil to see the warrant, the agents never showed him the administrative warrant.

50. Mr. Khalil's wife then went to the apartment to retrieve Mr. Khalil's immigration documents. She saw another individual in plain clothes on their floor of the apartment building holding a radio.

51. Attorney Greer advised Agent Hernandez that Mr. Khalil is a lawful permanent resident and has the right to due process. Agent Hernandez responded that the Department of State had revoked Mr. Khalil's green card, too, and that he would be brought in front of an immigration judge. Agent Hernandez stated that he would be taking Mr. Khalil to 26 Federal Plaza, the location of the ICE Field Office in Manhattan, New York. When Attorney Greer began to ask more questions, Agent Hernandez hung up on her. When Mr. Khalil requested to call her back, Agent Hernandez refused to allow Mr. Khalil to speak to his attorney again.

52. Mr. Khalil's wife presented the DHS agents with documents confirming Mr.

Khalil's status as a lawful permanent resident, handing them to an agent who was speaking on the phone. The agent looked confused when he saw the documents and said, "He has a green card" to the individual with whom he was on the phone. Mr. Khalil's wife heard the agent repeat that they were being ordered to bring Mr. Khalil in anyway.

53. The agents then handcuffed Mr. Khalil and brought him outside where there were multiple unmarked vehicles waiting. Mr. Khalil's wife asked for the names of the agents, their contact information, and how to reach them to follow up on her husband's detention, but they only advised her that Mr. Khalil would be taken to 26 Federal Plaza and otherwise refused to speak with her. They left her no business card or any information at all as to how to find out where her husband would be taken, on what grounds, or who she could contact.

54. The night of the arrest, Attorney Greer checked the ICE Detainee Locator ("ICE Locator") several times to confirm her client's location. She first checked the locator at 10:00 p.m. on Saturday, March 8th and found that Mr. Khalil was not yet listed in the system. She checked again at 1:35 a.m. on Sunday, March 9th, and saw that Mr. Khalil was listed as being in custody in New York. The ICE Locator entry also included an instruction to contact the New York field office. At 4:29 a.m. on Sunday, March 9,[16] Attorney Greer checked the locator once more, and the information remained the same. Shortly thereafter, at around 4:40 a.m. on Sunday, March 9th, Attorney Greer filed the original habeas corpus petition in in this case (ECF 2) in the Southern District of New York, based on information and belief that ICE was still holding Mr. Khalil at 26 Federal Plaza. During this time, Mr. Khalil made continuous requests to contact his attorney, including when agents asked him to sign several documents, but he was repeatedly denied.

55. The next morning, around 8:30 a.m. on Sunday, March 9, the ICE locator indicated

[16] Daylight Saving time began on March 9, meaning that clocks moved forward from 1:59am to 3am over the course of these events.

that Mr. Khalil was still in New York. Sometime after 9 a.m. on Sunday, the ICE locator changed to say that Mahmoud was detained in Elizabeth, New Jersey, at the Elizabeth Contract Detention Facility, a detention center privately owned and operated by the corporation CoreCivic. At 9:29 am, Mr. Khalil's immigration attorney attempted to call the Elizabeth facility twice, but no one answered. Around 11:20 a.m., Mahmoud's wife went to the Elizabeth Detention Center to see him, but she was told that Mahmoud was not showing up in the system.

56. At 1:47 p.m. on Sunday, March 9, after counsel had submitted a G-28 and sent a 1:22 p.m. email to ICE asking to be connected with him immediately, ICE responded by email informing that Mr. Khalil was in the process of being transferred to a detention facility within the New Orleans ERO Field Office, over 1,000 miles away.[17] Counsel emailed the U.S. Attorney's Office for the Southern District of New York, which confirmed that Mr. Khalil was en route to Louisiana. Counsel requested Mr. Khalil's immediate return, but was told that ICE would not consent to his return absent a court order. When Mr. Khalil's counsel attempted to schedule a telephone call with Mr. Khalil—a process that typically occurs the same day or the next day in New York—authorities in the Louisiana ICE detention facility offered a date ten days away.

57. Mr. Khalil's wife, who is 8-months pregnant, is unable to travel to Louisiana to see Mr. Khalil.

Mr. Khalil's Experience being Transferred Repeatedly and in Detention in Louisiana

58. While at 26 Federal Plaza on the night of March 8, the ICE agents took Mr. Khalil's biometrics. As they did so, Mr. Khalil saw an agent approach Agent Hernandez and say, "the White House is requesting an update."

[17] According to the copy of the NTA that Mr. Khalil's Counsel received on March 11, ICE was already preparing to transfer Mr. Khalil to the Central Louisiana ICE Processing Center while he was still detained at 26 Federal Plaza a few hours after his arrest.

59. Mr. Khalil was subsequently presented with several documents and asked to sign them, including a Notice to Appear ("NTA") for removal proceedings and a Custody Determination document. Mr. Khalil reviewed the NTA and Custody Determination and, because he did not fully understand the implications of signing them, he requested to speak with his lawyer before doing so. The ICE agent denied his request, prompting Mr. Khalil to refuse to sign.

60. The copy of the NTA states "YOU ARE ORDERED to appear before the immigration judge of the United States Department of Justice at: 830 Pinehill Rd, Jena, LA, 71342, LASALLE DETENTION FACILITY on March 27, 2025 at 8:30 AM to show why you should not be removed from the United States based on the charges set forth above." The copy is dated March 9, 2025, timestamped at 12:40 a.m., and signed by Supervisory Special Agent Timothy Moran at 26 Federal Plaza, New York, NY.

61. At some point in the night, Mr. Khalil was transported in handcuffs and shackles to Elizabeth Detention Center in New Jersey ("Elizabeth") but was not allowed to take his belongings—his shoes, jacket, and belt—with him. When Mr. Khalil asked about his belongings, he was told that he would be coming back to 26 Federal Plaza tomorrow, but that he could not spend the night there.

62. While at Elizabeth, Mr. Khalil again requested to speak with his lawyer, to which the officers responded that he would be allowed to do so after he was processed. Mr. Khalil spent the night in the cold waiting room for processing. Mr. Khalil requested a blanket but was denied. The next morning, as Mr. Khalil reached the front of the line to be processed, he was informed that processing would not be completed because ICE was coming from New York to transport him.

63. Around 12 p.m., ICE officers—one of whom Mr. Khalil believes he recognized from the night before at 26 Federal Plaza—handcuffed and shackled Mr. Khalil and placed him in

a van. The van had Mr. Khalil's belongings inside that were kept in 26 Federal Plaza. Mr. Khalil was told he was then going to JFK without further clarification.

64. At JFK, he was transferred to other government agents. None of the agents identified themselves or provided their badge information. At one point, Mr. Khalil noticed one of the agents received a text message instructing not to let his escort, Mr. Khalil, use his phone.

65. Mr. Khalil took an American Airlines flight from JFK around 2:45 p.m. to Dallas, Texas. During that flight, Mr. Khalil saw one of the officers receive a text message that instructed him not to let Mr. Khalil have a phone call.

66. Mr. Khalil arrived in Dallas, Texas around 5:30 p.m. and remained there until 9:30 p.m., at which time he was placed on another American Airlines flight—this time to Alexandria, Louisiana.

67. Mr. Khalil arrived in in Alexandria, Louisiana around 1:00 a.m. on Monday March 10. Upon his arrival, he saw between about four to five agents waiting for him. He was again shackled and placed in handcuffs. He was then placed in an ICE car, driven for about a minute, and then placed in a police car. The agents drove him to Jena, Louisiana.

68. Throughout this process, Mr. Khalil felt as though he was being kidnapped. He was reminded of prior experience fleeing arbitrary detention in Syria and forced disappearance of his friends in Syria in 2013. It was shortly after this that Mr. Khalil left Syria.

69. At no time throughout this process did any of the agents identify themselves.

70. Mr. Khalil then arrived at the Louisiana Detention Facility, where he was processed again. During his initial medical examination in Elizabeth, Mr. Khalil notified agents that he has an ulcer and needs to take his medication for it every day. Despite this, he was not given access to his medication until Tuesday evening. He sleeps in a bunker without a pillow or blanket. He continues

to worry about the wellbeing of 8-month pregnant wife and what will happen to them. He's also very concerned about missing the birth of his first child. In fact, Mr. Khalil turned down job offers that would have required him to miss the birth of his child. Throughout his wife's pregnancy, Mr. Khalil has been present for her doctor appointments.

71. Mr. Khalil also recently secured a coveted job position after four months of searching, and was scheduled to start this role in April of this year. In addition to fearing the loss of his expected salary, Mr. Khalil and his wife planned to obtain medical insurance through this role in order to cover health care costs, including for the birth and care of their expected child. Mr. Khalil continues to worry about the loss of income and health care, especially so close to the expected birth of his child.

72. It is very important to Mr. Khalil to be able to continue his protected political speech, advocating and protesting for the rights of Palestinians—both domestically and abroad. Indeed, Mr. Khalil was recently invited to go to Copenhagen to attend the premiere of a documentary in which he is featured and to speak on the panel after the premiere.

The Government Confirms that Mr. Khalil was Targeted for Deportation Because of His Protected Political Speech, in the First Implementation of their Policy

73. On March 9, President Trump issued a statement on Truth Social applauding ICE for arresting Mr. Khalil, whom he described as a "Radical Foreign Pro-Hamas Student on the campus of Columbia University." The President warned that Mr. Khalil's arrest was "the first of many to come," declaring that his administration would not tolerate "students at Columbia and other universities across the country who have engaged in pro-terrorist, anti-Semitic, anti-American activity," while promising to "find, apprehend, and deport these terrorist sympathizers from our country."[18]

[18] https://truthsocial.com/@realDonaldTrump/posts/114139222625284782

74. The White House reposted President Trump's statement on the social media platform X, accompanied by a mug-style graphic featuring an image of Mr. Khalil. Surrounding the photo were the words "ARRESTED BY ICE ON MARCH 9, 2025" and "LED ACTIVITIES ALIGNED TO HAMAS." The White House caption included the phrase "SHALOM, MAHMOUD" before quoting the President's statement.[19]

75. Secretary of State Marco Rubio stated, "We will be revoking the visas and/or green cards of Hamas supporters in America so they can be deported."[20]

76. The following day, the Department of Homeland Security issued a statement through its social media account, X, confirming Mr. Khalil's arrest by ICE was carried out "in support of President Trump's executive orders prohibiting anti-Semitism, and in coordination with the Department of State." The statement also accused Mr. Khalil of having "led activities aligned to Hamas, a designated terrorist organization" and asserted that both "ICE and the Department of State are committed to enforcing President Trump's executive orders and to protecting U.S. national security."[21]

77. In a statement to The Free Press on March 10, a White House official stated that Mr. Khalil was a 'threat to the foreign policy and national security interests of the United States' and that the federal government's "basis" for targeting Mr. Khalil was being used "as a blueprint for investigations against other students."[22]

78. On March 11, in response to an inquiry from the NY Times regarding Mr. Khalil's arrest, a spokesperson for the administration reportedly stated that "United States' foreign policy

[19] https://x.com/WhiteHouse/status/1899151926777749618
[20] https://x.com/marcorubio/status/1898858967532441945
[21] https://x.com/DHSgov/status/1898908955675357314; https://www.columbiaspectator.com/news/2025/03/10/department-of-homeland-security-confirms-arrest-of-palestinian-activist-mahmoud-khalil-sipa-24/
[22] https://www.thefp.com/p/the-ice-detention-of-a-columbia-student

includes combating antisemitism across the globe and that Mr. Khalil's residency in the nation undermines that policy objective."[23]

79. At a White House Press Briefing on March 11, Press Secretary Karoline Leavitt responded to questions about the arrest, asserting that the Secretary of State has "the right to revoke a green card or a visa for individuals who serve or are adversarial to the foreign policy and national security interest" and accusing Mr. Khalil of "siding with terrorists."[24]

80. In a press conference regarding this case on March 12, 2025, Secretary of State Rubio stated, "if you tell us that you are in favor of a group like this [Hamas], and if you tell us . . . I intend to come to your country as a student, and rile up all kinds of anti-Jewish . . . anti-Semitic activities," and "if you end up having a green card . . . we're going to kick you out."[25]

81. On March 13, 2025, when asked to justify the government's actions, Troy Edgar, the Deputy Secretary of DHS, did not dispute that Mr. Khalil had not broken any laws and instead asserted that he was "agitating and supporting Hamas" by "put[ting] himself in the middle of the process of basically pro-Palestinian activity." When asked directly if "any criticism of the Israeli government [is] a deportable offense," if "any criticism of the United States [is] a deportable offense," if "any criticism of the government [is] a deportable offense," and if "protesting [is] a deportable offense," Deputy Secretary Edgar did not dispute any of those statements.[26]

DHS Invokes the INA's Foreign Policy Ground against Mr. Khalil, in violation of the INA and the Constitution

82. Mr. Khalil's counsel did not receive DHS's asserted legal basis for his arrest and

[23] https://archive.ph/rD4sk#selection-1147.0-1159.428
[24] https://www.c-span.org/program/white-house-event/white-house-daily-briefing/657022 (timestamp 10:16)
[25] http://state.gov/secretary-of-state-marco-rubio-remarks-to-press/
[26] NPR, *Morning Edition* (March 13, 2025), *available at* https://www.npr.org/2025/03/13/nx-s1-5326015/mahmoud-khalil-deportation-arrests-trump.

detention until the afternoon of Tuesday, March 11, pursuant to an agreement with counsel for the government. His NTA states "the Secretary of State has determined that your presence or activities in the United States would have serious adverse foreign policy consequences for the United States." Citing Section 237(a)(4)(C)(i) of the Immigration and Nationality Act (the Foreign Policy Ground), the NTA further states "the Secretary of State has reasonable ground to believe that your presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States."

83. The Rubio Determination was exclusively motivated by Mr. Khalil's lawful, constitutionally-protected past, current, or expected beliefs, statements, or associations. Public statements by government officials, up to and including the President and Secretary of State, establish that Respondents are punishing, detaining, and attempting to silence Mr. Khalil because of his constitutionally-protected past, current, or expected beliefs, statements, or associations.

84. The Foreign Policy Bar expressly prohibits the Secretary of State from issuing a policy to exclude or condition entry based on a noncitizen's "past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States," unless the Secretary personally certifies to Congress that admitting the individual would compromise a compelling U.S. foreign policy interest. *See id.* (citing INA § 212(a)(3)(C)(iii)). Upon information and belief, Secretary Marco Rubio has not provided any certifications regarding a determination under the Foreign Policy Ground concerning Mr. Khalil to the chairs of the House Foreign Affairs, Senate Foreign Relations, and House and Senate Judiciary Committees, as required by 8 U.S.C. § 1182(a)(3)(C)(iv).

85. Nor could he. Legislative history reveals that Congress intended to limit the Executive's authority to exclude noncitizens based on their speech or beliefs. When the Moynihan

Amendment was passed in 1987, the Senate Committee warned that "[f]or many years, the United States has embarrassed itself by excluding prominent foreigners from visiting the United States solely because of their political beliefs." The amendment was intended "to take away the executive branch's authority to deny visas to foreigners solely because of the foreigner's political beliefs or because of his anticipated speech in the United States," while affirming "the principles of the First Amendment." (S. Rep. No. 100–75 at 11, 100th Cong., 1st Sess. (1987), reprinted in 133 Cong. Rec. S2326 (1987)).

86. Congress further evinced its intent to restrict the Executive's ability to exclude foreign speakers by asserting that such exclusions should not be based solely on "the possible content of an alien's speech in this country," that the Secretary's authority to determine that entry would compromise foreign policy interests should be used "sparingly and not merely because there is a likelihood that an alien will make critical remarks about the United States or its policies," and that the "compelling foreign policy interest" standard should be applied strictly. (H.R. Conf. Rep. No. 101-955, 101st Cong., 2nd Sess. (1990), reprinted in 1990 U.S.C.C.A.N. 6784, 6794).

87. In the decades since the Foreign Policy Ground was enacted, it appears to have been rarely invoked and reserved for cases involving high-ranking government officials or an alleged terrorist removable on other grounds and subject to high-profile prosecutions in their country of origin. It does not appear to have ever been applied to any person for engaging in First Amendment protected speech.

The government adds new allegations and a charge of removability pursuant to the Policy and in further retaliation for Mr. Khalil's speech and initiation of this lawsuit

88. One week after Mr. Khalil filed the present action, the government engaged in further retaliatory action. On March 17, 2025, the government amended Mr. Khalil's NTA to include new—false—allegations that Mr. Khalil engaged in "fraud" and "willfully misrepresent[ed]

a material fact" on his application for adjustment of status process (the "Post-hoc Charge"). *See* ECF 90-1 (basing these allegations on purported employment and associations not reported or reported incorrectly on an application which were, and still are, immaterial as to his eligibility for lawful permanent residency).

89. The Post-hoc Charge is meritless, pretextual, and further evidence of the government's unlawful Policy of targeting for detention and removal noncitizens who engage in protected expressive activity in support of Palestinian rights or critical of Israel. Like the Rubio Determination, the government added the Post-hoc Charge pursuant to this Policy as applied to Mr. Khalil. The Post-hoc Charge is retaliation for Mr. Khalil's speech and initiation of this lawsuit.

CLAIMS FOR RELIEF

FIRST CLAIM
Violation of the First Amendment to the United States Constitution

90. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein. The First Amendment to the United States Constitution provides in part that "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances." U.S. Const. Amend. I. The First Amendment protects past, present, and future speech, including speech by noncitizens.

91. The Rubio Determination, Policy, and Post-hoc Charge, Mr. Khalil's targeting, arrest, transfer, and ongoing detention violate the First Amendment because they:

- retaliate against and punish Mr. Khalil for his past protected speech;
- prevent him from speaking now (through detention);
- attempt to chill (through past punishment and ongoing threat) or prevent (through eventual removal) his future speech in the United States;

- deprive audiences of his present and future speech on matters of public concern; and
- chill other individuals from expressing views sympathetic to Palestinians.

92. These speech-related consequences are not side effects of an action with some other purpose; they are, instead, the point of the Determination and the government's subsequent actions against Mr. Khalil and are, in government officials' own telling, the result of their disagreement with his protected speech and the viewpoint it expresses.

SECOND CLAIM
Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

93. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

94. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

95. The government's detention of Mr. Khalil is wholly unjustified. *See Black*, F.4th at 157 (collecting cases stating that "[w]here an individual's liberty is at stake, the Supreme Court has consistently required the government to justify continued detention by clear and convincing evidence."). The government has not demonstrated that Mr. Khalil—a husband to a U.S. citizen, soon-to-be father to a U.S. citizen, and lawful permanent resident with no criminal history—needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Mr. Khalil cannot be safely released

back to his family.

96. Moreover, Mr. Khalil's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Zadvydas*, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). The sole basis of his detention—the Foreign Policy Ground and the Rubio Determination—are unlawful for the reasons discussed *supra*. Here, there is every indication that his "detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring).

97. The Policy and the Rubio Determination also violate Mr. Khalil's right to due process. The government's policy of targeting people like Mr. Khalil—lawful permanent residents, living peacefully in the country who engage in speech advocating for Palestinian rights—is unconstitutionally vague.

THIRD CLAIM

Violation of the Administrative Procedure Act and the *Accardi* Doctrine

98. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein. The government has adopted a policy of targeting noncitizens for removal based on First Amendment protected speech advocating for Palestinian rights. This policy is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C.A. § 706 (2)(A), (B), (C), and violates the *Accardi* doctrine and federal agencies' own rules, *see Accardi v. Shaughnessy*, 347 U.S. 260 (1954). In addition, the Secretary of State's determination that Mr. Khalil's "presence or activities would potentially have serious adverse foreign policy consequences for the United States" and "would compromise a compelling United States foreign policy interest"

is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C.A. § 706 (2)(A), (B), (C).

FOURTH CLAIM
Release on Bail Pending Adjudication

99. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint-Petition as if fully set forth herein.

100. This Court has the "inherent authority" to grant bail to habeas petitioners like Mr. Khalil. *See Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001) (holding that federal courts have inherent authority to set bail pending the adjudication of a habeas petition when the petition has raised substantial claims and extraordinary circumstances "make the grant of bail necessary to make the habeas remedy effective"). In considering a petitioner's fitness for bail, courts assess (1) "whether the petition raises substantial claims" and (2) "whether extraordinary circumstances exist that make the grant of bail necessary to make the remedy effective." *Elkimya v. Dep't of Homeland Sec.*, 484 F.3d 151, 154 (2d Cir. 2007) (cleaned up).

101. This petition raises numerous substantial constitutional and statutory claims challenging Mr. Khalil's retaliatory detention. As for the second factor, extraordinary circumstances exist here that make Mr. Khalil's release necessary to make the remedy effective. As long as Mr. Khalil remains in ICE custody, he will be prevented from speaking freely and openly—instead, his speech is severely curtailed and controlled by DHS. And it is effectively impossible for him to speak to the broader public at all. His detention is also preventing him from adequately litigating his removal proceedings, which the government has chosen to justify only in the press. Moreover, Mr. Khalil's wife is eight months pregnant with their first child. Not only is she unable to visit him where ICE has chosen to detain him, in Louisiana, but his continued detention prevents

him from caring for her at a critical time and will cause him to miss the birth of his first child. *See, e.g.*, *S.N.C. v. Sessions*, No. 18-CV-7680, 2018 WL 6175902, at *6 (S.D.N.Y. Nov. 26, 2018) (ordering immediate release of petitioner pending consideration of her claim that her abrupt deportation would violate her due process right to an opportunity to be heard on her application and in order to care for her children).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Vacate and set aside Respondents' unlawful Policy of targeting noncitizens for removal based on First Amendment protected speech advocating for Palestinian rights, including as applied to Mr. Khalil through the Rubio Determination and the Post-Hoc Charge;

3) Vacate and set aside the Rubio Determination;

4) Enjoin Respondents from transferring the Petitioner from the jurisdiction of this District pending these proceedings;

5) Order the immediate release of Petitioner pending these proceedings;

6) Order the release of Petitioner;

7) Declare that Respondents' actions to arrest and detain Petitioner violate the First Amendment and the Due Process Clause of the Fifth Amendment;

8) Award reasonable attorneys' fees and costs for this action; and

9) Grant such further relief as the Court deems just and proper.

Dated: May 1, 2025
Newark, NJ

NEW YORK CIVIL LIBERTIES UNION

Respectfully submitted,
/s/ Jeanne LoCicero
AMERICAN CIVIL LIBERTIES UNION
OF NEW JERSEY FOUNDATION

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing filing was served on counsel of record via this Court's CM/ECF system on May 8, 2025 pursuant to the Court's verbal ruling of May 2, 2025 granting Petitioner's motion to amend the petition.

/s/Jeanne LoCicero
Jeanne LoCicero
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973-854-1715

Counsel for Petitioner

U.S. Department of Justice
Civil Division

May 9, 2025

By ECF
Honorable Michael E. Farbiarz
United States District Judge
U.S. Post Office & Courthouse
Federal Square
Newark, New Jersey 07101

Re: ***Khalil v. Joyce, et al.*, Civ. Act. No. 25-1963 (MEF) (MAH)**
Government's Response to Court's Order (ECF No. 234)

Dear Judge Farbiarz:

Respondents ("the Government") submit this response to this Court's order (ECF No. 234). The Government refers to three instances below in which federal officials have invoked 8 U.S.C. § 1227(a)(4)(C) to initiate the removal of individuals from the United States. To protect privacy considerations and avoid inadvertent disclosures, the Government has anonymized the information.

1. On April 24, 2004, Secretary of State Colin Powell recommended to Secretary of the Department of Homeland ("DHS") Security Tom Ridge that the presence of an African national in the United States would have potentially adverse foreign policy consequences. Government authorities discovered evidence that the individual participated in and/or contributed to violent political activity while in Somalia. Based on this information, and in keeping with United States' interests in promoting democracy, the rule of law, an effective governing institution in Somalia, Secretary Powell concluded that allowing this alien to reside freely in the United States would undermine the country's foreign policy interests. Secretary Powell thus recommended that removal under 8 U.S.C. § 1227(a)(4)(C), and detained in the government's custody until his removal could be effectuated to Somalia or, alternatively, a third country.

2. On March 14, 2025, Secretary of State Marco Rubio determined that the presence and activities of another alien would have potentially serious adverse foreign policy consequences for the United States, because of (among other things) his "active support" for Hamas, his efforts to spread Hamas "propaganda," and his conduct in creating a "hostile environment" for Jewish students on campus. Secretary Rubio's memorandum stated that the individual's continued presence or activities in the United States would have potentially serious adverse foreign policy consequences and compromise a compelling U.S. foreign policy interest. DHS initiated removal proceedings, charging the alien with removability under 8 U.S.C. § 1227(a)(4)(C) based on the determination by Secretary Rubio.

3. On March 15, 2025, Secretary of State Rubio determined that the presence and activities of another alien present in the United States would have potentially serious adverse foreign policy consequences for the United States. The alien has a documented history of antisemitism and encounters with law enforcement, including incidents involving the possession of illicit drugs, a domestic dispute with his former spouse, and a 2015 episode in which he visited a gun store and bragged about "kill[ing] Jews while he was in Palestine." Secretary Rubio determined that the individual's continued presence and activities would have potentially serious foreign policy consequences and compromise a compelling U.S. foreign policy interest. Thus, DHS initiated removal proceedings, charging the alien with removability pursuant to 8 U.S.C. § 1227(a)(4)(C)(i) based on Secretary Rubio's determination.

These three examples are what the Government has been able to assemble in the time allotted by the Court. The Government is also reviewing the accompanying documentation for privilege and other sensitive information with all deliberate speed. The Government must ensure that it does not disclose information inadvertently and hopes to provide an update later today.

The Government also continues to review its databases and files for any other invocations of 8 U.S.C. § 1227(a)(4)(C)(i) to initiate removal proceedings. If other instances of the statute's invocation become known, the Government will inform the Court as appropriate. The Government cannot provide a firm deadline for its complete review at this time because it has not yet been able to confirm the full universe of materials that need to be reviewed in the short period of time afforded to respond to the Court's order.

* * *

Respectfully submitted,

YAAKOV M. ROTH
Acting Assistant Attorney General
Civil Division

DREW C. ENSIGN
Deputy Assistant Attorney General

SARAH S. WILSON
Assistant Director

s/ Dhruman Y. Sampat
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U.S. Department of Justice
Civil Division

May 9, 2025

By ECF
Honorable Michael E. Farbiarz
United States District Judge
U.S. Post Office & Courthouse
Federal Square
Newark, New Jersey 07101

Re: ***Khalil v. Joyce, et al.*, Civ. Act. No. 25-1963 (MEF) (MAH)**
Government's Second Response to Court's Order (ECF No. 234)

Dear Judge Farbiarz:

Respondents ("the Government") submit this letter in response to the second part of this Court's order (ECF No. 234).

The undersigned is aware of only one predecessor statute to Immigration and Nationality Act ("INA") § 237(a)(4)(C)(i), 8 U.S.C. § 1227(a)(4)(C)(i). That predecessor statute was INA § 241(a)(4)(C)(i), 8 U.S.C. § 1251(a)(4)(C)(i). It was adopted as part of Section 602 of the Immigration Act of 1990, Pub. L. No. 101–649, 104 Stat. 4978. The text of the enacted provision is as follows:

> An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable.

8 U.S.C. § 1251(a)(4)(C)(i) (1996). In 1996, Congress transferred the provision to its current location. *See* Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104–208, Div. C, § 305(a)(2), 110 Stat. 3009 (1996).

The Government refers to four instances below in which federal officials invoked 8 U.S.C. § 1251(a)(4)(C)(i) to initiate the removal of individuals from the United States. To protect privacy considerations and avoid inadvertent disclosures, the Government has anonymized the information as to the two cases that did not result in public court decisions.

1. On January 5, 1995, Secretary of State Warren Christopher determined that the presence in this country of Mohammad J.A. Khalifah, a Saudi national, would have potentially serious adverse foreign policy consequences for the United States under INA § 241(a)(4)(C), because he was convicted for terrorist activities in Jordan, among other things. *See In re Mohammad J.A. Khalifah*, 21 I. & N. Dec. 107 (BIA 1995). The Government has so far been unable to locate the relevant letter from Secretary of State Christopher to the Attorney General.

2. On March 29, 1995, Secretary of State Warren Christopher recommended to Attorney General Janet Reno that the presence in this country of a Haitian national would have potentially serious adverse foreign policy consequences for the United States under INA § 241 (a)(4)(C), because he was a co-founder and leader of an illegitimate paramilitary organization responsible for numerous human rights violations in Haiti. His presence and activities in the United States created the impression in Haiti that the United States was permitting this individual to use the United States as a base of operations and fueled rumors that the United States secretly supported him. Therefore, the Secretary concluded that his presence and activities in the United States would seriously undermine the compelling foreign policy objectives of supporting Haiti's democracy and of seeking respect for human rights in Haiti and throughout the world.

3. On October 2, 1995, Secretary of State Warren Christopher recommended to Attorney General Janet Reno that the presence in this country of Mario Ruiz Massieu, a Mexican national, would have potentially serious adverse foreign policy consequences for the United States under INA § 241 (a)(4)(C) because of existing allegations of Ruiz Massieu's engagement in political corruption in Mexico, among other things. *See Matter of Ruiz-Massieu,* 22 I. & N. Dec. 833 (BIA 1999); *see also Massieu v. Reno*, 915 F. Supp. 681, 711–12 (D.N.J. 1996). This individual was the former second-ranking law enforcement official in Mexico and had been charged criminally in Mexico. Therefore, the Secretary concluded that his presence in the United States would harm the foreign policy objectives of working with Mexico to confront criminality on both sides of the border and to support the reform of Mexico's justice system.

4. On April 4, 1997, Secretary of State Madeleine Albright recommended to Attorney General Janet Reno that the presence of a Palestinian national in the United States would have potentially serious adverse foreign policy consequences and compromise a compelling United States foreign policy interest. This person was a top leader of a designated foreign terrorist organization and had been declared a Specially Designated Terrorist. In addition, two U.S. courts had found probable cause that this person was criminally responsible for ten incidents of terrorism. Therefore, the Secretary concluded that his presence and activities in the United States would seriously undermine the compelling foreign policy objectives in the fight against international terrorism and the promotion of a peaceful resolution of the issues between Israel and Palestinians. The Secretary made this determination pursuant to INA § 241 (a)(4)(C), as it was designated prior to April 1, 1997, and INA § 237(a)(4)(C), as in effect after April 1, 1997.

These four instances are what the Government has been able to assemble in the time allotted by the Court. The Government is also reviewing the accompanying documentation for privilege and other sensitive information with all deliberate speed. The Government must ensure that it does not disclose information inadvertently.

The Government also continues to review its databases and files for any other invocations of 8 U.S.C. § 1251(a)(4)(C)(i) to initiate removal proceedings. If other instances of the statute's invocation become known, the Government will inform the Court. The Government cannot provide a firm deadline for its complete review at this time because it has not yet been able to confirm the full universe of materials that need to be reviewed in the short period of time afforded to respond to the

Court's order. The Department of State is continuing its search and inquiring about files that may not be in the agency's immediate custody. The Executive Office for Immigration Review is currently reviewing its databases and files.

Respectfully submitted,

YAAKOV M. ROTH
Acting Assistant Attorney General
Civil Division

DREW C. ENSIGN
Deputy Assistant Attorney General

SARAH S. WILSON
Assistant Director

s/ Dhruman Y. Sampat
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May 12, 2025

VIA ECF
Honorable Michael E. Farbiarz
United States District Judge
District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street, Newark, New Jersey 07101

Re: *Khalil v. Trump*, *et al.*, No. 2:25-cv-1963 (MEF) (MAH)

Dear Judge Farbiarz:

Petitioner writes to seek leave to provide the Court with a copy of the Secretary of State's 8 U.S.C. § 1227(a)(4)(C) determination in the case of Mohammad J.A. Khalifah (1995), which the government referenced in its May 9, 2025 letter, but stated it has been "unable to locate." (ECF No. 246 at 1). Petitioner's counsel, Marc Van Der Hout, obtained a true and correct copy of that determination during his representation of Mr. Khalifah in removal proceedings, which is attached for the court's consideration.

Respectfully submitted,

/s/ Baher Azmy

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* *Appearing Pro hac vice*

Counsel for Petitioner

United States of America

DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

January 20, 19 95

CERTIFICATION

BY VIRTUE OF the authority vested in me by Title 8, Code of Federal Regulations, Part 103 a regulation issued by the Attorney General pursuant to Section 103 of the Immigration and Nationality Act,

I HEREBY CERTIFY that the annexed documents are originals, or copies thereof, from the records of the said Immigration and Naturalization Service, Department of Justice, relating to

Mohammad J.A. KHALIFAH

File No. A29-457-661, of which the Attorney General is the legal custodian by virtue of Section 103 of the Immigration and Nationality Act.

Thomas J. Schiltgen
District Director

I.n Ex. 2

Immigration and Naturalization Service

Form ... (Rev. ...-73) N

THE SECRETARY OF STATE
WASHINGTON, D.C. 20520

The Honorable
Janet Reno,
Attorney General.

THE SECRETARY OF STATE

WASHINGTON

EXECUTIVE SECRETARIAT
95 JAN -6 A8:41
RECEIVED
DEPARTMENT OF JUSTICE

January 6, 1995

Dear Madam Attorney General:

I am writing to inform you that, pursuant to Section 241(a)(4)(C) of the Immigration and Nationality Act, 8 U.S.C. 1251(a)(4)(C), I have concluded that the presence or activities of Mohammad Khalifah in the United States would have potentially serious adverse foreign policy consequences for the United States. I request that you seek his deportation on foreign policy grounds, and that you take all steps possible, consistent with the Immigration and Nationality Act and other relevant law, to effect his deportation to Jordan.

My decision to invoke Section 241(a)(4)(C) with respect to Mr. Khalifah is based on the following considerations. Most significantly, global counterterrorism is among the top foreign policy priorities of this Administration. The United States is taking a leading role in international efforts, both bilateral and multilateral, to combat terrorism. The Department of State continually seeks to foster cooperation between foreign governments and international organizations in antiterrorist efforts.

Central to this policy is the effort to identify terrorists and ensure that they are brought to justice. Terrorist acts frequently occur outside the United States or are committed by persons beyond the reach of the United States; in such cases, we seek through intense diplomatic efforts to have countries with jurisdiction over the perpetrators bring the perpetrators to justice or, in appropriate cases, make them available to the United States for prosecution.

OFFICE OF THE DEPUTY ATTORNEY GENERAL
95 JAN 12 P12:21
DEPARTMENT OF JUSTICE

The Honorable
Janet Reno,
Attorney General.

We also work closely with foreign governments to ensure that international terrorists do not find sanctuary in countries that will not or cannot bring them to justice. Where possible, we share evidence and other information that can help curb terrorist activities.

Permitting Mr. Khalifah to remain in the United States would be at odds with these important foreign policy initiatives and would have potentially serious adverse foreign policy consequences for the United States. Mr. Khalifah has been identified to us by the Government of Jordan as a terrorist. He is accused of involvement in terrorist attacks against cinemas in Jordan, and has been convicted in absentia. The Government of Jordan has notified the Department of State that it seeks Mr. Khalifah's rendition and that, in accordance with usual Jordanian practice, he will be tried again if he is returned to Jordan, after which the previous verdict will be null and void.

I believe that the Jordanian request is made in good faith. To permit Mr. Khalifah to remain at large in the United States in light of his alleged activities and criminal conviction in Jordan, and Jordan's request for his deportation, would have potentially serious adverse foreign policy consequences in several respects. It would cast doubt upon the seriousness of our resolve to combat terrorism, and thereby undermine our ability to play a leadership role in this arena. It would also damage our credibility in making requests to other governments that they refuse to permit terrorists to travel freely in their own countries.

In the particular context of Middle East terrorism, it could damage U.S. relations with Jordan (a key player in the Middle East peace process) and other friendly foreign governments whose interests Mr. Khalifah threatens.

Jordan is aware of Mr. Khalifah's presence in the United States, and has asked for our assistance in sending him to Jordan so that he may be brought to justice. To permit Mr. Khalifah to remain in the United States in these circumstances would potentially be seen as an affront to Jordan and at odds with many of the basic elements of our cooperative bilateral relationship.

Ultimately, permitting Mr. Khalifah's presence in the United States would potentially undermine our longstanding and successful policy of international legal cooperation to bring about the prosecution of terrorists. If other countries concluded that we were not serious about combatting terrorists, or that we were not prepared to take the aggressive steps to bar terrorists from the United States, this would threaten the ability of the United States to obtain the assistance of foreign authorities in the combatting of terrorism, including U.S. efforts to bring suspects residing abroad to trial in the United States.

Accordingly, I have made the finding provided for in Section 241(a)(4)(C) and request that you take all reasonable efforts to ensure Mr. Khalifah's deportation from the United States. In addition, in light of the Government of Jordan's good faith request that Mr. Khalifah be rendered to Jordan, I request that you do everything possible, consistent with the Immigration and Nationality Act, to ensure his deportation to Jordan.

Sincerely,

Warren Christopher

Warren Christopher

May 21, 2025

VIA ECF
Honorable Michael E. Farbiarz
United States District Judge
District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street, Newark, New Jersey 07101

Re: *Khalil v. Trump*, *et al.*, No. 2:25-cv-1963 (MEF) (MAH)

Dear Judge Farbiarz:

Petitioner respectfully writes with an urgent request for this Court's intervention regarding his ongoing detention. Specifically, and for the reasons set forth below and to aid in his habeas and proceedings, Petitioner requests that this Court issue an order: (1) requiring the LaSalle Detention Facility to permit Mr. Khalil to have a private contact visit with his wife, Dr. Abdalla, and newborn child today, May 21, 2025, for two hours[1] and/or (2) at a minimum, permit Dr. Abdalla to join a contact visit currently scheduled with immigration counsel at LaSalle so the legal team can discuss legal strategy and facts known collectively between Dr. Abdalla and Mr. Khalil and which is relevant to his pending habeas case and for pending motions in his immigration proceedings. One of the first orders issued in this case was to direct the U.S. Attorney's office to ensure that DHS would provide regular access to counsel, *Khalil v. Joyce*, 1:25-cv-01935, ECF 29 (S.D.N.Y.), which is an equitable power this Court retains and authorizes the relief requested—modest as it is as compared to the painful costs of denial.

As the Court is aware, the Khalil family welcomed their first child one month ago, on April 21, 2025. In order to provide the most indispensable human connection and to help Mr. Khalil prepare for his ongoing habeas proceeding and for the upcoming immigration hearing, Petitioner's wife and his newborn baby have traveled over 6 hours and 1500 miles to visit Mr. Khalil in detention, which will be the first time he will be able to see or hold his family since his arrest and transfer to Louisiana, over 10 weeks ago. As this Court well knows, Mr. Khalil is purportedly in civil immigration detention, where he cannot be subject to punishment or retaliation; yet currently, routine legal or family visits only occur in a confined space permitting muffled communication through a full plexiglass window that permits no human touch.

Petitioner's counsel have made repeated requests for a contact visit to occur between Mr. Khalil and his wife and baby to the relevant ICE and GeoGroup administrators at the LaSalle Detention Facility in Jena. Such a visit is necessary for the most elementary human reasons and given the ongoing strain of his pending habeas petition, this visit is critical to ensure Mr. Khalil, who is an active participant his legal case, can continue to meaningfully contribute to the proceedings before this Court.

[1] Currently, Dr. Abdalla and Mr. Khalil have a visit approved for 6PM CT, however that visit would be a no-contact visit.

The relevant administrators have responded that they are unable to accommodate this request, including a confirmation of this refusal this morning. (Email correspondence attached as Exhibit A). ICE policy authorizes contact visits between detained individuals and family members, subject to the reasonable discretion of DHS officials.[2] The refusal to permit a contact visit is not reasonable and is further evidence of the retaliatory motive behind Mr. Khalil's arrest and far-away detention as well as the ongoing punitive nature of his detention. Petitioner, his wife and infant son are, as all the evidence in this case demonstrates, the farthest thing from a security risk. It is the government who chose to detain Mr. Khalil and send him 1500 miles from his family rather than detain him, as they could have (and as we have requested in seeking a transfer there), in Elizabeth, New Jersey, where counsel confirmed with an EDC official that family contact visits are ordinarily provided on a daily basis and where a parent is permitted to hold their child.[3]

In addition, a legal contact visit has been authorized for today between Mr. Khalil and his counsel, from 11-3pm CT. It thus appears the facility can accommodate contact visits absent a plexiglass barrier. Thus, the facility should make accommodations during or after this time for a private in-person visit where the family can be alone together for the first time. In addition, and at a minimum, counsel needs to meet with Petitioner and his wife together to discuss the factual circumstances surrounding his arrest on March 8, 2025. This discussion is relevant both to his habeas proceedings and his immigration proceedings. For the former, this conversation is relevant to his claims of retaliatory arrest and detention and the unusual circumstances surrounding both events that reflect the government's retaliatory motive. For the latter, Petitioner has an outstanding motion to terminate his removal proceedings on the grounds of his warrantless arrest and to rebut DHS's misrepresentation to the immigration court that Mr. Khalil attempted to evade his arrest.

Undersigned counsel emailed the government to seek assistance with this request and their position on this motion, and agreed to give the government until 12:30 PM ET to communicate a response. The government finally responded that they would not facilitate a contact visit as "doing so would pose security concerns, such as requiring the visit to occur in an unsecure part of the facility or requiring Mr. Khalil's wife and newborn inside a secured part of the facility." Petitioner has responded asking for clarification regarding these responses in the hope of reaching an accommodation, but is filing this motion nevertheless in the interest of expediency.

---

[2] *See* ICE Directive 11064.3 (Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults), which states that: "It is the policy of ICE to ensure that the agency's civil immigration enforcement activities do not unnecessarily disrupt or infringe upon the parental or guardianship rights of noncitizen parents or legal guardians of minor children or incapacitated adults, consistent with all legal obligations and applicable court orders." ICE Directive 11064.3 Section 2.

[3] *See also* Core Civic FAQ (attached as Exhibit B) (Q: "Who can visit?" A: "Detainees are allowed to receive visits from their families, associates, legal representatives, consular officials, and others in the community. All visitors must provide proper government issued photo identification.") (Q: "How do I get approval for a visit?" A: "No approval needed.") (A: "detainees may hold their small children").

Respectfully submitted,

/s/ Baher Azmy

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* *Appearing Pro hac vice*

Counsel for Petitioner

EXHIBIT A

CENTER FOR CONSTITUTIONAL RIGHTS

Diala Shamas <dshamas@ccrjustice.org>

Fw: [EXTERNAL] Request for Social Contact Visit with U.S. citizen wife and newborn child traveling from New York // Mahmoud KHALIL [redacted] (readnow - for Marc's filter)

Nora Ahmed <Nahmed@laaclu.org> Wed, May 21, 2025 at 10:46 AM
To: "Khalil v. Trump (All-Counsel)" <khalilvTrump_All-Counsel@nyclu.org>

Nora Ahmed | Legal Director
Pronouns: she, her, hers
American Civil Liberties Union of Louisiana
P.O. Box 56157, New Orleans, LA 70156
Tel: 917.842.3902| nahmed@laaclu.org
*Admitted to the New York Bar, not admitted to the Louisiana Bar

From: [redacted] <[redacted]>
Sent: Wednesday, May 21, 2025 9:30:07 AM
To: Nora Ahmed <Nahmed@laaclu.org>; [redacted] <[redacted]>
Cc: Marc Van Der Hout <JodyMarc@mindspring.com>; Marc Van Der Hout <MV@vblaw.com>; Johnny Sinodis <Jsin@vblaw.com>; Oona Cahil <Ocah@vblaw.com>
Subject: Re: [EXTERNAL] Request for Social Contact Visit with U.S. citizen wife and newborn child traveling from New York // Mahmoud KHALIL [redacted] (readnow - for Marc's filter)

Good Morning,

The visit will remain as non-contact as previously arranged. Thank you.

[redacted]

FACILITY ADMINISTRATOR, GEO SECURE SERVICES
The GEO Group, Inc.®
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Alexandria Staging Facility
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Jena, Louisiana 71342

[redacted]

[redacted]
www.geogroup.com

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From: Nora Ahmed <Nahmed@laaclu.org>
Sent: Wednesday, May 21, 2025 9:08 AM
To: [redacted] <[redacted]>; [redacted] <[redacted]>
Cc: Marc Van Der Hout <JodyMarc@mindspring.com>; Marc Van Der Hout <MV@vblaw.com>; Johnny Sinodis <Jsin@vblaw.com>; Oona Cahil <Ocah@vblaw.com>
Subject: Re: [EXTERNAL] Request for Social Contact Visit with U.S. citizen wife and newborn child traveling from New York // Mahmoud KHALIL [redacted] (readnow - for Marc's filter)

Good morning Facility Administrator [redacted] and DFOD [redacted],

As time is of the essence and mom and child are here after traveling 1500 miles, I am checking in on the below request.

Best,
Nora Ahmed | Legal Director
Pronouns: she, her, hers
American Civil Liberties Union of Louisiana
P.O. Box 56157, New Orleans, LA 70156
Tel: 917.842.3902| nahmed@laaclu.org
*Admitted to the New York Bar, not admitted to the Louisiana Bar

---

From: Nora Ahmed <Nahmed@laaclu.org>
Sent: Tuesday, May 20, 2025 4:46:52 PM
To: [redacted] <[redacted]>; [redacted] <[redacted]>
Cc: Marc Van Der Hout <JodyMarc@mindspring.com>; Marc Van Der Hout <MV@vblaw.com>; Johnny Sinodis <Jsin@vblaw.com>; Oona Cahil <Ocah@vblaw.com>
Subject: Re: [EXTERNAL] Request for Social Contact Visit with U.S. citizen wife and newborn child traveling from New York // Mahmoud KHALIL [redacted] (readnow - for Marc's filter)

Thank you, Facility Administrator Rice, for keeping the previously scheduled visits on the calendar.

I am writing again to ask you both—Facility Administrator [redacted] and DFOD [redacted]—for an exception to CLIPC's standing no-contact social visitation policy. We come to you requesting your assistance in uniting a new father with his less than one-month old first-born child, who, as you know, was born while his father was detained.

We understand that provision 5.7.V.B. in the PBNDS provides that facility administrators determine whether to permit social contact visits. We also understand that it authorizes exceptions to be made to the visitation standards on a "case-by-case basis when warranted by compelling circumstances." Those same standards indicate that a facility should "try to facilitate contact visitation when possible" between an individual detainee and his minor child.

So, while we understand the facility's standing policy for no-contact social visitation, we believe that the circumstances here are beyond compelling. Therefore, we are appealing to both of you to work with us to

find a way for CLIPC to make an exception for Mr. Khalil—so that he can hold his newborn child for the first time.

We are simply trying to unite father and child. Please let us know if it is at all possible to facilitate at least one contact visitation between the two.

Nora Ahmed | Legal Director

Pronouns: she, her, hers

American Civil Liberties Union of Louisiana

P.O. Box 56157, New Orleans, LA 70156

Tel: 917.842.3902 | nahmed@laaclu.org

**Admitted to the New York Bar, not admitted to the Louisiana Bar*

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From: [redacted] <[redacted]>
Date: Tuesday, May 20, 2025 at 3:02 PM
To: Nora Ahmed <Nahmed@laaclu.org>, [redacted] <[redacted]>
Cc: Marc Van Der Hout <JodyMarc@mindspring.com>, Marc Van Der Hout <MV@vblaw.com>, Johnny Sinodis <Jsin@vblaw.com>, Oona Cahil <Ocah@vblaw.com>
Subject: Re: [EXTERNAL] Request for Social Contact Visit with U.S. citizen wife and newborn child traveling from New York // Mahmoud KHALIL A[redacted] (readnow - for Marc's filter)

Good Afternoon Ms. Nora,

I understand your request for contact visitation; however, our facility procedures are for non-contact visitation only. The visit will remain on the schedule for non-contact as previously approved. Thank you.

[redacted]

FACILITY ADMINISTRATOR, GEO SECURE SERVICES

The GEO Group, Inc.®

Central Louisiana ICE Processing Center

Alexandria Staging Facility

830 Pinehill Road
Jena, Louisiana 71342

[redacted]

[redacted]
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From: Nora Ahmed <Nahmed@laaclu.org>
Sent: Tuesday, May 20, 2025 2:05 PM
To: [redacted] <[redacted]>; [redacted] <[redacted]>
Cc: Marc Van Der Hout <JodyMarc@mindspring.com>; Marc Van Der Hout <MV@vblaw.com>; Johnny Sinodis <Jsin@vblaw.com>; Oona Cahil <Ocah@vblaw.com>
Subject: Re: [EXTERNAL] Request for Social Contact Visit with U.S. citizen wife and newborn child traveling from New York // Mahmoud KHALIL A[redacted] (readnow - for Marc's filter)

Good afternoon DFOD [redacted] and Facility Administrator [redacted],

I understand per below that CLIPC has denied a contact visit—between Mr. Khalil, his wife, and his newborn child—because the facility does not provide for social contact visits. While I understand the information set forth in the email below, I am trying to square that with what I read as a policy directive that "[c]ontact visits may be facilitated at *all* ICE detention facilities." *See* https://www.ice.gov/doclib/detention-reform/pdf/facilitatingVisitationParents.pdf (accessed May 20, 2025) (emphasis added).

Taking into consideration CLIPC's standing policy denying all social contact visits, I am writing to ask that an exception be made pursuant to the above-mentioned policy, and/or to understand how a limited contact family visit can be provided for considering the age of Mr. Khalil's son—he is 29 days old today. ICE Directive 11064.3 (Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults) states that: "It is the policy of ICE to ensure that the agency's civil immigration enforcement activities do not unnecessarily

disrupt or infringe upon the parental or guardianship rights of noncitizen parents or legal guardians of minor children or incapacitated adults, consistent with all legal obligations and applicable court orders." ICE Directive 11064.3 Section 2.

We fully understand that the PBNDS states that facilities should make decisions and policies for visits within the "constraints of the safety, security and good order of the facility."(5.7.I, *Purpose and* Scope). But we also understand that facilities are encouraged to provide opportunities for *both* contact and non-contact visitation with approved visitors during both day and evening hours. (5.7.II, *Expected Outcomes*) (emphasis added). Moreover, the PBNDS clearly encourage consideration of the particular circumstances at issue for the person detained. 5.7.II.6 ("Generally visits should be for the maximum period practicable but not less than one hour with special consideration given to family circumstances and individuals who have traveled long distances.").

Here, contact visitation for Mr. Khalil with his wife and newborn son poses no risk of violating the facilities' conditions on safety, security, and good order. Indeed, based on public-facing CLIPC policy, it is only family or "social" visits that are non-contact; thus, contact visits are feasible broadly and can be reasonably accommodated. A simple contact visit for Mr. Khalil's wife and newborn child poses no risk of violating the orderly operation of the facility; indeed, as you are aware, the facility is highly secure, with multiple security checkpoints prior to entry. Existing policies already protect against such disruptions, and the minor exception to allow a contact family visit here would leave those in place. Further, such a meeting can be facilitated with minimal staffing requirements, greatly mitigating the impact to the operations of the facility.

Thank you both for considering this request. We are happy to continue working with ICE and CLIPC to identify any limited exception that may provide Mr. Khalil with the opportunity to see his wife, and his newborn son for the first time.

Best,

Nora Ahmed | Legal Director

Pronouns: she, her, hers

American Civil Liberties Union of Louisiana

P.O. Box 56157, New Orleans, LA 70156

Tel: 917.842.3902 | nahmed@laaclu.org

**Admitted to the New York Bar, not admitted to the Louisiana Bar*

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From: [redacted] <[redacted]>
Sent: Tuesday, May 20, 2025 7:33 AM
To: Oona Cahill <ocah@vblaw.com>
Cc: Marc @ Home <jodymarc@mindspring.com>; Marc Van Der Hout <MV@vblaw.com>; Johnny Sinodis <jsin@vblaw.com>
Subject: Re: [EXTERNAL] Request for Extended Contact Visits with U.S. citizen wife traveling from New York // Mahmoud KHALIL A[redacted] (readnow - for Marc's filter)

Good Morning,

The dates and times below are good for visitation. Please note that CLIPC does not offer contact visitation. The visitation extension is approved but it will be non-contact. Thank you.

Wednesday, May 21 (6pm-8pm)

Thursday May 22 (6pm-8pm)

Friday May 23 (9am-11am, and 6pm-8pm).

[redacted]

FACILITY ADMINISTRATOR, GEO SECURE SERVICES

The GEO Group, Inc.®

Central Louisiana ICE Processing Center

Alexandria Staging Facility

830 Pinehill Road
Jena, Louisiana 71342

[redacted]

[redacted]
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From: Oona Cahill <ocah@vblaw.com>
Sent: Monday, May 19, 2025 9:14 PM
To: [redacted] <[redacted]>
Cc: Marc @ Home <jodymarc@mindspring.com>; Marc Van Der Hout <MV@vblaw.com>; Johnny Sinodis <jsin@vblaw.com>
Subject: [EXTERNAL] Request for Extended Contact Visits with U.S. citizen wife traveling from New York // Mahmoud KHALIL A[redacted] (readnow - for Marc's filter)

Hi Warden,

Thanks again for your assistance coordinating the legal visit for this week. We also wanted to reach out to request that your facility provide extended contact visitation during family visiting hours with Mr. Khalil's U.S. citizen wife, Noor Abdalla, who will be traveling from New York to Louisiana this week to attend Mr. Khalil's hearing and visit her husband. Mr. Khalil's wife would like to visit her husband for as long as possible during the visitation periods on Wednesday, May 21 (6pm-8pm), Thursday May 22 (6pm-8pm), and Friday May 23 (9am-11am, and 6pm-8pm).

Because Ms. Abdalla is traveling from such a great distance after having just given birth to the couple's first child to visit her husband for the first time since he was detained ten weeks ago, we hope and assume that under the circumstances, the facility would be willing to arrange extended contact visitation. This request is in line with ICE's Performance-Based National Detention Standards (PBNDS), which encourage facilitating contact visits and allowing generous visitation policies for family members traveling far distances. *See, e.g.*, PBNDS 5.7, V.I.1 ("ICE/ERO encourages more generous limits when possible, especially for family members traveling significant distances."); PBNDS 5.7, II.4 ("Facilities are encouraged to provide opportunities for both contact and non-contact visitation with approved visitors during both day and evening hours"); II.6 ("Generally visits should be for the maximum period practicable but not less than one hour with special consideration given to family circumstances and individuals who have traveled long distances.").

Please let us know if there is any additional information that would be helpful in processing this request. We would be happy to discuss further on the phone to work out any logistics. Thank you very much for your assistance.

Best,

Oona

Oona Cahill

Litigation & Research Fellow

Van Der Hout LLP

360 Post Street, Suite 800

San Francisco, CA 94108

Main Line: 415-981-3000

Fax: 415-981-3003 | www.vblaw.com

VAN DER HOUT
Immigration & Nationality Law

Van Der Hout LLP is available and accessible. We are still fully operational both in-office and remotely, and continue to provide all services with little or no delay.

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EXHIBIT B

Elizabeth Detention Center

Elizabeth, New Jersey

Inmate Mail Information

- **Addressing correspondence properly**

  - All incoming and outgoing mail must be properly addressed and include the detainee's full name, Immigration A# and dorm/bed number. If all information is not included, mail will be returned. *Example:*
    - John Doe
    - A# 123456789
    - 625 Evans Street
    - Elizabeth, NJ 07201

- **General Correspondence**

  - Detainees may send or receive general mail from anyone they know. All general correspondence must be received in a standard legal or letter-size envelope.

- **Special Correspondence**

  - Detainees may also send or receive special correspondence from private attorneys and other legal representatives, government attorneys, judges, courts, embassies and consulates, ICE and the Office of the Inspector General, IHSC, and grievance officers.

  NOTE: When the sender is an approved special correspondent, as outlined above, the envelope should also be marked “Confidential” or "Legal".

- **Packages**

  - Detainees are not allowed to receive or send packages without advance arrangements and prior approval from facility officials.
  - Inspection and Rejection of Correspondence
  - All incoming and outgoing correspondence and packages will be opened in the detainee's presence (unless otherwise authorized by the Warden) and inspected for contraband.
  - Contraband includes, but is not limited to the following: materials that depict, describe or encourage activities that could lead to physical violence such as materials dealing with the subjects of self-defense or survival, weaponry, armaments, explosives, or incendiary devices; information regarding escape plots, plans to commit illegal activities or to violate ICE rules or facility guidelines; information regarding the production of drugs or alcohol; sexually explicit

material; threats, extortion, obscenity, or gratuitous profanity; a code; stamps, envelopes and blank paper; phone cards; photos larger than 5x7; books and magazines. (If magazines are approved, they must be received directly from the publisher). A package received without prior approval is considered contraband.

- ❖ Correspondence and packages containing contraband will be rejected.

Procedures for Sending Money

- ➢ Detainees will be allowed to have funds sent to them while in detention. Funds may be sent to detainees through one of the following methods:
  - ❖ To the company's bank lockbox at

CORECIVIC **Inmate Last Name, First Name, Commissary Number** Facility: **EDC** P. O. Box 16545 Atlanta, GA 30321-0545

- ➢ Western Union transfer services
- ➢ ConnectNetwork App (google play, app store)

Bank Lockbox

- ➢ Funds received must be in the form of a money order or cashier check made payable to the inmate/resident. There is no limit to the amount of funds that the inmate/resident may receive on any given day, unless contractual requirements mandate otherwise.
  - ❖ Cash will not be accepted.
  - ❖ Personal checks will not be accepted.
  - ❖ Checks made out to multiple parties will not be accepted.
  - ❖ Foreign currency will not be accepted.
- ➢ With the exception of personal checks received at the company's lockbox, unaccepted funds received will be sent back to the sender with a 16-1B Unaccepted Funds Notification. Personal checks received at the company's lockbox will be destroyed.
  - ❖ In the event cash is received, it will be deposited and a check will be written to the sender for the amount of cash received with a 16-1B Unaccepted Funds Notification.
- ➢ Incoming Funds

  All incoming funds must clearly indicate the inmate/resident's name and identification number.
  - ❖ Funds received at the company's bank lockbox may not have any other documents included in the envelope. Other documents or personal items received at the company's lockbox will be destroyed.

Western Union

- ➢ You can send money via Western Union by using the Internet, by phone or by a Walk-in Cash

Payment. The website for internet is www.westernunion.com/corrections. The phone number for phone quick collect is 1-800-634-3422.

- To send money via a Western Union Walk-In Cash Payment Location the following is a sample of a quick collect form.

Emergency Notifications

- Emergency notifications may be made to the Shift Supervisor 24 hours a day.

Visitation Frequently Asked Questions

Who can visit?

- Detainees are allowed to receive visits from their families, associates, legal representatives, consular officials, and others in the community. All visitors must provide proper government issued photo identification.
- Safety, security and good order are always primary considerations in a detention facility, and visitors must be properly identified and attired.

How do I get approved for visitation?

- No approval needed.

How do minors get approved to visit?

- No approval needed. Minors who are visiting the facility must be accompanied by an adult guardian

(18 years or older). Minors must not be left unaccompanied in the waiting room, visiting room or any other area.

How long does the application process take?

- There is no application process.

How will I know if I've been approved?

- No approval needed.

What are the days and times of visitation?

Visitation Schedule

Males		
Monday, Wednesday and Friday	(1700Hrs - 2045Hrs)	5:00PM - 8:45PM
Tuesday and Thursday	(1830Hrs - 2200Hrs)	6:30PM - 10:00PM
Saturday	(0900Hrs - 1745Hrs)	9:00AM - 5:45PM
Sunday	(0900Hrs - 1745Hrs)	9:00AM - 5:45PM
Females		
Monday, Wednesday and Friday	(2100Hrs - 2200Hrs)	9:00PM - 10:00PM
Tuesday and Thursday	(1700Hrs - 1800Hrs)	5:00PM - 6:00PM
Saturday	(1800Hrs - 1900Hrs)	6:00PM - 7:00PM
Sunday	(1800Hrs - 1900Hrs)	6:00PM - 7:00PM
Holiday Schedule		
Males	(0900Hrs - 1745Hrs)	9:00AM - 5:45PM
Females	(1800Hrs - 1900Hrs)	6:00PM - 7:00PM
Attorney Visits		
Sunday to Saturday	(0600Hrs - 2200Hrs)	6:00AM - 10:00PM

How long can I visit?

- Elizabeth Detention Center provides an opportunity for you to have up to one (1) hour of visitation with family and friends according to the Visitation Schedule. If there are more visitors than the visitation room can accommodate, it may be necessary to limit visits or its duration.

Where do I park when I arrive at the facility?

- Parking Lot across the street from facility is for Staff and Visitors

Will I be searched?

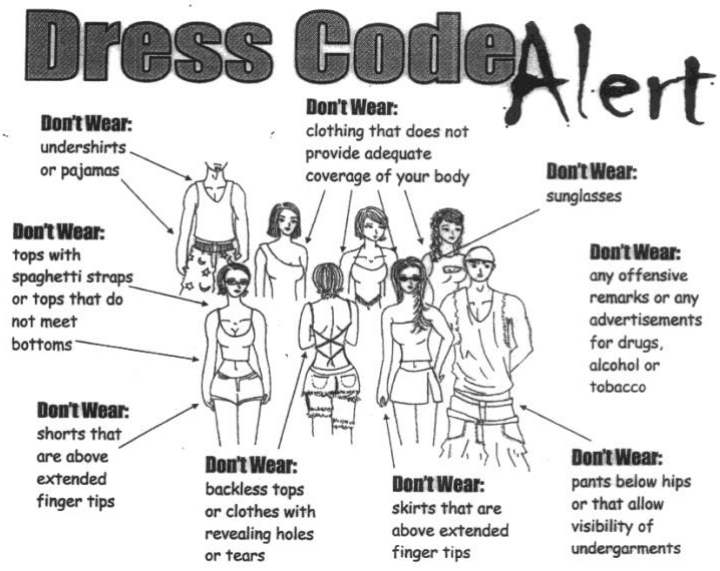
- Yes.
  - All visitors are subject to a personal search. This may include a pat-down search as well as a visual search of purses, briefcases, packages, and other documents. Any visitor refusing to be searched shall not be permitted to visit.

What is the dress code for visitation?

Visitor Dress Code

All visitors must be properly dressed and adhere to the following dress code:

- Shorts shall cover customarily covered areas of the anatomy, including the buttocks and crotch area, both when standing and sitting. Shorts no higher than mid-thigh are acceptable. Short-shorts, jogging shorts, cut-offs, and other obviously inappropriate short garments are prohibited.
- Shirts and dresses shall extend to mid-thigh, seated.
- Slits in skirts and dresses shall rise no higher than mid-thigh, seated.
- Sheer (see-through) or extremely tight clothing is prohibited.
- Tops that expose the shoulders and midriffs are not permitted. Examples of prohibited clothing items include, but are not limited to; bare midriffs, tube tops, strapless tops, and swimsuits.
- Coats, jackets, hooded sweatshirts, zip up/button sweatshirts and hats are not permitted. Space will be provided for coats and hats as they are NOT permitted in the visitation area.
- Shirts shall be worn at all times. Muscle shirts, bare mid-riff shirts and sleeveless shirts are prohibited.
- Shoes shall be worn at all times.
- Gang "colors" and other gang displays are prohibited.



Picture source from Le Folauga-The Journey

What type of identification do I need to be allowed into the facility?

- Valid government issued photo ID such as driver's license or passport.

What items am I allowed to bring to visitation?

- None

Can my visitation be shortened, suspended, or terminated?

CoreCivic has the right to shorten, suspend, or terminate visitation. Some examples which can affect your visit are listed below, but are not limited to:

- Visitors are expected to conduct visits in a quiet and orderly manner at all times. Disruptive conduct by minors, accompanying adults, or detainees may cause termination of visit.
- Under no circumstances shall visitors pass any item directly to a detainee, nor a detainee pass any item to a visitor.
- Visitors are NOT allowed to bring money to visitation.
- Cases of contraband introduction or criminal violations may lead to criminal prosecution of the visitor, detainee, or both.
- Visitors shall remain seated at their assigned table during the duration of the visit
- Detainees may briefly embrace and kiss each visitor once at the beginning and end of each visit
- Detainees may hold their small children or the children of their visitor.
- Detainees and their visitors may hold hands only if it can be observed by visitation staff. The holding of hands placed on one's lap is strictly prohibited.
- No other forms of affection or physical contact between detainees and visitors are permitted nor shall they be tolerated.
- No firearms or weapons of any kind are permitted in the facility.
- If visitors are or appear to be intoxicated, visitation will not be allowed.
- All visitors are subject to search while in the facility.
- Visitors are not allowed to carry any items into the visitation area.
- ***Please refer to Dress Code for further information***.

Note:

Minors must remain under the direct supervision of an adult visitor, so not to disturb other visitors. Disruptive conduct by minors, accompanying adults, or detainees may cause termination of visit.

May 27, 2025

VIA ECF
Honorable Michael E. Farbiarz
United States District Judge
District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street, Newark, New Jersey 07101

Re: *Khalil v. Trump*, *et al.*, No. 2:25-cv-1963 (MEF) (MAH)

Dear Judge Farbiarz,

Petitioner Mahmoud Khalil thanks the Court for its May 21 order, ECF 262, and writes to update the Court about various structural barriers to his access to counsel and witnesses, as those relate to his fully-briefed motions for release pending adjudication of his habeas corpus petition, *see, e.g.,* ECF 91 at 22, and to compel his return to New Jersey, ECF 11 and 96. To be clear, Petitioner respectfully submits this update, but seeks no new relief by way of this letter.

Petitioner's need to request a federal court's intervention last week illustrates how Mr. Khalil's continued detention at the Central Louisiana ICE Processing Center in Jena during the pendency of this matter in this Court in New Jersey impedes his meaningful access to his habeas counsel and to witnesses—including his own spouse—who would assist in his prosecution of his habeas case.

To begin with, it has been enormously difficult for counsel to arrange in-person legal visitation or to communicate remotely with Mr. Khalil fully and effectively. Louisiana's great distance from New Jersey and Mr. Khalil's attorneys itself poses significant problems, along with the limitation of virtual meetings, which complicates even the simplest lawyering act of reviewing legal documents with an incarcerated client. But the specific location of the Jena facility itself has compounded those significant hurdles, even when counsel attempts to arrange out-of-town visits there. The nearest airport, hotels, and rental car facilities are in Alexandria, approximately one hour away, and the nearest large cities (New Orleans, Dallas, and Houston) are more than a four-hour drive away. Moreover, the small size of the Alexandria airport means that travel from the greater New Jersey region is complicated and costly to rearrange at the last minute.

When in-person visitation in Jena does occur, that access is insufficient to allow habeas counsel to properly consult with and advise Mr. Khalil. It also pales in comparison to the access that Mr. Khalil would maintain to habeas counsel if he were detained in New Jersey. The government confirmed in its May 21 declaration that there is no regular space for counsel to have contact legal visitation with Mr. Khalil at the facility in Jena. *See* ECF No. 263-1 ¶ 10 (noting that all visitation spaces at Central Louisiana ICE Processing Center have plexiglass dividers). Visitation typically occurs in a cramped, closet-sized space with only a single chair for counsel. That the Jena facility made a one-time exception to those rules for a contact legal visit with several immigration counsel last week, *see* ECF 258 at 1, stands in stark contrast to how visits would take place at a detention facility closer to this Court. In fact, throughout May, several attorneys from CLEAR, one of the legal organizations representing Mr. Khalil in this case, met with a client held at the Elizabeth Detention Center (EDC) since April. Those meetings occurred under normal EDC

rules, in a legal visitation space where contact and document-sharing were permitted. Because regular, in-person, contact visitation, with the ability to share and review legal documents with a client, is essential both to maintaining a meaningful attorney-client relationship and to effective communication, even frequent, regularly scheduled video teleconferences are not an adequate substitute.

Finally, last week's events underscore that the human costs of Mr. Khalil's detention in Louisiana, now in its third month, continue to mount. After the government denied him the opportunity to be present for his son's birth and his wife's recovery, Mr. Khalil seeks at minimum the chance to form his own physical bond with his son—an opportunity that release or even detention at EDC provides, but continued detention at CLIPC in Jena does not.

In sum, release or detention at EDC in New Jersey would allow regular legal (and social) contact visits, which would significantly aid Mr. Khalil and his lawyers in continuing to litigate his habeas case. *See* ECF 96 at 5.

Respectfully submitted,

/s/ Naz Ahmad

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Fax: (415) 981-3003

Counsel for Petitioner

* *Appearing Pro hac vice*

Nos. 25-2162 & 25-2357

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MAHMOUD KHALIL,

Petitioner-Appellee,

v.

PRESIDENT UNITED STATES OF AMERICA; DIRECTOR NEW YORK FIELD OFFICE IMMIGRATION AND CUSTOMS ENFORCEMENT; WARDEN ELIZABETH CONTRACT DETENTION FACILITY; DIRECTOR UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT; SECRETARY UNITED STATES DEPARTMENT OF HOMELAND SECURITY; SECRETARY UNITED STATES DEPARTMENT OF STATE; ATTORNEY GENERAL UNITED STATES OF AMERICA,

Respondents-Appellants.

On Appeal from the United States District Court
for the District of New Jersey, No. 25-1963 (MEF) (MAH)

APPENDIX: VOLUME IV (1092-1430)

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,
Petitioner,
v.
Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF VERONICA R. SALAMA

I, Veronica R. Salama, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. My name is Veronica R. Salama. I am a licensed attorney in good standing in the state of New York. I am an attorney of record in the above-captioned case. I represent the Petitioner-Plaintiff, Mahmoud Khalil, in this action.

2. Attached hereto, at the exhibits listed below, are true and correct copies of the following declarations:

   A. Attached as **Exhibit A** is the Declaration of Petitioner-Plaintiff Mahmoud Khalil, dated June 4, 2025.

   B. Attached as **Exhibit B** is the Declaration of Dr. Noor Ramez Abdalla, dated June 3, 2025, speaking to the harms that she and Mr. Khalil are experiencing to date as a direct result of the Determination and Petitioner's arrest and detention, including: chilling effects, family separation, and the trauma of detention.

   C. Attached as **Exhibit C** is the June 4, 2025, Declaration of Johnny Sinodis, partner at Van Der Hout LLP and representing Mr. Khalil's in this matter and in his immigration proceedings, summarizing Mr. Khalil's immigration proceedings and related evidence—including the dismissal of post-hoc charge #7 by the immigration judge on April 22,

2025, DHS's decision not to cross-examine Mr. Khalil at this same hearing, and its failure to argue in support of the remaining charges in its June 2, 2025, closing arguments submission.

D. Attached as **Exhibit D** are declarations from the American Association of Urban Professors ("AAUP") about the broader chilling effect in colleges and universities and the uncertainty of how to conform conduct because of the Trump Administration's ideological exclusion Policy:

1. **Exhibit D-1:** Declaration of Veena Dubal, general counsel of the AAUP, a plaintiff in *American Association of University Professors v. Rubio*, No. 25-cv-10685, (D. Mass. filed Mar. 25, 2025), dated April 1, 2025, speaking on the principal ways in which the ideological-deportation policy has impeded and continues to impeded the AAUP, from carrying out its mission and the harm to AAUP campus chapters and members.

2. **Exhibit D-2:** Declaration of Aslı Ü Bâli, the Howard M. Holtzmann Professor of Law at Yale Law School, member of the AAUP, and the current President of the Middle East Studies Association of North America ("MESA"), a plaintiff in *American Association of University Professors v. Rubio*, No. 25-cv-10685, (D. Mass. filed Mar. 25, 2025), dated April 1, 2025, speaking on the effect of the ideological-deportation policy on MESA's members.

E. Attached as **Exhibit E** are declarations by a professor and a student at Cornell University, speaking to the chilling effects they experienced from government's targeting of Momodou Taal, a non-U.S. citizen who, like Mr. Khalil, was targeted for removal based on his pro-Palestine expression.

1. Declaration of Mũkoma Ngũgĩ, Professor at Cornell University, dated March 14, 2025, filed as ECF 2-3 in *Taal v. Trump*, No. 3:25-cv-00335, (N.D.N.Y. filed Mar. 15, 2025).

2. Declaration of Sriram Parasurama, graduate student at Cornell University, filed as ECF 2-4 in *Taal v. Trump*, No. 3:25-cv-00335, (N.D.N.Y. filed Mar. 15, 2025).

F. Attached as **Exhibit F** are declarations from legal service providers speaking to a significant uptick in individuals seeking legal advice following Mr. Khalil's arrest, particularly those on university campuses, or those who had been previously been outspoken in support of Palestinian rights or simply because of their non-citizen status:

1. **Exhibit F-1:** Declaration of Victoria Porell, Senior Staff Attorney at Palestine Legal, dated June 3, 2025, reporting a 30% spike in legal support requests since Mr. Khalil's arrest and providing individual anonymized examples;

2. **Exhibit F-2**: Declaration of Golnaz Fakhimi, legal director of Muslim Advocates, dated June 4, 2025, reporting a sharp increase in non-citizens seeking legal support since Mr. Khalil's arrest, driven by fear that expressing views supportive

of Palestinian rights or critical of U.S. and Israel policies could trigger immigration enforcement;

3. **Exhibit F-3:** Declaration of Joshua Dratel, founding partner of Dratel & Lewis,[1] dated June 3, 2025, stating that since Mr. Khalil's arrest, his law firm has been contacted by dozens of individuals from diverse backgrounds seeking legal advice out of fear of government retaliation for their pro-Palestine advocacy.

G. Attached as **Exhibit G** are declarations from Columbia University professors, speaking on the climate of fear and uncertainty, chilling effect on speech and political participation, and providing examples of faculty and students changing their behavior in response to Mr. Khalil's arrest and detention:

1. **Exhibit G-1:** Declaration of Rashid Khalidi, Edward Said Professor Emeritus of Modern Arab Studies at Columbia University, dated June 4, 2025;

2. **Exhibit G-2:** Declaration of James Schamus, Professor of Professional Practice in the School of the Arts at Columbia University, dated May 31, 2025;

3. **Exhibit G-3:** Declaration of Nadia Abu El-Haj, Professor of Anthropology at Barnard College and Columbia University, dated June 1, 2025;

4. **Exhibit G-4:** Declaration of [redacted] at Columbia University, dated June 2, 2025;

5. **Exhibit G-5:** Declaration of Yannik Thiem, associate professor in the Department of Religion at Columbia University, dated June 1, 2025;

6. **Exhibit G-6:** Declaration of Harold Stolper, Lecturer at Columbia University's School of Internal and Public Affairs ("SIPA"), dated June 2, 2025;

7. **Exhibit G-7:** Declaration of [redacted], dated June 2, 2025;

8. **Exhibit G-8:** Declaration of [redacted], dated June 2, 2025;

9. **Exhibit G-9:** Declaration of [redacted] dated June 2, 2025;

[1] Dratel & Lewis is one of the law firms representing Mr. Khalil in the above-captioned case.

10. **Exhibit G-10:** Declaration of [redacted], [redacted], dated June 2, 2025;

11. **Exhibit G-11:** Declaration of [redacted], Lecturer in the Department of [redacted] and postdoctoral scholar in [redacted] at Columbia University, dated June 2, 2025.

H. Attached as **Exhibit H** are declarations of students at Columbia University speaking to their own experiences and of their observations of chilled speech since Mr. Khalil's arrest and detention and the Rubio Determination:

1. **Exhibit H-1:** Declaration of [redacted], graduate student at Columbia University pursuing an [redacted], dated June 1, 2025;

2. **Exhibit H-2:** Declaration of [redacted], recent graduate of Columbia University, dated June 1, 2025;

3. **Exhibit H-3:** Declaration of [redacted], Jewish graduate [redacted], dated May 31, 2025.

4. **Exhibit H-4:** Declaration of [redacted], recent Jewish graduate of Barnard College, dated May 31, 2025;

5. **Exhibit H-5:** Declaration of Shay Orentlicher, student at Columbia University and organizer with Columbia-Barnard Jewish Voice for Peace (JVP), dated May 31, 2025;

6. **Exhibit H-6:** Declaration of [redacted], rising third-year PhD student and instructor at Columbia University, dated June 2, 2025;

7. **Exhibit H-7:** Declaration of [redacted], [redacted], dated June 3, 2025;

8. **Exhibit H-8:** Declaration of [redacted], recent graduate of [redacted], dated June 2, 2025;

9. **Exhibit H-9:** Declaration of [redacted], recent Jewish graduate of Columbia University with continued active involvement in the Columbia community, dated June 1, 2025, speaking to their experience and attaching a letter by Jewish Columbia alumni denouncing the arrest and detention of Mr. Khalil;

10. **Exhibit H-10:** Declaration of [redacted], [redacted] dated June 2, 2025;

11. **Exhibit H-11:** Declaration of [redacted], recent Jewish graduate of Columbia University, dated June 2, 2025; and

12. **Exhibit H-12:** Declaration of [redacted], recent graduate of Columbia University, dated June 2, 2025.

I. Attached as **Exhibit I** is the Declaration of Human Rights Watch ("HRW") researcher John Raphling, dated June 4, 2025, describing the chilling effect on speech among international students and non-U.S. citizens in response to the Trump administration's punitive actions against 'dissenters,' drawing comparisons to patterns of repression observed by HRW in authoritarian regimes.

J. **Exhibit J -** is the Declaration from Stephanie Fox, Executive Director of Jewish Voice for Peace ("JVP"), dated June 2, 2025, on the chilled speech of both U.S. citizen and noncitizen JVP members.

K. Attached as **Exhibit K** is the Declaration of immigration attorney Ira Kurzban**,** dated June 4, 2025, on the unusualness of detaining a lawful permanent resident, especially one with strong ties to the U.S., on fraud or misrepresentation grounds.

L. **Exhibit L** Declaration of immigration attorney Stacy Tolchin, dated May 30, 2025, regarding how fraud and misrepresentation and Mr. Khalil's likelihood of success obtaining a waiver even if the post-hoc charges were sustained.

M. Attached as **Exhibit M** is the declaration from Josh Paul, former Director of Congressional and Public Affairs for the Bureau of Political-Military Affairs, U.S. Department of State, in his personal capacity, dated May 12, 2025 on immigration cases regarding international chill and harm and impact on public interest.

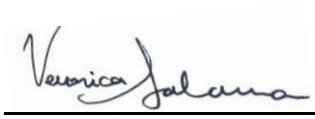
N. Attached as **Exhibit N** is the declaration from Christopher J. Le Mon, former Deputy Assistant Secretary in the Bureau of Democracy, Human Rights, and Labor at the U.S. Department of State, in his personal capacity, dated June 4, 2025, on arbitrary detention being utilized to suppress speech in the U.S. under the Rubio Determination similar to practices in undemocratic countries.

O. Attached as **Exhibit O** is the Expert Declaration of Andrew Rasmussen, PhD., a licensed psychologist in New York, documenting the clinical psychological harm Mr. Khalil is suffering from the shock of unjust arrest and continued detention and family separation, which will inevitably severely worsen absent release.

P. Attached as **Exhibit P** is the declaration from Kerry Doyle, former Principal Legal Advisor for U.S. Immigration and Customs Enforcement ("ICE") and former Immigration Judge, in her personal capacity, dated June 4, 2024, on the transfer of Mr. Khalil to Louisiana, his detention based on the Foreign Policy Ground, and the post-hoc charges as highly unusual.

Q. Attached as **Exhibit Q** is the declaration from [redacted], a licensed psychologist and [redacted], dated June 3, 2025, on the irreparable social and stigmatic harm that Mr. Khalil is and will likely continue to suffer in this country as a Palestinian Muslim subject to the Rubio Determination and other disparaging comments by high level government officials.

Executed on June 4, 2025
New York, New York



Veronica R. Salama
Staff Attorney
New York Civil Liberties Union Foundation

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF MAHMOUD KHALIL

I, Mahmoud Khalil, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. I am the Petitioner-Plaintiff in this action. As my attorney previously stated in her declaration (ECF 50-1), we reviewed the amended habeas petition (ECF 38) together during a virtual attorney-client meeting on March 13, 2025, and I confirmed the accuracy of the factual statements in that petition as they pertain to me. I have also reviewed the second and third amended habeas petitions filed in this matter (ECF 162 and 236, respectively), including the new allegations regarding the post-hoc charge of inadmissibility, and I verify that the facts contained therein, as they relate to me, are true and correct to the best of my knowledge.

2. Some of the facts in this declaration are stated in my habeas petition. I include them here again for clarity and to assist the Court in reviewing my account directly and in my own words. I also welcome the opportunity to testify in person, at the courthouse, as to any of my experiences described here.

3. I understand that the Court has requested additional information about the irreparable harms I have suffered—and continue to suffer—as a result of the government's actions against me. These harms are wide-ranging: they include dignitary and reputational harm, personal and

familial hardship, including constant fear for personal safety, continued detention, restrictions on my freedom of expression, and severe damage to my professional future.

4. I submitted a declaration in my immigration proceedings describing the events of the night of my arrest on March 8. I understand my attorneys in this matter have also filed these documents (ECF 212-1). For the Court's ease, I am attaching a copy of that declaration as **Exhibit 1.**

5. I am 30 years old. I am a Palestinian Lawful Permanent Resident of the United States of America. I hold an Algerian passport. I was born in a Palestinian refugee camp in Syria named Khan Eshieh. I have dedicated my life to advocating for human rights, informed by my own life experiences. I am a husband to Dr. Noor Abdalla, a U.S. Citizen, and as of April 21, 2025, I am a father to our son, Deen, who is also a U.S. Citizen. As of May 22, 2025, I hold a master's degree in public administration from the Columbia University's School of International and Public Affairs ("SIPA"). I have never been accused or convicted of any crime.

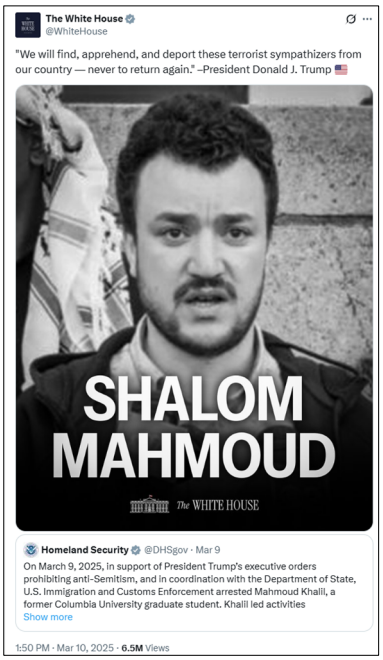
6. I offer this declaration from inside LaSalle Detention center, where I have been confined since March 9, 2025, because of the government's determination that my protected speech in support of Palestinian rights somehow impacts U.S. foreign policy interests.

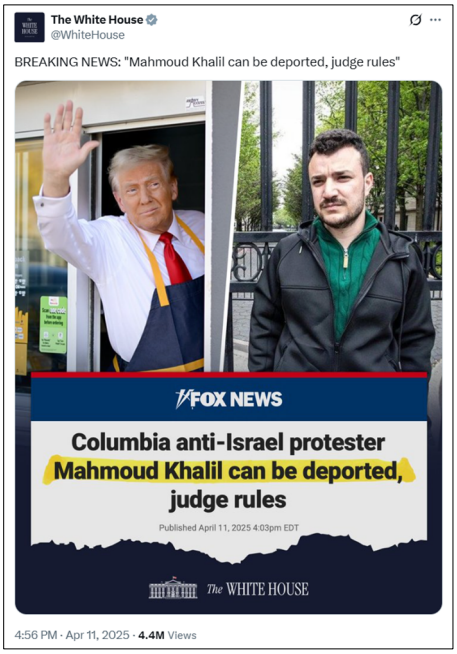
7. The most immediate and visceral harms I have experienced directly relate to the birth of my son, Deen. Instead of holding my wife's hand in the delivery room, I was crouched on a detention center floor, whispering through a crackling phone line as she labored alone. I listened to her pain, trying to comfort her while 70 other men slept around me. When I heard my son's first cries, I buried my face in my arms so no one would see me weep. The first time I saw my son in person was through a plate-glass window. The first time I held him was in an immigration courtroom, only after Noor traveled over ten hours with our newborn. I speak to her as often as possible, but these conversations are not private, everything is monitored by the government. Knowing that we are being recorded means we can't speak freely out of fear for further retaliation—not about how all of this is affecting us, not even about the private intimate things between a husband and wife. We leave so much unsaid, and that silence weighs heavily on both of us.

8. Noor and Deen mean everything to me. To not be able to see them, hold them, speak with them freely, enjoy everything I imagined our first days as a family would be like, is devastating. Worst still is knowing that they must face all the fear and notoriety of this case without me. The Rubio Determination is casting a shadow of suspicion across our entire family. I could never have imagined this would happen, and it is horrifying to experience this as a husband and father.

9. In speaking with Noor, I have been deeply disturbed by the harassment she has endured as a result of my arrest and detention. That harassment has been directed at both her and our family—not only because the government labeled me a U.S. foreign policy concern, but also because of this administration's public, deeply racist, and false accusations that I support Hamas or have engaged in antisemitic activity. None of this is true. I am a Palestinian who cares deeply about the Palestinian people and their inalienable rights. But the U.S. government believe that anyone who calls for Palestinian rights must support Hamas or be antisemitic. That is itself a form of anti-Palestinian racism and it is wrong.

10. I remember seeing the public statements issued by the White House and President Trump on social media, both after my arrest and again after the Immigration Judge upheld the Rubio Determination. It is hard to describe the humiliation and pain of seeing mugshot-style images of myself circulated from the highest levels of the U.S. government—accompanied by inflammatory language, grotesque and false accusations, and open celebration of my deportation. These were not just attacks on my character; they were efforts to erase my humanity. Below are true and correct copies of just four of the social media posts I have seen, as shown to me by my attorneys:





11. As someone who fled prosecution in Syria for my political beliefs, for who I am, I never imagined myself to be in immigration detention, here in the United States—a country that proclaims democracy and rule of law, freedom of expression—defending myself against baseless and retaliatory immigration charges, after being targeted for who I am, for who I advocated for.

12. Like the thousands of students that I've protested with across the United States and in my university—including Muslim, Jewish and Christian friends—I advocate for human rights, for international law, for the end of the killing of innocent people. I believe in the innate equality of all human beings. I believe in human dignity. I believe in the right of my people to look at the blue sky and not fear an impending missile. Why should protesting this Israel government's indiscriminate killing of thousands of innocent Palestinians result in the erosion of my constitutional rights?

13. As I remain detained because of the Rubio Determination, and because of the government's stated intent to punish me for my speech, I am unable to protest the ongoing genocide of the Palestinian people—my own people— a fundamental aspect of my freedom of expression that is deeply important to me.

14. Beyond my immediate detention, as the Rubio Determination continues to hang over me, I know that any expressive activity I undertake carries the risk of further punishment or surveillance. I still believe it is important to speak out against the ongoing genocide of the Palestinian people and broader systemic injustices. But even as I try to do so now from a distant prison, I do so under the weight of extreme fear—that my words will be mischaracterized, used against me, or taken as further evidence of wrongdoing. It is impossible for me to understand what words the U.S. government believes are the basis for arrest and exile, and what words are not.

15. Before the Rubio Determination and my consequent arrest and detention, my career projection was to work in diplomacy and international affairs, whether at the United Nations (UN) or at a diplomatic mission. In fact, just days before my arrest and detention, I had accepted a position at Oxfam International as a Palestine and Middle East/North Africa Policy Advisor. In this role, I was set to work towards helping to uphold international law and human rights at the UN, including by achieving a permanent ceasefire in Gaza that would end the genocide that this Israeli government is committing in Palestine. I was scheduled to start this job in April 2025.

16. On April 3rd, Oxfam International formally revoked my employment offer. I strongly believe that the Rubio Determination, my arrest and detention—and the public stigma that followed—played a significant role in this decision. I was not surprised; roles like this depend on your reputation. How could someone who has been labeled a risk to U.S. foreign policy credibly represent an international organization in diplomatic spaces—let alone serve as an advisor on human rights and regional policy in the Middle East and North Africa? Beyond credibility, how could I effectively perform the essential duties of a position like this—which requires traveling internationally—where visa denial or intense scrutiny would be nearly inevitable?

17. I have devoted my academic and professional life to international development, public service

and diplomacy. And I've long aspired to serve in international organizations or diplomatic missions—perhaps as a U.S. citizen someday. But if the Rubio Determination stands, that is not possible—the harm to my professional career would be career-ending.

18. In addition to the professional aspirations I've spent over a decade pursuing, I now face immediate relational and safety harms because of the Rubio Determination.

19. This label is now embedded in government systems and records—including DHS databases, consular files, and likely even diplomatic cables. I face the risk of being flagged, delayed, or denied when traveling, applying for visas, or engaging with consular authorities anywhere in the world. The suspicion has real implications for my family and my safety. Because of my arrest and the government's publicized and false determination that my protected speech in support of Palestinian rights is antisemitic and compromises "a compelling U.S. foreign policy interest," I—and by extension, my wife and newborn son—have become targets for attack and surveillance by government agencies, as well as by private actors. If this determination remains in place, I will continue to live in constant fear for our safety—from formal institutions and informal, but very real, threats of harm.

20. In addition to the ongoing risks to our physical safety because of the Rubio determination, other harms to my family are already accruing: my mother had applied for a U.S. visa so she could be with us for the birth of my son, listing me as her host. Her visa was approved in March 2025, and the U.S. embassy ask her to send in her passport to get the visa stamped. However, after she submitted her passport, the embassy returned it without stamping, saying that her case was under administrative processing. The timing of this change is directly correlated with the Rubio Determination and my arrest and detention. As of today, my mother's visa has not been approved.

21. And while my family is unlikely to be able to visit me, to bond with my newborn son or assist me and Noor as we navigate parenthood for the first time, I also fear I will no longer be admitted into Germany to see my father, who is 70 years old and severely disabled. This is deeply devastating for me. Before the Rubio Determination, I prioritized seeing him at least three times a year. Even during the travel-restricted period after applying for adjustment of status, I applied for, and was granted, USCIS emergency parole so I could visit him due to his disability. Will Germany, or any U.S. ally, allow entry to someone the U.S. government has determined to be a foreign policy concern? I worry I will never be able to see him again if the Rubio Determination is allowed to remain in place.

22. There are similar relational harms that have already begun to accrue because of the Rubio Determination, as many people in my life seek to distance themselves from me and from Noor, out of fear for their own reputation, safety, and potential targeting of the next Rubio Determination.

23. I believe that undoing the Rubio Determination will allow me to be with my son and my wife beyond the walls of this detention center, to speak, write, and protest freely, to continue my career trajectory in diplomacy, to see my family and return to the community in New York that I have worked so intentionally to build since I moved to the United States.

24. I also want to provide this Court with more information regarding DHS's baseless post-hoc charges against me:

25. On March 17, 2025—after one week in detention at LaSalle and just days after filing my habeas petition—I was approached by LaSalle staff and handed a Form I-261, "Additional Charges of Inadmissibility/Deportability." I have reviewed ECF 90-1 and confirm it is a copy of the form I received. The I-261 stated that these new charges were "in lieu of those set forth in the original charging document," which I understand refers to the NTA I was given on March 9 at 26 Federal Plaza. While the original NTA alleged that the Secretary of State had determined my "presence or activities would have serious adverse foreign policy consequences," the I-261 claimed they would *also* "compromise a compelling U.S. foreign policy interest." It also added three new allegations, claiming I "failed to disclose" certain information in my Form I-485, Application to Register Permanent Residence or Adjust Status. Specifically, the I-261 alleged:

    A. "you failed to disclose that you were a member of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) from June through November 2023, as a political affairs officer" (Allegation 6); "you failed to disclose your continuing employment as a Program Manager by the Syria Office in the British Embassy in Beirut beyond 2022" (Allegation 7); and "you failed to disclose that you were a member of the Columbia University Apartheid Divest (CUAD)" (Allegation 8).

26. I answered all questions in my green card application truthfully and to the best of my knowledge. As to Allegation 6: I was never employed by UNRWA, nor was I ever an "officer" of the organization. Rather, I completed an unpaid internship at UNRWA in 2023 as part of my graduate program at Columbia University. Columbia approved me for the internship, paid me a stipend directly, and remained my employer throughout. As part of that internship, I was required to submit reports and blog posts to Columbia about my experience, and my supervisor at UNRWA was required to submit a report to the university, after which I received a passing grade from the university. I understood that the U.S. Department of State was notified of my internship because UN agencies must notify the U.S. Mission to the United Nations. My LinkedIn profile accurately reflected this internship, and I disclosed my employment with Columbia—which included this internship—on my green card application. Indeed, I am proud of my internship experience. I had simply understood that reflecting my employment with Columbia was sufficient to fully and truthfully disclose my employment history, including the internship at UNRWA, on my green card application.

27. As to Allegation 7: I stopped working at the British Embassy in December 2022, when I moved to the United States. The reference in my green card application was therefore accurate. At my Immigration Court hearing on May 22nd, the immigration judge dismissed this allegation.

28. As to Allegation 8: I have always been clear about my role as a negotiator and facilitator between student protestors, groups, coalitions, including CUAD, and the university administration. To the best of my knowledge, CUAD is a coalition made up of over 120 different student groups. It is not a standalone organization with individual membership. As far as I am aware, it has always operated horizontally, without formal leadership or hierarchy.

Importantly, when the April 2024 student encampment protests began at Columbia—I had already submitted my green card application (in March 2024). Faculty members reached out to me and asked me to help as a mediator between the students and the administration. They specifically sought someone who was not affiliated with the student groups organizing the encampment and who was trusted by the administration, students, and faculty alike. I believe they approached me because of my background in diplomacy and negotiation, and because of the relationships I had established with the university administration. At the same time, students in the encampment—which included many who were not affiliated with CUAD—also chose me to serve in this role. I agreed, and I began going back and forth, sharing messages and stated positions between the two sides.

29. I testified about these facts at my immigration court hearing on May 22, 2025. The government attorneys did not ask me any questions regarding these issues.

30. While all of the allegations against me in my immigration court case are false, I know that the Rubio Determination is the one that carries the heaviest consequences. It is the only allegation that, if it stands, will have the greatest impact on the future of my family—particularly my wife and son, who are U.S. citizens. I understand that the Rubio Determination is not only a ground for deportation, but it is also a bar to entry and is not subject to routine waiver like the post-hoc charges. In other words, no matter what happens to the other charge against me, it is the Rubio Determination that will make this country—the country of my wife and child—a country I cannot return to in the future. This harms all of us.

31. I have read every decision issued by the Court in this matter. I ask my lawyers to walk me through the decisions in detail during my virtual legal visits and I wait for the decision to be uploaded to LexisNexis so I can access it from the detention center for myself. I remember reading the Court's finding that, when it comes to here-and-now harms on First Amendment freedoms, and political speech in particular, the law requires "no unnecessary delay."

32. I have authorized my attorney to sign this declaration on my behalf, given the difficulty in arranging in-person visits to the LaSalle Detention Center in Jena, Louisiana where I am presently detained. If required to do so, I will provide a signature when I am able to do so.

Executed on June 4, 2025
New York, New York

/s/ Mahmoud Khalil
Mahmoud Khalil

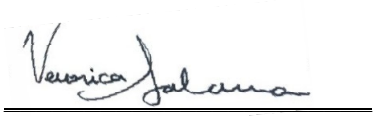
Signed on his behalf by counsel
Veronica R. Salama

DECLARATION OF VERONICA R. SALAMA

I, Veronica R. Salama, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. My name is Veronica R. Salama. I am a licensed attorney in good standing in the state of New York. I am an attorney of record in the above-captioned case.
2. I represent the petitioner, Mahmoud Khalil, in this action.
3. Mr. Khalil is currently detained by ICE at the LaSalle Detention Center in Jena, Louisiana, and I am unable to travel to him.
4. On June 4, 2025, I met with Mr. Khalil in a virtual attorney-client meeting. I signed Mr. Khalil's declaration on his behalf with his express consent, after reviewing it with him and confirming its accuracy, as reflected in his declaration.

Executed on June 4, 2025
New York, New York



Veronica R. Salama
Staff Attorney
New York Civil Liberties Union Foundation

EXHIBIT A-1

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Declaration of Mahmoud Khalil

I, Mahmoud Khalil, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

1. On Saturday, March 8, 2025, at approximately 8:25 PM, my wife and I were returning from dinner at a friend's apartment next door to our Columbia-owned apartment building when two agents in plain clothing followed us from outside our building into the foyer. The agents asked me if I was Mahmoud Khalil, and I confirmed that I was. The agents claimed to be from the police and I asked them which police. They said the Department of Homeland Security ("DHS") and that I had to go with them. At that point, I handed them my driver's license and asked them why I should go with them. They told me that my visa has been revoked. I explained that I am not a visa holder, but in fact have a green card. They were visibly confused when they heard that I have a green card. I requested to see an arrest warrant.
2. They asked my wife to leave me and said otherwise she would be detained. I asked my wife to go upstairs to our apartment to get my green card. I waited in the foyer with the agents as my wife went up to our apartment to find my green card.
3. At 8:26 PM, I called my attorney, Amy Greer, as I was surrounded by people claiming to be from the DHS inside my Columbia-owned apartment and who wanted me to go with them. My attorney asked me if they had shown me an arrest warrant. I asked the agent again to see the arrest warrant, to which he replied that he had the warrant on his phone. The same agent told me to hand over my phone to him and identified himself as special agent [redacted] to Amy Greer. During the call between my attorney and Agent [redacted], he reiterated that he had an administrative warrant. But despite repeated

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requests, he did not show the warrant. After a brief phone call with my attorney regarding my status as a green card holder and if a warrant existed, the agent abruptly ended the phone call. The other agents asked me to move to the other side of the foyer, and I complied. I sat in the foyer while waiting for my wife.

4. Once my wife returned and showed the agents my green card, Agent [redacted], on the phone with an unknown individual, informed them that I was a green card holder. I tried to call my lawyer again on my phone.

5. Then, a DHS agent told me I was under arrest and directed me to turn around. I asked again about the warrant, but complied with the request. As I turned, I attempted to hand my wife my phone to talk to the lawyer. The agent said "stop resisting" to which my wife and I both responded that I was not resisting but attempting to hand my phone to my wife. I placed my hands behind my back as they arrested me and stated to them, "I am coming with you, don't worry," as clearly shown in the video my wife was recording. Once I was handcuffed, the agents escorted me out of the building and on to [redacted]. The agents placed me in a car and drove me to 26 Federal Plaza.

6. At no point in my interactions with these agents did I attempt to resist, flee, or otherwise not comply with the agents' orders. Throughout this interaction, I insisted on seeing the warrant that the agent stated he had on his phone and that he would show me, but he did not at any point show me a warrant.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 23rd day of April, 2025.

/s/ Mahmoud Khalil

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Mahmoud Khalil

I, Oona Cahill, declare as follows:

1. My name is Oona Cahill. I am a licensed attorney in good standing in the state of California. I am an attorney of record in the above-referenced case.
2. I represent the Petitioner, Mahmoud Khalil.
3. I signed Mr. Khalil's declaration on his behalf with his express consent, after reviewing it with him, as reflected in his declaration. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on the 23rd day of April, 2025.

/s/ Oona Cahill

Oona Cahill

Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF NOOR RAMEZ ABDALLA

I, Noor Ramez Abdalla, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. I am a United States citizen, and Mahmoud Khalil's wife.

2. I previously submitted a declaration in support of Mahmoud's motion for release (ECF No. 55) about our relationship and the impact of his arrest and detention on my pregnancy. I also submitted a declaration in Mahmoud's immigration proceedings, in support of his motion to terminate, which I understand was subsequently submitted to this Court as part of ECF 212-1.

3. On April 21, 2025, I gave birth to my and Mahmoud's first child, our son Deen.

4. The end of my pregnancy and labor was extremely stressful because I was separated from Mahmoud due to his ongoing detention.

5. After Mahmoud was arrested and before I gave birth, many people posted awful statements online, including death threats, about Mahmoud, myself, and our baby. I saw these whenever I would read an article or social media post about our situation, and became afraid for our safety. The posts often focused on the false accusations of Mahmoud being antisemitic, the fact that I wear a hijab, and the fact that we are Muslim. Because of the baseless allegations against Mahmoud, we have become an easy target for hateful people who want to harm my family, wished I would miscarry, or that someone should take our baby away from us. There were so many comments like this that I was honestly shocked – both at the amount and at the hatred and bigotry included in them.

6. Those comments impacted me negatively, even though I made efforts to not read them. I was constantly stressed, which is not good for a baby. I did not leave the house as much as I would before Mahmoud's arrest and detention because I was scared someone would try to hurt me because I am Mahmoud's wife. I did not want to be recognized.

7. When I first went into labor, I had no family with me. I felt alone and I was scared. My mother thankfully was able to come to New York a few hours after I went into labor.

8. When I first got to hospital, I was told my water broke and they admitted me. I was overwhelmed and started having a panic attack. I couldn't stop crying. I was devastated that Mahmoud was still detained instead of being by my side, as he and I wished. I was also extremely afraid for my safety at the hospital because so many people had threatened me and threatened to take our baby. The hospital admitted me under an alias and the hospital's security had to be instructed to only allow a pre-approved list of people into my room.

9. Despite my fear and panic, at that moment, I was still hopeful that Mahmoud would be released in time to join me at the hospital. I spent the first hours of my labor coordinating with Mahmoud's lawyers – something I never would have imagined having to do before all of this – to see if there was any possibility of him being released for our baby's birth. It was not how I imagined giving birth; I thought Mahmoud and I would be welcoming our new baby boy into the world together.

10. After being in labor for nearly ten hours, I learned from one of Mahmoud's attorneys that ICE had denied Mahmoud's request for furlough or temporary release, and that he would not be with me during the birth. I was utterly heartbroken.

I could not believe that I would have to give birth to our child without Mahmoud by my side.

11. I was in labor for 24 hours. It was extremely difficult. After Deen arrived, though I was exhausted, I could not sleep.

12. I didn't sleep during the two nights I spent at the hospital after giving birth to my son because I was too worried that if my baby left my side, someone might take him away from me. I made my mother, who had flown in from out of state to be with me, accompany Deen to all of his newborn medical tests and declined the nurses' offers to look after him so that I could get some rest because I didn't want my baby to leave the room. I didn't want to take my eyes off of him.

13. Mahmoud had to meet his newborn son, Deen, over a video call the morning after he was born. He could not call on video when Deen was first born in the middle of the night because the immigration jail does not allow video calls at night. It did not feel like a real meeting because it was only through a screen. This was not how he wanted to see his son for the first time. He should have been holding Deen, touching him, and kissing him.

14. When I returned home from the hospital, it finally hit me that I would have to do everything – caring for a newborn, navigating the legal system, figuring out housing, work, finances – without Mahmoud's presence at my side. I was completely overwhelmed and crying a lot. My mother was extremely concerned about me.

15. Though I had immense support from family and friends in those early days, nothing could replace Mahmoud's presence. Those are days our little family will never get back. Mahmoud will never be part of bringing our first baby home from the hospital, awkwardly carrying the baby carrier, and figuring out how to hold such a tiny baby, and all of the other fun, hard, and challenging parts of adjusting to having a newborn. This reality of all we have missed and will never get back is a weight that constantly sits on me.

16. I am constantly aware of Mahmoud's absence, not just because I miss him so deeply, but because taking care of a newborn alone is a lot of work. At first, I was in a lot of physical pain as I healed from giving birth, and I was distressed that Mahmoud was not there. Now, though I feel physically improved, the distress remains.

17. Because of the immense stress I am under, it has been difficult to feed Deen without supplementing with formula. This has been a source of great sadness and disappointment for me.

18. On May 20th, Deen and I traveled more than ten hours to Louisiana to attend Mahmoud's immigration hearing with hopes that he could hold his son for the first time.

19. However, I was told on the phone, before we arrived at the facility in Louisiana, that we could not have a contact visit. Numerous lawyers and this Court had to get involved as we sought an opportunity for Mahmoud, Deen, and I to be together in person, even if only for a legal meeting to be able to discuss his habeas corpus case in federal court. At one point, I didn't think it was going to happen because we were constantly being told no. But, eventually, I was told that we had been granted a contact visit for the following morning.

20. However, I did not want to wait to see my husband in person for the first time in 2 ½ months. We had already been apart for too long. We had come all that way, Mahmoud was expecting us, and so Deen and I traveled nearly an hour to get to the detention facility. Mahmoud met Deen for the first time through a plate glass window. In order for Mahmoud to better see Deen and play with him, I had to lay Deen on the ledge in front of the plate glass window separating us from each other. It was an awful feeling for all of us. Mahmoud was right there, but he could not touch his son.

21. Thankfully, the following day, we were able to meet in person, though we only had less than one hour. One of Mahmoud's lawyers was with us. Certainly, it was not how I imagined Mahmoud would first meet his son.

22. I was so happy that Mahmoud was able to see and hold Deen without a plate glass window separating them. However, even that moment was bittersweet because I had to teach Mahmoud how to hold and feed Deen – something Mahmoud would have already known how to do after 4 weeks of parenting an infant had he been home with us. It highlighted how much Mahmoud had missed over the past month because he has been detained and has not been allowed to get to know or take care of his child – the child both of us love so much, and who we both were so excited to bring into this world *together*.

23. Attending the immigration hearing and listening to the expert witnesses and Mahmoud talk about all the ways he could be targeted or killed if he were to be deported as a result of the U.S. government's public and highly visible smearing of him was incredibly scary.

24. Mahmoud's case has impacted every aspect of our life. I have experienced Islamophobia my whole life as a Muslim woman who wears a hijab, but it has been amplified by Mahmoud's detention and ongoing case. Mahmoud's and my careers,

our desire for a stable life, and Deen's future will forever be impacted by these false allegations against him.

25. The government has said that Mahmoud's speech harms U.S. foreign policy. This false statement hangs over his head and ours. It is unimaginable to have to live our lives without knowing whether our words will make us a target for the U.S. government to harm us.

26. I don't want Deen to have to grow up with the knowledge that the U.S. government views his father's advocacy for his people's rights as something that requires punishment, that is not welcome in his country, or that would subject him to hostility. I don't want him to grow up thinking that a part of his identity is somehow not worthy of protection or that advocating for his people's human rights can land him in trouble like it did his father.

27. Mahmoud's case is also impacting our networks of support. Friends and family members are worried about traveling because of their connection with Mahmoud. People we are close with, especially noncitizens, have stopped coming to my apartment, declined to write letters of support for Mahmoud, or even talk on the phone with him because they fear retaliation by the U.S. government due to their support of Mahmoud.

28. Post-partum continues to be difficult. I am getting little to no sleep. I'm supposed to go back to work in September but everything in our life is uncertain because of Mahmoud's detention and immigration case. Without Mahmoud's financial, physical, and emotional support, without his *presence*, and because of his detention, it is very hard to plan for any kind of future.

29. Having Mahmoud present would take so much off my plate. Right now, everything falls on me alone because I am doing so much on behalf of Mahmoud that he cannot while he is detained. When he is home, I can focus fully on raising Deen, which is what I want to do, and I will have a partner with whom to share the heavy lift of everyday life with an infant.

30. The uncertainty is hard. I don't want to be separated from Mahmoud any longer. I want us to be together. I want Deen to grow up with both of his parents in the way Mahmoud and I dreamed, planned, hoped, and wanted.

31. Despite the uncertainty, my main priority is for Mahmoud to return home to us – to make our family whole again.

Dated: June 4, 2025

[redacted]

Signed:

NOOR RAMEZ ABDALLA

Exhibit C

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF JOHNNY SINODIS

DECLARATION OF JOHNNY SINODIS

I, Johnny Sinodis, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am a partner at Van Der Hout LLP, which is located at 360 Post Street, Suite 800, San Francisco, CA 94108. I have personal knowledge of the matters stated herein. I am one of Mr. Khalil's attorneys who is representing him in the above captioned-matter before this Court and also the Immigration Court. I have been practicing immigration law since December 2011.

2. I write to provide the Court additional relevant information and updates on Mr. Khalil's removal proceedings in Immigration Court.

3. As the Court is aware, on March 17, 2025, nine days after the U.S. Department of Homeland Security (DHS) arrested and detained Mr. Khalil pursuant to the Rubio Determination, DHS asserted for the first time that he is removable from the United States pursuant to 8 U.S.C. § 1227(a)(1)(A) because, per DHS, he was inadmissible under 8 U.S.C. § 1182(a)(6)(C)(i) when he adjusted his status to that of a lawful permanent resident (i.e., a green card holder) for

allegedly failing to disclose: (1) he was "a member of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) from June through November 2023, as a political affairs officer" (Allegation 6); (2) his alleged "continuing employment as a Program Manager by the Syria Office in the British Embassy in Beirut beyond 2022" (Allegation 7); and (3) he was "a member of the Columbia University Apartheid Divest (CUAD)" (Allegation 8).

4. The alleged "failure to disclose" occurred in March 2024 when Mr. Khalil completed and filed his Form I-485, Application to Register Permanent Residence or Adjust Status, with the U.S. Citizenship and Immigration Services (USCIS). The Form I-485 is also commonly referred to as a "green card application." Mr. Khalil signed his Form I-485 on March 26, 2024, and mailed it to USCIS on March 29, 2024.

5. DHS asserted these additional allegations and the additional § 1227(a)(1)(A) charge of removal via a Form I-261, Additional Charges of Inadmissibility/Deportability. *See* Form I-261 dated Mar. 17, 2025 (Allegations 6 through 8).

6. Under longstanding precedent from the Board of Immigration Appeals (BIA), DHS must prove by clear and convincing evidence that an alleged misrepresentation was willful, material, and made with the intent to deceive to establish inadmissibility under § 1182(a)(6)(C)(i) and removability under § 1227(a)(1)(A).[1]

7. DHS's Form I-261 does not assert that any of Mr. Khalil's alleged "failure[s] to disclose" at the time he applied for his green card were willful, material, or done with the intent to deceive. As discussed below, at the outset of the May 22 hearing in Immigration Court, the Immigration Judge dismissed Allegation 7. During the hearing, Mr. Khalil testified, as relevant here, in response to allegations 6 and 8, and DHS did not cross-examine him on this testimony. In the parties' closing arguments submitted to the Immigration Court on June 2, DHS did not reference or address Allegations 6 and 8.

Removal Proceedings as to the § 1227(a)(1)(A) Charge:

8. On April 8, 2025, the Immigration Judge (IJ) ordered DHS to submit all evidence in support of its allegations against Mr. Khalil by April 9, 2025.

9. On April 9, 2025, DHS submitted documents in Immigration Court in support of their

[1] I am providing the following BIA decisions as a reference for the Court: *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956) (for immigration purposes, the term fraud "is used in the commonly accepted legal sense, that is, as consisting of false representation of a material fact made with knowledge of its falsity and with intent to deceive the other party."); *Matter of Y-G-, 20 I&N Dec. 794, 796 (BIA 1994)* (material misrepresentation requires: (1) the person procured, or sought to procure a benefit under U.S. immigration laws; (2) the person made a false representation and the false representation was willfully made; (3) the false representation was material; and (4) the false representation was made to a U.S. government official); *Matter of D-R-, 27 I&N Dec. 105, 107 (BIA 2017)* (a finding of a willful, material misrepresentation must be based on "clear, unequivocal, and convincing evidence.").

allegations that Mr. Khalil failed to disclose information on his March 26, 2024, Form I-485. The following documents correspond to these allegations:

(a) a screenshot of a website showing Mr. Khalil as a speaker at a conference for the Society for International Development (SID) in 2025 and erroneously stating he works at the Syria Office in the British Embassy in Beirut;

(b) tabloid articles and blog posts dating between April 26, 2024, and March 11, 2025, which (a) erroneously state that Mr. Khalil's LinkedIn profile reflected that he was employed as a political affairs officer with UNRWA from June to November 2023 and (b) falsely claim Mr. Khalil was the leader of CUAD, while also providing no supporting evidence;

(c) several articles describing Mr. Khalil as the negotiator on behalf of all student protestors involved in Columbia University's encampment; and

(d) the "About Us" page from UNRWA's website, describing its work assisting Palestinian refugees.

10. On April 11, 2025, Mr. Khalil submitted evidence to the Immigration Court refuting DHS's allegations and evidence. *See* **Exhibit 1** (Mr. Khalil's submission of documents on April 11, 2025).[2]

11. On April 11, 2025, as relevant here, the IJ issued an order giving both parties until April 23, 2025, to file any additional evidence on the § 1227(a)(1)(A) charge of removal.

12. DHS did not file additional evidence on or before April 23, 2025.

13. On April 23, 2025, Mr. Khalil filed additional documents with the Immigration Court further refuting the charge that he willfully failed to disclose material information on his Form I-485 or made a false representation with an intent to deceive the U.S. government. *See* **Exhibit 2** (Mr. Khalil's submission of documents on April 23, 2025).[3]

14. Mr. Khalil's evidentiary submissions on April 11, 2025, and April 23, 2025, included the following documents:

(a) <u>In Opposition to Allegation 6 regarding UNRWA:</u> (1) a letter from UNRWA to Columbia University, confirming that Mr. Khalil was an unpaid intern at UNRWA and that the internship was approved by Columbia University; (2) a letter from the Associate Director of Mr. Khalil's master's program at Columbia University, dated April 10, 2025, confirming that Mr. Khalil completed his internship with UNRWA for

[2] On April 13, 2025, Mr. Khalil submitted the full record of immigration proceedings, to date, to the Court. *See* ECF 199. He reattaches his submission from April 11, 2025, discussed herein for ease of the Court's review as **Exhibit 1**.

[3] The April 23, 2025, immigration court evidence was previously filed with the Court as ECF 210-1 and is reattached here for ease of the Court's review as **Exhibit 2**.

course credit at Columbia; (3) a printout of Mr. Khalil's LinkedIn profile, demonstrating that his role at UNRWA was publicly disclosed and was listed as an internship (not employment, as the tabloid article filed by DHS alleged); and (4) a letter from the Director of the UNRWA Representative Office confirming that Mr. Khalil served as an unpaid, voluntary intern at UNRWA between June 2023 and November 2023.

(b) In Opposition to Allegation 7 regarding the British Embassy: (1) Evidence Regarding Mr. Khalil's participation in the SID conference in 2020—not 2025, as inaccurately portrayed in a screenshot submitted by DHS; (2) Mr. Khalil's contract with the British Embassy showing an end date in November 2022; (3) a letter from Mr. Khalil's colleague and the head of the office at the British Embassy, confirming he left the British Embassy in December 2022; and (4) a Letter from SID confirming Mr. Khalil is not a speaker in 2025.

(c) In Opposition to Allegation 8 regarding CUAD: (1) a letter from a professor at Columbia University confirming Mr. Khalil was not a member of CUAD but in fact a negotiator on behalf of all students involved in the encampment, who liaised between the students and the administration; (2) a letter from a University Senator at Columbia confirming Mr. Khalil was not a member of CUAD; and (3) letters of support from Columbia students explaining Mr. Khalil's role as a negotiator on behalf of all students.

15. On April 25, 2025, the IJ scheduled an Individual Calendar Hearing (the equivalent of a trial in Immigration Court) for May 22, 2025, at 8:30 a.m.

16. On May 12, 2025, DHS filed a motion to pretermit Mr. Khalil's applications for asylum and for withholding of removal, arguing that there are reasonable grounds to believe that he is a danger to the security of the United States. *See* 8 U.S.C. §§ 1158(b)(2)(A)(iv), 1231(b)(3)(B)(iv). As support for this argument, DHS alleged that, because Secretary of State Marco Rubio had determined Mr. Khalil's presence in the United States to be adverse to a compelling foreign policy interest, he is also a danger to the security of the United States.

17. On May 19, 2025, Mr. Khalil filed an opposition to DHS's motion to pretermit.

18. At the outset of the hearing on May 22, 2025, the IJ orally stated that, based on the evidence in the record, DHS could not sustain the allegation that Mr. Khalil had failed to disclose that he worked at the British Embassy after December 2022. *See* Form I-261 at Allegation 7. The IJ did not provide a ruling on the other two allegations—Allegation 6 and 8.

19. The IJ also orally stated that she denied DHS's motion to pretermit Mr. Khalil's applications for asylum and for withholding of removal, rejecting DHS' argument that she should find him a danger to the security of the United States.

20. During his testimony at the May 22 hearing, as relevant here, Mr. Khalil provided further explanation for why the Form I-261's allegations regarding UNRWA and CUAD lacked

merit.[4]

21. As to UNRWA, Mr. Khalil testified that: (1) he received a stipend from Columbia University for his internship at UNRWA; (2) that he was paid directly by Columbia University; and (3) that he was never employed by UNRWA. He testified that, as part of his internship at UNRWA, he was required to submit reports to Columbia and author blog posts about his experience for the school. He testified that his supervisor at UNRWA was also required to submit a report to Columbia. Mr. Khalil disclosed his employment with Columbia University on his Form I-485, which necessarily included his internship at UNRWA. Because Columbia was his employer during his internship with UNRWA, Mr. Khalil understood that disclosing his employment at Columbia included that internship role. Mr. Khalil further testified that it is his understanding that, in June 2023, the U.S. Department of State was notified of his internship with UNRWA. Mr. Khalil explained that he relied on the guidance in the Form I-485 instructions, which do not mention internships, to complete the application. He further testified that individuals cannot be members of UNRWA, as membership of UNRWA is reserved for nation-states.

22. When DHS had the opportunity to cross-examine Mr. Khalil about his internship at UNRWA and the documentary and testimonial evidence he provided about the information on his Form I-485, DHS did not ask him a single question.

23. As to CUAD, Mr. Khalil testified that all of the purported evidence DHS filed in support of its allegation—that he willfully failed to disclose "membership" in CUAD on his March 2024 green card application—concerns alleged activity that took place in April 2024, nearly a full month *after* he submitted his Form I-485.

24. He further testified that he was never a member or a leader of CUAD. He testified that, to the best of his knowledge, CUAD is not an individual member organization and did not have a formal leadership. CUAD was comprised of over 120 different groups that ranged from those focusing on Palestine, to a climate club and a dance club. Mr. Khalil testified that, CUAD is just that—a coalition of existing groups, not a free-standing individual membership group—and that, as far as he is aware, CUAD operated without any hierarchy, leadership, or structure. Mr. Khalil further explained that, when protests began at Columbia—nearly three weeks after he submitted his Form I-485—faculty at Columbia reached out to him to act as a negotiator. Mr. Khalil explained how faculty approached him specifically because they wanted someone who was NOT part of the student groups leading the protests, as well as someone like Mr. Khalil who was trusted by the administration, students, and faculty, and who had experience with diplomacy and negotiation. Contemporaneously, students in Columbia's encampment—which encompassed many students other than those affiliated with CUAD—also asked him to act as a negotiator. Mr. Khalil agreed to do so, and he began to go back and forth between the administration and the students. He relayed the positions of the administration to the hundreds of students in assembly-style meetings. The students then voted on their collective position by

[4] In addition to testifying as to the meritless of the second charge of removal, Mr. Khalil also presented his own testimony and the testimony of four expert witnesses in support of his applications for asylum, withholding of removal, and protection under the Convention Against Torture.

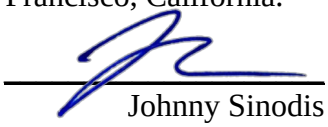
raising their hands to vote. Mr. Khalil would then take their collective decision back to the administration.

25. DHS had the opportunity to cross-examine Mr. Khalil about his alleged membership in CUAD and the documentary and testimonial evidence he provided about the information on his Form I-485 but again did not ask him a single question about this allegation or his testimony contradicting it.

26. At the close of the May 22 hearing, the IJ ordered both parties to submit written closing arguments by June 2, 2025, at 5:00 p.m. Central Time.

27. The parties filed their respective closing arguments on June 2, as the IJ ordered. DHS's written closing argument did not dispute any of Mr. Khalil's testimony nor the evidence submitted by him as to the second charge of removal, all of which showed that the § 1227(a)(1)(A) could not stand. In fact, DHS did not discuss in any way or even mention the § 1227(a)(1)(A) charge of removal, conceding, for all intents and purposes, that the § 1227(a)(1)(A) charge cannot be sustained.

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my own personal knowledge. Executed this 4th day of June 2025 at San Francisco, California.



Johnny Sinodis
Declarant

EXHIBIT 1

Uploaded on: 04/15/2025 at 10:57:52 PM (Central Daylight Time) Page: 38 JNA
Case 2:25-cv-01963-MEF-MAH Document 28-4 Filed 08/05/25 Page 2 of 74 PageID: 3260

Marc Van Der Hout
Johnny Sinodis
Oona Cahill
Van Der Hout LLP
360 Post Street, Suite 800
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Telephone: (415) 981-3000
Facsimile: (415) 981-3003

Attorneys for Respondent
Mahmoud KHALIL

DETAINED

UNITED STATES DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

OFFICE OF THE IMMIGRATION JUDGE

JENA, LOUISIANA

In the Matter of: Mahmoud KHALIL, Respondent, In Removal Proceedings.	[redacted] Hearing Date: April 11, 2025 Hearing Time: 1:00 p.m. Before: Hon. Judge Jamee E. Comans

DOCUMENT LIST FOR MR. KHALIL'S HEARING ON APRIL 11, 2025

Uploaded on: 04/11/2025 at 12:57:02 PM (Central Daylight Time) Page: 39 of 74 JA 1127
Case 2:25-cv-01963-ME Document 44-4 Filed 07/15/25 Page 39 of 74 PageID: 3261

Respondent, Mr. Mahmoud KHALIL, [redacted], through counsel, hereby submits attached Exhibits A through L. He reserves the right to amend and supplement this documentation prior to and at his Hearing scheduled for April 11, 2025, at 1:00 p.m.

Dated: April 11, 2025

Respectfully submitted:

Marc Van Der Hout
Johnny Sinodis
Oona Cahill
Van Der Hout, LLP

Attorneys for Mr. Khalil

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Tab Page

EVIDENCE REFUTING ALLEGATIONS OF ANTISEMITISM IN THE RUBIO MEMORANDUM

A. "Columbia has pushed an anti-Palestinian narrative, lead student negotiator tells CNN," CNN (Apr. 29, 2024), available at https://www.cnn.com/business/live-news/university-protests-palestine-04-29-24/index.html 1

Khalil was also asked what he would say to Jewish students who feel unsafe on campus. "I would say that the liberation of Palestine and the Palestinians and the Jewish people are intertwined. They go hand in hand. Anti-Semitism and any form of racism has no place on campus and in this movement," Khalil said, noting that some members of Columbia's encampment are Jewish and held Passover seders earlier this week, led by Jewish Voices for Peace. "They are an integral part of this movement," Khalil said of the organization.

EVIDENCE DEMONSTRATING MR. KHALIL'S PUBLICLY DISCLOSED POSITION AT UNRWA WAS AN INTERNSHIP FOR COURSE CREDIT THROUGH HIS COLUMBIA MASTER'S PROGRAM

B. Letter from UNRWA New York to the Assistant Director, Master of Public Administration in Development Practice (MPA-DP), the School of International and Public Affairs, Columbia University, dated May 17, 2023 3

I am pleased to inform you that SIPA student, Mahmoud Khalil, has been selected for an internship at the Representative Office of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) in New York. We are looking forward to welcome Mahmoud to our team. The internship is unpaid and will have a duration of three months. It is expected to commence on 1 June to 31 August on a full-time basis; Mahmoud will transition to a part-time schedule from 1 September until 30 November to allow for the continuation of his studies.

C. Letter from Associate Director and Adjunct Associate Professor, Master of Public Administration in Development Practice, School of International and Public Affairs, Columbia University, dated April 10, 2025 5

I certify that, as part of the MPA-DP [Master of Public Administration in Development Practice] core curriculum, Mahmoud Khalil concluded his 3.0 credit 12-week summer placement, in 2023, at the United Nations Relief and Works Agency (UNRWA). The MPA-DP program trains aspiring practitioners to understand, develop, and implement integrated approaches to sustainable development, emphasizing practical knowledge and skills. The core curriculum, in combination with internships such as this, provide students with a solid background in the theories and methods of development. As a supplement to coursework, skills training through internships equip students with the management, communication, quantitative, and analytical skills needed to work fluidly across disciplines and regions.

Uploaded on: 04/11/2025 at 25:52:52 PM (Central Daylight Time) Page Cit: JA 1129 Case 2:25-cv-05631 Document 4 Page 41 Date Filed: 08/20/2025 Case 2:25-cv-05631-ME Document 4-4 Filed 07/15/25 Page 2 of 74 PageID: 3263

D. Printout of Mr. Khalil's LinkedIn profile, demonstrating that his role at UNRWA was publicly disclosed and was listed as an internship 7

E. Evidence of UNRWA USA's 501(c)(3) status 12

EVIDENCE DEMONSTRATING THE SOCIETY FOR INTERNATIONAL DEVELOPMENT WEBSITE SUBMITTED BY DHS IS OUTDATED, ERRONEOUS, AND DOES NOT ESTABLISH THAT HE WORKED FOR THE UK'S SYRIA OFFICE IN BEIRUT BEYOND 2022

F. 2020 Annual Conference Social Media Toolkit, Society for International Development, October 7-8, 2020, listing Mr. Khalil as a speaker.....15

G. 2020 Annual Conference Schedule, Society for International Development, listing Mr. Khalil as a speaker on October 7, 2020.....20

EVIDENCE DEMONSTRATING MR. KHALIL LEFT HIS EMPLOYMENT IN THE BRITISH EMBASSY IN DECEMBER 2022, AS STATED ON HIS FORM I-485

H. Mr. Khalil's signed Independent Contractor Agreement with the British Embassy in Beirut, showing his contract with the Embassy ended in December 2022 25

I. Email from [redacted] , British Embassy Beirut confirming that Mr. Khalil left his position at the Embassy in December 2022 27

EVIDENCE DEMONSTRATING MR. KHALIL WAS NOT A MEMBER OF COLUMBIA UNIVERSITY APARTHEID DIVEST (CUAD)

J. Letter from [redacted] [redacted] Professor at Barnard College and Columbia University 29

I am a Professor of [redacted] *at Barnard College and Columbia University. I spent a lot of time at the encampment in the spring of 2024: I was there to observe and de-escalate the situation. I had many conversations with Mahmoud Khalil, as well as one conversation with members of the Columbia administration involved in the negotiations. I want to emphasize that Mahmoud Khalil's involvement was not as a member of CUAD. As I understood it—and also as is my understanding from the Columbia administrators with whom I spoke—Mr. Khalil served as a negotiator between CUAD and other student protesters, on the one hand, and the Columbia administration, on the other. He was not a member of CUAD, but rather he was nominated as a person who could serve as a go-between between students and the university administration. Mahmoud Khalil's role was to negotiate a peaceful solution between the encampment participants and the Columbia administration, in the hopes of avoiding inviting the New York City police department onto campus a second time.*

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Case 2:25-cv-01963-MEF Document 44-4 Page: 42 Date Filed: 08/20/2025 Page 43 of 74 PageID: 3264

K. Letter from [redacted] University Senator, representing the [redacted] at Columbia University, 2023-2024 academic year, [redacted] and member of the Senate Executive Committee 31

The main point of this letter is to define what Mahmoud's role was as it relates to CUAD. Everything in this letter is from my personal experience and perspective of the 2023-2024 academic year. While I cannot speak for anyone else, any group, or any institution, I believe that my understandings of the situations and relationships that I discuss in this letter are opinions that are shared widely by most who know Mahmoud and anyone who interacted with him in the context of the student movement for Palestine at Columbia.

Mahmoud Khalil was not a member or a leader of CUAD. He was known by many, including myself, as a compassionate, diplomatic, intelligent, and passionate Palestinian student who advocated for his people and for the basic right to freedom of speech and protest. That is why protestors in the Columbia Encampment (also known as the Gaza Solidarity Encampment) asked Mahmoud to negotiate with the University on their behalf, and why he agreed to represent them at the negotiating table. I know this from my role as part of the University Senate delegation that mediated and observed the negotiations. Any allegation that Mahmoud was a member of CUAD is unequivocally false and has no basis in fact.

EVIDENCE THAT MR. KHALIL'S LOBBY, WHERE HE WAS ARRESTED BY ICE OFFICERS ON MARCH 8, 2025, WAS CLOSED TO THE PUBLIC AND THEREFORE OFFICERS COULD NOT ENTER WITHOUT A JUDICIAL WARRANT, WHICH THEY DID NOT HAVE

A. Photos of signs at the entrance to Mr. Khalil's lobby 36

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CERTIFICATE OF SERVICE

On April 10, 2025, 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 10th day of April 2025.

Uploaded on: 04/11/2025 at 12:55:02 PM (Central Daylight Time) Page Ct: JA 1132 of 1175
Case 2:25-cv-12552-ME-CDB ECF No. 4, PageID.44 Filed 06/25/25 Page 1 of 74
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TAB A

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PageID: 3267

4:35 p.m. PDT, April 29, 2024

Columbia has pushed an anti-Palestinian narrative, lead student negotiator tells CNN

From CNN's Samantha Delouya

Mahmoud Khalil speaks with CNN on Monday, April 29. CNN

In a conversation with CNN's Wolf Blitzer, Columbia student lead negotiator Mahmoud Khalil, discussed what he called an "anti-Palestinian narrative" at the school amid pro-Palestinian protests.

> "Over the past six months, these students, they have witnessed the killing of over 34,000 Palestinians in Gaza and despite all of this, the institution, Columbia at least, has only pushed one narrative — an anti-Palestinian narrative on campus," Khalil said. "They feel that they are alienated. They feel that the university is very biased against them," he said of the protesters.

Khalil was also asked what he would say to Jewish students who feel unsafe on campus.

> "I would say that the liberation of Palestine and the Palestinians and the Jewish people are intertwined. They go hand in hand. Anti-Semitism and any form of racism has no place on campus and in this movement," Khalil said, noting that some members of Columbia's encampment are Jewish and held Passover seders earlier this week, led by Jewish Voices for Peace.
> "They are an integral part of this movement," Khalil said of the organization.

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TAB B

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unrwa
الاونروا
united nations relief and works agency for palestine refugees in the near east
وكالة الأمم المتحدة لإغاثة وتشغيل اللاجئين الفلسطينيين في الشرق الأدنى

representative office
new york

one un plaza
room 1265
united nations
new york, n.y. 10017
usa

t +1 212 963 2255

www.unrwa.org

New York, 17 May 2023

Dear Ms. [redacted]

I am pleased to inform you that SIPA student, Mahmoud Khalil, has been selected for an internship position at the Representative Office of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) in New York. We are looking forward to welcome Mahmoud to our team.

The internship position is unpaid and will have a duration of three months. It is expected to commence on 1 June to 31 August on a full-time basis; Mahmoud will transition to a part-time schedule from 1 September until 30 November to allow for the continuation of his studies.

The internship at the UNRWA Representative Office in New York provides a valuable opportunity to familiarize interns with the UN system and with substantive humanitarian, development and political issues. Mahmoud will be responsible for assisting with the smooth functioning of the Office, including:

- Attend meetings, briefings and other events at the UN related to the situation of Palestine refugees, including the monthly Security Council briefings on the Question of Palestine;
- Write reports of meetings; prepare a variety of documents, including letters, concept notes and talking points;
- Prepare monthly newsletters;
- Track international media and social media coverage of issues related to Palestine refugees and UNRWA;
- Assist in the preparation of UNRWA events and visits to New York by senior UNRWA officials;
- Assist with the effective administrative management of UNRWA's Representative Office in New York.

Should you require any further information please do not hesitate to contact us.

[redacted]
Director

[redacted]
Assistant Director, Master's of Public Administration in Development Practice (MPA-DP)
The School of International and Public Affairs, Columbia University

المكتب التمثيلي
نيويورك
مبنى الأمم المتحدة (للأزل)
غرفه رقم ١٢٦٥
نيويورك، نيويورك ١٠٠١٧
الولايات المتحدة الأمريكية
هـ +١٢١٢ ٩٦٣ ٢٢٥٥

EOIR — 10 of 44
Exh. 13 - Adm.

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TAB C

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COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK
SCHOOL OF INTERNATIONAL AND PUBLIC AFFAIRS

New York City, April 10, 2025

TO WHOM IT MAY CONCERN

This is to certify that Mahmoud Khalil successfully concluded an internship for 1.5 credit as part of his Master of Public Administration in Development Practice (MPA-DP) degree, at The Permanent Mission of the State of Palestine to the United Nations, during the spring semester of 2024.

Furthermore, I certify that, as part of the MPA-DP core curriculum, Mahmoud Khalil concluded his 3.0 credit 12-week summer placement, in 2023, at the United Nations Relief and Works Agency (UNRWA).

The MPA-DP program trains aspiring practitioners to understand, develop, and implement integrated approaches to sustainable development, emphasizing practical knowledge and skills.

The core curriculum, in combination with internships such as this, provide students with a solid background in the theories and methods of development. As a supplement to coursework, skills training through internships equip students with the management, communication, quantitative, and analytical skills needed to work fluidly across disciplines and regions.

Yours sincerely,

[redacted]

[redacted]

Associate Director and Adjunct Associate Professor
Master of Public Administration in Development Practice
School of International and Public Affairs
Columbia University

International Affairs Building 420 West 118th Street MC: 3328 New York, NY 10027 212-854-2636 Fax 212-864-4847

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TAB D

Uploaded on: 04/11/2025 at 12:57:53 PM (Central Daylight Time). Base City: JNJ

Home My Network 13 Jobs Messaging 4 Notifications 24 Me For Business Retry Premiu

Mahmoud K. · 3rd

MPA Candidate at SIPA | Columbia

Columbia | SIPA

New York, New York, United States · **Contact info**

500+ connections

Message + Follow More

Activity

887 followers

Mahmoud hasn't posted yet

Recent posts Mahmoud shares will be displayed here.

Show all activity →

Experience

Political Affairs Officer

UNRWA · Internship

Jun 2023 - Nov 2023 · 6 mos

New York, United States

Main tasks included covering issues related to UNRWA at the Security Council and General Assembly.

Foreign, Commonwealth and Development Office

Full-time · 4 yrs 7 mos

Programme Manager - Conflict, Stability & Security Fund

Sep 2022 - Dec 2022 · 4 mos

Managed UK-funded projects with a focus on accountability, justice, and gender equality in Syria.

Programme Manager - Political Officer

Jun 2018 - Aug 2022 · 4 yrs 3 mos

Beirut District, Lebanon · On-site

Managed the prestigious Chevening Scholarship Program and reported on the situation in Syria.

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EOIR – 14 of 44

Finance and Operations Manager / Lebanon Scholarship Program Lead
Jusoor
Jun 2013 - Jun 2018 · 5 yrs 1 mo
Lebanon

Oversaw the finance and operations of a growing program, which expanded to serve 4,000 students across 3 centers and employ 45 staff

Field Officer
Najda Now International
Jan 2013 - May 2013 · 5 mos
Lebanon

Education

Columbia | SIPA
Master of Public Administration - MPA
Jan 2023 - Dec 2024

Lebanese American University
Bachelor's Degree, Computer Science
2015 - 2018

Show all 3 educations →

Volunteering

Social Media Coordinator
Jusoor
Jan 2014 - Jul 2016 · 2 yrs 7 mos
Education

Youth Advisory Group Member
Global Partnership for Education
Jun 2017 - Jan 2019 · 1 yr 8 mos
Education

Part of GPE's Youth Advisory Group advocating for access to quality education for out of school children.

Skills

NGOs
12 endorsements

Teamwork
Endorsed by [redacted] who is highly skilled at this
Endorsed by 2 colleagues at Jusoor
9 endorsements

Show all 30 skills →

Courses

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Project Management

Associated with Jusoor

Relief Rapid Assessment Methodology

Associated with Najda Now International

Show all 4 courses →

Languages

Arabic
Native or bilingual proficiency

English
Full professional proficiency

Interests

Companies Groups Newsletters Schools

United Nations
5,839,262 followers
✓ Following

Columbia Business School
231,844 followers
+ Follow

Show all companies →

Causes

Disaster and Humanitarian Relief · Economic Empowerment · Education · Human Rights · Politics · Poverty Alleviation · Science and Technology

More profiles for you

Badar Khan Suri · 3rd
Ph.D. in Peace & Conflict Studies
Message

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Laya Mosto · 3rd
Advocacy and Policy Officer, MPA in Development Practice
Message

Asmaa AbuMezied · 3rd
Gender and Economic Justice Advisor | Development Consulting | Program Design and Management | LSE | Columbia University SIPA MPA-
+ Follow

Paras Abbasi · 3rd
MPA | Climate finance and climate justice | Gender justice | Sustainable development and financial inclusion | Human rights and advocacy
Message

Amy Greer · 3rd
Partner K&L Gates White Collar Defense and Investigations | Securities & Financial Regulatory Enforcement | Corporate Governance & ESG |
Message

Show all

People you may know
From Mahmoud's school

Nishat "Bella" T.
Assistant Commissioner, DYFJ | CUP NY Fellow 2023
Connect

Stephanie McGregor
Retired Assistant Director Career Planning at City University of New York School of Law
Connect

Darren Rosenblum
Professor, McGill Law Faculty
Connect

Scott Roehm
Director of Global Policy and Advocacy at The Center for Victims of Torture
Connect

Zainab Tahir
Master's Candidate - Columbia University School of International and Public Affairs
Connect

Show all

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TAB E

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Unrwa USA National Committee Inc.

EIN: 20-2714426 | Washington, District of Columbia, United States

Other Names

UNRWA USA NATIONAL COMMITTEE INC

Publication 78 Data

Organizations eligible to receive tax-deductible charitable contributions. Users may rely on this list in determining deductibility of their contributions.

On Publication 78 Data List: Yes

Deductibility Code: PC

Copies of Returns (990, 990-EZ, 990-PF, 990-T)

Electronic copies (images) of Forms 990, 990-EZ, 990-PF or 990-T returns filed with the IRS by charities and non-profits.

- Tax Year 2021 Form 990
- Tax Year 2020 Form 990
- Tax Year 2019 Form 990
- Tax Year 2018 Form 990
- Tax Year 2017 Form 990

Uploaded on 04/11/2025 at 10:53 AM (Central Daylight Time) Case 2:25-cv-12562-MEF-CLW Document 4-3 Filed 04/15/25 Page 57 of 74 PageID: 3279

Tax Year 2016 Form 990

Uploaded on: 04/11/2025 at 12:52:02 PM (Central Daylight Time) Page: 58 JA 1146
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TAB F

Uploaded on: 04/11/2025 at 03:30:02 PM (Central Daylight Time) Page: 59 JA 1147 Dated: 08/20/2025
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Case 2:25-cv-02152-ME Document 1-4 Page ID: 3281 Filed 08/20/25 Page 59 of 74

2020 Annual Conference Social Media Toolkit

Date: October 7-8, 2020

About: Join us on October 7 and 8 for **SID-Washington's first-ever virtual conference**! While we will miss gathering in person, we are super excited about moving our annual conference online. Join hundreds of other international development professionals to discuss and debate ideas, trends, and challenges facing our sector today. Focusing on our theme of **The Decade to Deliver**, we will examine what we need to do as a community to meet the Sustainable Development Goals by 2030.

Just like our in-person conference, we will have keynote addresses, plenaries, breakout sessions, and more. We will also have workshops, networking opportunities, and, of course, our ever-popular exhibit hall. And, unconstrained by physical space, we expect speakers and attendees from all over the globe. With our focus on networking, we will have innovative ways for you to interact with your peers from all sectors of development, including NGOs, contractors, the private sector, consulting firms, government agencies, universities, small businesses, large corporations, donors, and anyone else engaged in the important work of international development.

Join the Conversation

Twitter: @sidwashington

Hashtags:

- #SIDWConference
- #SIDWOnline
- #globaldev
- #VirtualConference
- #HappeningNow

Website: https://www.sidwconference.org

LinkedIn: Society for International Development, Washington Chapter

Facebook: Society for International Development, Washington Chapter

Instagram: @sidwash

Please use these social media platforms to spread the word to everyone in the development community about the Annual Conference!

Sample Tweets

Conference-Related

- Looking forward to speaking at the first-ever @SIDWashington #VirtualConference this week! Join me at the #SIDWConference for a full day of discussion about #globaldev issues, achieving SDG goals by 2030, and more! Register now: https://www.sidwconference.org

- Join me tomorrow at [time] to discuss [topic] at the 2020 #SIDWConference. Thank you for having me @SIDWashington https://www.sidwconference.org/

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- #HappeningNow: The 2020 #SIDWConference is underway. I'll be speaking about [topic] and look forward to an engaging #SIDWOnline experience full of discussion, debate & networking with people engaged in #globaldev! https://www.sidwconference.org

Sample LinkedIn Posts

- It is almost time for 2020 #SIDWConference! On October 7-8, I am excited to join other #GlobalDev professionals at the first-ever Virtual Society for International Development, Washington Chapter (SID-W) Conference! I'll be speaking about [topic] and I hope to see you there: https://www.sidwconference.org/

Sample Facebook Posts

- Delighted to be able to talk about [topic] at the first ever virtual #SIDWConference. Registration is still open and you can be part of the conversation: www.sidwconference.org

Annual Conference Speaker Twitter Handles and/or Organization:

Day 1

Opening Plenary

- Fireside Chat with USAID Deputy Administrator Bonnie Glick
  - Keynote Speaker: Bonnie Glick - @USAIDBGlick, @USAID
  - Moderator: Wade Warren - @Deloitte, @DeloitteGov

AM Panels

- Panel 1 (People) - Building our Talent Pipeline for Diversity, Equity, and Inclusion
  - Moderator: Yvette Burton - @ycburtonphd, @NYUniversity
  - Tonija Hope - @HowardU
  - Carmen Mezzera - @apsiainfo
  - Uzra Zeya - @UzraZeya, @AfPeacebuilding
- Panel 2 (Planet) - Realizing the Circular Economy Advantage
  - Moderator: Wesley Spindler - @wesleyspindler, @AccentureStrat
  - Jon Angin - @TetraTechIntDev
  - Elissa Foster - @Pantagonia
  - David Stover - @BureoInc
- Panel 3 (Prosperity) - Delivering Economic Growth and Trade Support in the "New Normal"
  - Moderator: Masood Ahmed - @MasoodCGD, @CGDev
  - Jennifer Adams - @USAIDMozambique
  - Anabel Gonzalez - @_AnabelG, @PIIE
  - Vasken Khabayan - @VKhabayan, @GAC_Corporate
  - Gail Warrander - @GWarrander, @FCDOGovUK
- Panel 4 (Learning Lab) - How Effective Partnerships are Addressing the SDGs
  - Facilitator: Joeanne Sonenshine - @jsonenshine, @conn_impact

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Lunch Plenary

- Next Generation of Leaders and SDGs: Linking Local and Global for Systemic Change
    - Moderator: Jeffrey Caesar
    - Mahmoud Khalil - @FCDOGovUK
    - Claire Sullivan - @univofdayton
    - Soazic Elise Wang Sonne - @WorldBank

PM Panels

- Panel 1 (People) - Focusing on Women and Girls in COVID Response and Recovery
    - Moderator: Caren Grown - @CarenGrown, @WorldBank
    - Gary Barker – @Promundo_US
    - Patricia Greene
    - Dr. Valerie Hudson - @BushSchool
- Panel 2 (Planet) - Environmental Implication of Infectious Diseases
    - Moderator: John Parker - @TetraTechIntDev
    - Hellen Amuguni - @tuftsvet
    - Patricia Bright - @USAID
    - Sabri Zain - @TRAFFIC_WLTrade
- Panel 3 (Prosperity) - Local Leadership for Sustainable Urban Development
    - Moderator: Tony Pipa - @anthonypipa, @BrookingsGlobal
    - Yvonne Aki-Sawyerr - @yakisawyerr
    - Mauricio Rodas - @MauricioRodasEC
- Panel 4 (Learning) - Disrupting Racism through Communications
    - Facilitator: Jelena Hasbrouck - @Jelenyo
    - Chizi Igwe - @DalbergTweet

Day 2

Opening Plenary

- Sean Cairncross - @MCC_CEO, @MCCGov
- Gloria Steele - @USAID

AM Panels

- Panel 1 (People) - Strategies and Tools for Addressing Inequalities
    - Moderator: Carla Koppell - @CarlaKoppell, @GeorgetownU
    - Lucie Amadou - @counterpartint
    - Maitreyi Bordia Das – @DasMaitreyi, @WorldBank
    - Rosarie Tucci - @USIP
- Panel 2 (Reimagining Development) - Reimagining Development
    - Moderator: Roger Ford - @FRogerFord, @Accenture
    - Nicole Barnes - @RTI_INTL_DEV
    - Julie Becker - @Chemonics
    - Jeremy Kanthor - @DAIGlobal
    - Thomas Reilly - @TetraTechIntDev
    - Erin Uggen - @Nathan_Inc
- Panel 3 (Innovation Showcase Q&A)

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- Moderator: Nick Martin - @ncmart
- Panel 4 (Learning Lab)
  - Bobby Jefferson - @DAIGlobal
  - Jon Walton

PM Panels

- Panel 1 (USAID's Digital Strategy and the Decade to Deliver)
  - Moderator: Manisha Aryal - @Chemonics
  - Krista Baptista - @DAIGlobal
  - Craig Jolley - @JolleyWithAnE, @USAID
  - Michelle Parker - @USAID
- Panel 2 (Reimagining Development)
  - Moderator: Wade Warren, @Deloitte
  - Graham Couturier - @EqualAccessIntl
  - Bob Fries - @acdivoca
  - Olivier Girard - @1977Creative
  - Michele Laird - @Michele_Laird, @abtassociates
- Panel 3 (Food Security)
  - Moderator: Sylvia Megret - @SylviaMegret, @acdivoca
  - Mark Castellino – @CastellinoMark, @OpportunityIntl
  - Jocelyn Brown Hall - @ JocelynB_FAO, @FAO
  - Tracy Mitchell - @RTI_INTL_DEV (Doesn't have her own account)
  - Lori Groves Rowley - @LGRowley1
- Panel 4 (Learning Lab)
  - Tosca Bruno-van Vijfeijken - @Tosca5Oaks

Closing Plenary

- Moderator: George Ingram - @BrookingsInst
- Sarah Mendelson - @SarahMendelson, @CarnegieMellon
- Shaun Mickus - @JNJGlobalHealth
- Eric Reading - @eric_reading, @AbtAssociates
- Tessie San Martin - @Tessie_Plan, @PlanUSA

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TAB G

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Day 1

Wednesday, October 7, 2020
10:00 AM - 3:00 PM (Eastern Time)

Please note that the schedule is subject to change.

10:00 - 10:55 AM (ET)

Fireside Chat with USAID Deputy Administrator Bonnie Glick

To kick off our first ever Virtual Annual Conference, USAID Deputy Administrator Bonnie Glick will join us for a fireside chat with SID-Washington incoming Board Chair Wade Warren to talk about priorities and challenges in international development during a pandemic and looking ahead to a post-COVID world. Following up on their

discussion at our 2019 Annual Conference, Bonnie and Wade will talk about how things have changed more than any of us could have imagined just a year ago and provide their thoughts on the way forward in unprecedented and challenging times.

Keynote:
Bonnie Glick - Deputy Administrator, USAID

Moderator:
Wade Warren - Board Chair, Society for International Development - Washington Chapter, Chief Strategy Officer for International Development, Deloitte Consulting and former Acting Administrator, USAID

11:00 - 11:55 AM (ET)

- Track 1: People
- Track 2: Planet
- Track 3: Prosperity
- Track 4: Learning Lab
- Other Features

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Building our Talent Pipeline for Diversity, Equity and Inclusion

A diverse workforce and an inclusive climate are essential for ensuring organizations that thrive and deliver globally. This panel will discuss how to enable a diverse, healthy workforce for our field and within our organizations – why it's essential and how to cultivate and nurture talent.

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Moderator:
Yvette Burton - Lead Faculty and Architect, Inclusion By Design Business Certification Program, New York University

Speakers:
Tonija Hope - Director, Ralph J. Bunche International Affairs Center, Howard University
Carmen Mezzera - Executive Director, Association of Professional Schools of International Affairs (APSIA)
Uzra Zeya - CEO and President, Alliance for Peacebuilding

12:00 - 12:25 PM (ET)

Networking Lounges
Want to meet others working on specific topic or issue? Stop by our networking lounge to meet SID-Washington Co-chairs and other attendees. Join a table on a topic that is of interest to you. Feel free to move around to multiple tables during this 25-minute session or stay at one the entire time. It's up to you!

The networking lounge will be open all day for you to informally mingle with others, but will only be facilitated by SID-W Co-Chairs during this 25-minute session.

Other Ways to Network

1. Visit the virtual exhibit hall.
2. Participate in the discussion boards and create your own topics for discussion.
3. Chat one-on-one with other attendees.
4. Stop by the networking lounge throughout the day to meet others.

12:30 - 1:25 PM (ET)

Next Generation of Leaders and SDGs: Linking Local and Global for Systemic Change

To deliver on the SDGs we need leadership at the local and global level. And we need to identify strategies and approaches for community engagement that build lasting results. Our panel of leaders working both globally and locally will explore how we can tap into the potential of new and innovative digital sources of data to track progress towards the SDGs. What are examples of effective strategies for community engagement? And how can artificial intelligence be deployed as a force for good to achieve the SDGs?

Moderator:
Jeffery Caesar - Campaign Director, 360 Campaign Consulting

Speakers:
Mahmoud Khalil - Program Manager, UK's Syria Office in Beirut

Claire Sullivan - Student Sustainability Leader, University of Dayton
Soazic Elise Wang Sonne - Young Professional (Economist), Social Development Global Practice, The World Bank Group

1:30 - 2:25 PM (ET)

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- Track 1: People
- Track 2: Planet
- Track 3: Prosperity
- Track 4: Learning Lab
- Other Features

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Focusing on Women and Girls in COVID Response and Recovery

Women and girls are being disproportionately affected economically and socially by COVID-19, and they risk losing ground in the recovery. They are the majority of frontline workers in the response and they are losing jobs and income disproportionately, even as they assume the larger share of paid and unpaid care responsibilities, and face skyrocketing rate of gender-based violence. This panel will discuss the impact of COVID on efforts to foster gender equality and strategies for preventing long-term backsliding of efforts for equality.

Moderator:
Caren Grown - Global Director, Gender, The World Bank

Speakers:
Gary Barker - CEO and Founder, Promundo
Patricia Greene - Former Director, Women's Bureau, U.S. Department of Labor
Valerie Hudson - University Distinguished Professor, Bush School of Government and Public Service, Texas A&M University

2:30 - 3:30 PM (ET)

Fireside Chat with Andrew Herscowitz, Chief Development Officer, DFC

Keynote:
Andrew Herscowitz - Chief Development Officer, U.S. International Development Finance Corporation

Moderator:
Robert Mosbacher, Jr. - Board Chair, Mosbacher Energy Company and Former President and CEO, Overseas Private Investment Corporation

Keynote Address: David Miliband, International Rescue Committee

We will end our first day with a keynote address by International Rescue Committee (IRC) President and CEO David Miliband. David is leading IRC through extraordinarily difficult times and will comment on the challenges facing all of us and how he and IRC are navigating them.

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Keynote:
David Miliband - President and CEO, International Rescue Committee (IRC)

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TAB H

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British Embassy
Beirut

01 November 2022

Private and Confidential

Mahmoud Khalil
British Embassy Beirut

Dear Mahmoud,

Re: Extension of Fixed Term Contract

As you are aware your Independent Contractor Agreement as CSSF Syria Projects Manager at the British Embassy Beirut will end on 20 November 2022.

I am writing to confirm the extension of your Independent Contractor Agreement until 20th December 2022.

The terms and conditions of your employment will remain the same as per your original agreement.

Please confirm your acceptance by signing the acknowledgement receipt below and return it to the Human Resource Department, Corporate Services.

May I take this opportunity to thank you for your valued contribution to British Embassy Beirut.

Yours sincerely,

[redacted]

Head of Corporate Service

I hereby acknowledge receipt of the letter of appointment setting out the conditions for locally engaged staff at the British Embassy in Beirut. Having read and fully understood them, I agree to accept them as the conditions governing my employment at the British Embassy, Beirut.

Signed Mahmoud Khalil

Name in full Mahmoud Khalil

Date 14/11/2022

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Exh. 13 - Adm.

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TAB I

Sent: Friday, April 11, 2025 11:51:58 AM
To: [redacted]
Subject: Mahmoud Khalil Contract

OFFICIAL

To whom it may concern

I can confirm that Mahmoud Khalil ended his contract at the British Embassy Beirut in December 2022 in order to take up a scholarship at Columbia University. Mahmoud has not worked for the Embassy since, albeit he was an excellent and respected member of staff during his time here and also a worthy recipient of a scholarship.

Regards

[redacted]
British Embassy Beirut
+961 81 512 80

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This email is intended for the addressee(s) only: All messages sent and received by the Foreign, Commonwealth & Development Office may be monitored in line with relevant UK legislation

OFFICIAL

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TAB J

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April 10, 2025

Executive Office for Immigration Review
Immigration Court
830 Pinehill Road
Jena, LA 71342

Dear Sir/Madam,

I am a Professor of [redacted] at Barnard College and Columbia University. I spent a lot of time at the encampment in the spring of 2024: I was there to observe and de-escalate the situation. I had many conversations with Mahmoud Khalil, as well as one conversation with members of the Columbia administration involved in the negotiations. I want to emphasize that Mahmoud Khalil's involvement *was not as a member of CUAD*. As I understood it—and also as is my understanding from the Columbia administrators with whom I spoke—Mr. Khalil served as a negotiator between CUAD and other student protesters, on the one hand, and the Columbia administration, on the other. He was not a member of CUAD, but rather he was nominated as a person who could serve as a go-between between students and the university administration. Mahmoud Khalil's role was to negotiate a peaceful solution between the encampment participants and the Columbia administration, in the hopes of avoiding inviting the New York City police department onto campus a second time.

Best,

[redacted]

[redacted]

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TAB K

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April 10, 2025
TO: Executive Office for Immigration Review
Immigration Court
830 Pinehill Rd
Jena, LA 71342

To the Executive Office for Immigration Review,

I am writing to you today in defense of Mahmoud Khalil. My name is [redacted], and I am a graduate of Columbia [redacted], 2024). Before graduating in May 2024, I served as a University Senator, representing the [redacted] at Columbia University. In the 2023-2024 academic year, I was serving as a [redacted], and by virtue of that role I was a member of the Senate Executive Committee. It is through my work as a student leader within the University Senate (particularly in the context of the pro-Palestine protests and the ensuing injustices and controversies at Columbia) that I met, befriended, and interacted with Mahmoud. It is through that same work that I have firsthand knowledge of his relationship to Columbia University Apartheid Divest (CUAD).

The main point of this letter is to define what Mahmoud's role was as it relates to CUAD. Everything in this letter is from my personal experience and perspective of the 2023-2024 academic year. While I cannot speak for anyone else, any group, or any institution, I believe that my understandings of the situations and relationships that I discuss in this letter are opinions that are shared widely by most who know Mahmoud and anyone who interacted with him in the context of the student movement for Palestine at Columbia.

Mahmoud Khalil was not a member or a leader of CUAD. He was known by many, including myself, as a compassionate, diplomatic, intelligent, and passionate Palestinian student who advocated for his people and for the basic right to freedom of speech and protest. That is why protestors in the Columbia Encampment (also known as the Gaza Solidarity Encampment) asked Mahmoud to negotiate with the University on their behalf, and why he agreed to represent them at the negotiating table. I know this from my role as part of the University Senate delegation that mediated and observed the negotiations. Any allegation that Mahmoud was a member of CUAD is unequivocally false and has no basis in fact.

There were many parties involved with the Encampments on all sides, so here is a breakdown of the relevant groups:

1. Columbia Encampment (or the Encampment) - a non monolithic group of protestors who set up camp on the Columbia University lawn to demand, among other things, disclosure and divestment from companies involved in the oppression and killing of Palestinians. This included both members of CUAD and allies who were Columbia students not affiliated with CUAD.
2. Encampment Negotiators - There were two students who represented the Encampment in negotiations with the University. One of them was Mahmoud Khalil, and the other was [redacted].

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3. University Senate delegation - a group of University Senators, some witnessing the negotiations as neutral observers, and others serving as neutral mediators to help both sides come to an agreement. We were asked to take on this role by the Encampment Negotiators, who wanted a trusted, neutral body to ensure that the University administration dealt with them in good faith. This format for the negotiations was agreed to by the University.
4. University Negotiators - members of the University administration who represented the University in the negotiations and reported to senior University leadership
5. University (or University Administration) - the senior University leadership who made the ultimate decisions when it came to the negotiations. This included the President of the Columbia, the Board of Trustees, and whoever else they decided to include in their decision-making process

During this time, I spent many hours, sometimes almost the entire day, in the negotiating room with Mahmoud and the others. Not a single negotiating session would pass without Mahmoud stating that he is not a member of CUAD and that he does not have the power to tell the Encampment what to do. This was not some negotiating tactic. When I was not in the negotiating room, I observed what happened in the Encampment and how they made decisions. The Encampment Negotiators, including Mahmoud, would come down and provide the latest update to a committee of members in the Encampment, which included some CUAD members. This committee would then discuss the updates and then share them with the entire Encampment during an “assembly” meeting. There were times when they just had Mahmoud and/or [redacted] share the updates directly at assembly. If there was a decision to be made (for example, to accept or decline a given deal), that would be voted on at assembly by everyone in the Encampment, which included both CUAD and non-CUAD members. There would be individuals who spoke up in favor of or against particular actions or decisions, meaning there was an opportunity to discuss or debate at assembly as well. The Encampment Negotiators would then take this decision back into the negotiating room during the next session to continue in trying to reach an agreement. So, in the entire process, Mahmoud was fully faithful in representing the demands of the Encampment in the negotiations, and held no position to make decisions. He was, in a sense, a messenger and an ambassador, and he would constantly ensure that everyone in the negotiating room understood the limitations of his influence in the process as a non-CUAD member, particularly because he respected the democratic decision-making of the Encampment.

This should be enough to explain that Mahmoud was not a member of CUAD, and was simply negotiating on behalf of the Encampment (which included CUAD and non-CUAD protestors); he would constantly repeat this fact, and all of his interactions with CUAD and the Encampment were aligned with this reality. But, I want to also back up a bit and share another interaction with Mahmoud that gives more context and evidence for him not being a member of CUAD.

My first real interaction with Mahmoud was in February 2024, when he and a handful of other Palestinian students at Columbia, across different schools, came to my apartment to meet with me and some other University Senators. The University administration had just announced an

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Interim University Policy for Safe Demonstrations, which the Senate Executive Committee had consulted on in an attempt to ensure that the admin did not repeat their past transgressions of limiting the free speech rights of protesting students. While the University Senate did not agree with this new policy (it was never voted on by the full University Senate), it was a fairer and less restrictive framework for managing demonstrations when compared to how the University was previously operating. Because of this, a few of us University Senators wanted to meet with CUAD leadership to explain the new policy, come to an agreement on abiding by it, and hopefully open an ongoing dialogue that would help inform further reforms to University policies. (It is important to note that CUAD does not have a formal leadership structure, though we did not know about how they operated when initiating the meeting). Instead of meeting with us, the CUAD members who we were in contact with suggested that we meet with a delegation of Palestinian students and hear directly from them about their personal experiences trying to advocate for their people. We believed that taking that meeting was important to ensure that our constituents were heard (Palestinians students and their allies were rarely ever afforded the common courtesy of being able to share their stories with University leadership), to inform our decision-making with the needs of some of our most vulnerable community members, to build trust, and to eventually get around to meeting with CUAD and opening that dialogue. The Palestinian students did not feel comfortable or safe meeting with us without masks on campus, and this was of course understandable given the persecution and doxxing that they and their allies had already faced thus far. So, I offered my apartment as a more neutral meeting space.

Mahmoud introduced himself to me and my colleagues as folks started trickling into the apartment, and I recognized him from other events around campus. I did not know he was Palestinian until then. I kicked off our meeting and Mahmoud acted as a sort of facilitator for their side. When introducing everyone, he made a few things clear: 1) they were not here representing CUAD, 2) some of them may be involved with CUAD in various capacities, but not all of them are, and 3) he was not affiliated with CUAD. As the meeting went on, it became clear to me that Mahmoud was a trusted member of the Palestinian student community, and it became clear why - he was empathetic, knowledgeable, wise, diplomatic, and steadfast. He did not need to be a member of CUAD or the leader of a student org to advocate for his people; he just needed to be who he is and stay engaged where he can make the most impact.

From that first interaction, I knew that Mahmoud was neither a leader nor a member of CUAD. But, because of that same first meeting, I knew that he would always do what he could, in his personal capacity, to support his community and stand up for what is right. So when, a few months later, I walked into a room where negotiations between the University and the Encampment were to take place, I was not surprised to see him sitting there, representing the protestors in the Encampment. They could not have asked a better person to speak on their behalf, and indeed, the University could not have asked for a better negotiating partner; not because he would agree to their unserious demands, but because Mahmoud was composed and honorable. He would (and did) deal with the University with equitability and honesty. It is a shame that the rest of that chapter ended so disgracefully.

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To sum up this letter for support, I, in my capacity as a student leader within the University Senate, met with and worked directly with Mahmoud Khalil to help better represent and meet the needs of the University student body and various other stakeholders. Through all of my interactions with Mahmoud in that capacity, it was clear to me that Mahmoud was not a member of CUAD. Any allegation to the contrary is baseless.

I hope you will consider these facts as you make this decision. Thank you.

Sincerely,

[redacted]

[redacted]

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TAB L

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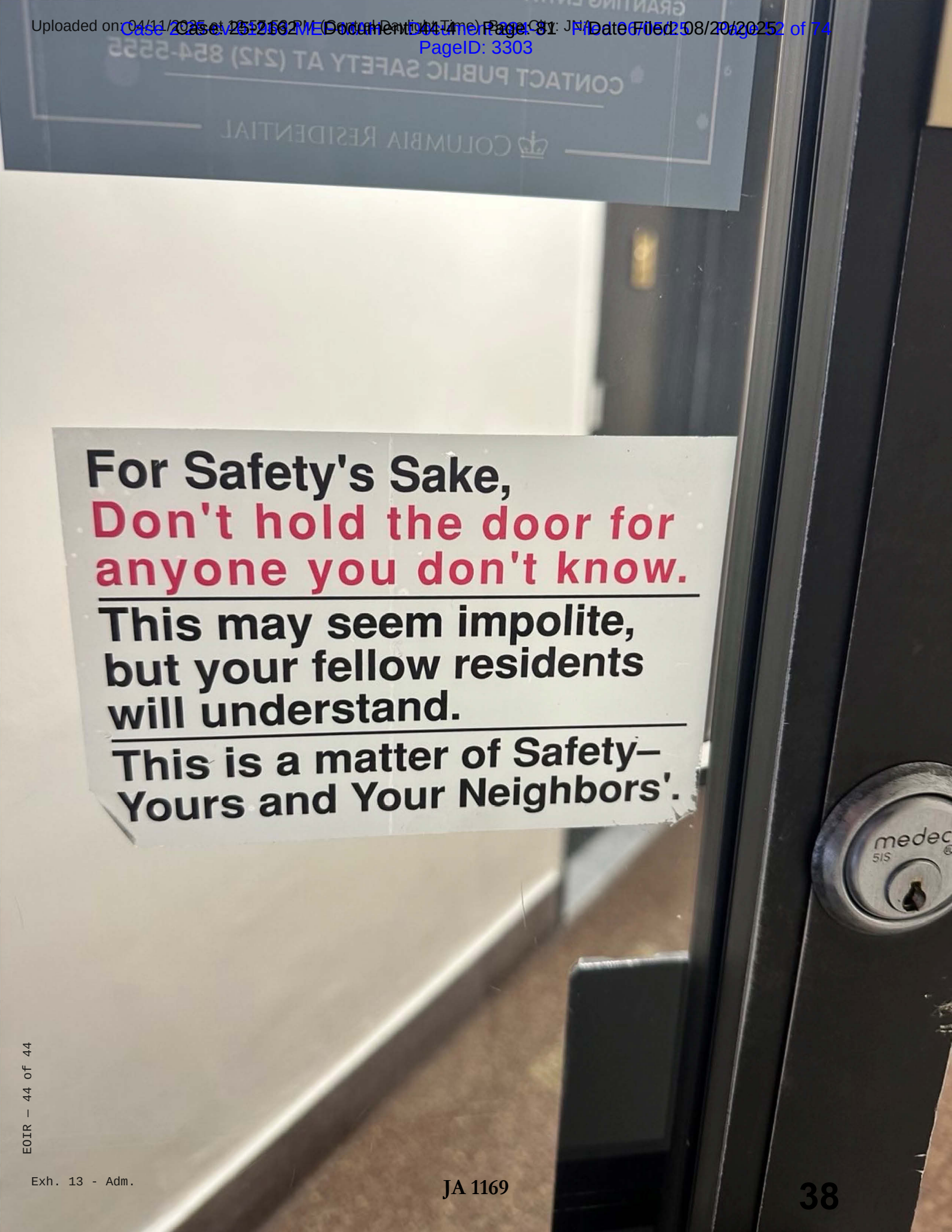

EXHIBIT 2

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Marc Van Der Hout
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San Francisco, California 94108
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Facsimile: (415) 981-3003

Attorneys for Respondent
Mahmoud KHALIL

DETAINED

UNITED STATES DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

OFFICE OF THE IMMIGRATION JUDGE

JENA, LOUISIANA

In the Matter of: Mahmoud KHALIL, Respondent, In Removal Proceedings.	[redacted] Hearing Date: N/A Hearing Time: N/A Before: Hon. Judge Jamee E. Comans

ADDITIONAL EVIDENCE AND DOCUMENT LIST FOR MR. KHALIL REFUTING THE CHARGES AGAINST HIM IN THE NOTICE TO APPEAR AND FORM I-261

On April 23, 2025, 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 23rd day of April 2025.

We include a separate certificate of service on the final page, as requirements vary by Immigration Courts

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Respondent, Mr. Mahmoud KHALIL, [redacted], through counsel, hereby submits attached Exhibits A through F in further rebuttal to the charges in the Notice to Appear and the Form I-261, Additional Charge of Inadmissibility/Deportability.

Dated: April 23, 2025

Respectfully submitted:

Marc Van Der Hout
Johnny Sinodis
Oona Cahill
Van Der Hout, LLP

Attorneys for Mr. Khalil

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ADDITIONAL EVIDENCE REFUTING ALLEGATIONS OF ANTISEMITISM IN THE RUBIO MEMORANDUM AND CLARIFYING MR. KHALIL'S ROLE AS A NEGOTIATOR ON BEHALF OF ALL STUDENTS

A. Letter from [redacted], dated March 19, 2025 1

I am writing this letter to you in support of Mahmoud Khalil. My name is [redacted] and I am a U.S. citizen and identify as Jewish. I graduated from Columbia University's School of International and Public Affairs (SIPA) in May 2024 and have known Mahmoud Khalil for about two years since he started his studies at SIPA in January 2023.

I consider Mahmoud a colleague, fellow advocate and profound human being. I regard Mahmoud as a thoughtful, committed, highly intelligent, curious and pacifistic person. I developed this understanding of his character through my many interactions with him at Columbia in classrooms, social outings, and advocacy circles. I have had countless discussions with him about international affairs, politics and the Israeli-Palestinian conflict. I can point to several specific examples that highlight Mahmoud commitment to non-violent, respectful language and building an inclusive pro-Palestinian movement on campus.

My first interaction with Mahmoud was in March 2023. Over the prior winter break, I participated in a trip to the Occupied Palestinian Territories organized by PalTrek National. As a follow-up to the trip, a discussion was convened with participants of the trip to highlight our experience. I offered to speak about my experience as a Jewish person who has traveled to Israel on multiple occasions before this trip. I was honest about my participation in Birthright International, a fully-funded trip for American Jewish youth to experience Israel. Birthright has received criticism from anti-Israel groups for its support of resettling American Jews to Israel, often at the expense of Palestinian families. While some students at SIPA expressed valid concerns about including my experience over others from the trip, Mahmoud personally welcomed my inclusion in the panel. Mahmoud saw the importance of including my voice in this discussion and highlighting the complicated pressures on American Jews. Mahmoud, starting at SIPA in January, did not participate in the trip and did not know me beyond my identity as Jewish and previous participant in Birthright. Instead of leaning into stereotypes or succumbing to the pressures of others, Mahmoud saw me as a human being with a long and complicated relationship to my religious identity and its connection to the state of Israel.

The next incident I'd like to highlight occurred in October 2023. Following the Hamas-led terrorist attacks on October 7th and subsequent military response by Israel, the Dean of SIPA, Keren Yarhi-Milo, asked to meet with some SIPA students to understand the impact of the war on Palestinian students. Mahmoud was in attendance. Mahmoud began the meeting by asking Dean Yarhi-Milo, an Israeli citizen, how she, her family and community were doing in light of the terrorist attack. In asking the question, Mahmoud condemned the violent, hateful act by Hamas terrorists and expressed grief for the immediate loss of life and continued impact on the communities. Even Dean Yarhi-Milo appeared touched by the question and expressed

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gratitude for his consideration of her experience of this violence as an Israeli woman.

From October 2023, tensions on campus elevated. I've watched Mahmoud on several occasions de-escalate tense situations on campus, leading with peace to usher a constructive dialogue rather than inciting aggression that leads to hate speech. I saw Mahmoud, as well as other Arab classmates, confronted and, at times, harassed by other students, asking him if he supported Hamas. Mahmoud would not raise his voice or respond with aggression, but instead simply answer the question by condemning Hamas and all forms of violent extremism. Mahmoud recognized this was a tactic to coerce him to promote hateful or extremist language, but he never wavered in his denouncement of all forms of violent extremism, including the actions of Hamas on October 7th.

On October 25th 2023, over 20 students, including myself, were targeted in a doxing campaign by the right-wing media organization, Accuracy in Media. The organization launched an online petition, personal website for each student, and paraded a billboard truck around campus displaying my name and photo under the banner, "Columbia's Leading Antisemite." The false statement was attributed to my position as the President of SIPA's Human Rights Working Group. Mahmoud, not targeted at that time by this doxing campaign, reached out to me personally to check in on my well-being. He recognized that my identity and work experience with Jewish organizations contradicted the claim of antisemitism, and offered his support. He expressed his support not in justification of antisemitism, but as defamatory action to distract from legitimate antisemitism happening on campus, saying to me, "by targeting the Jewish student and ignoring the very real antisemitism happening on campus, [Accuracy in Media] has made it clear their motives are not to protect Jewish people."

I can point to additional incidents that occurred in April 2024 during the Solidarity Encampment at Columbia University. During the Encampment, Mahmoud led community-wide discussions on how to ensure the space was free from hate and discrimination. Through this, he helped develop community guidelines for the encampment that indicated any expression of hate speech will not be tolerated. On one occasion, some individuals made remarks that I personally found offensive as a Jewish person. I saw Mahmoud visibly uncomfortable, and instead of berating or verbally attacking the individuals, he approached them calmly to deescalate the situation by saying, "that's not a productive approach. We need to focus on law, not emotion." His priority has always been advocacy through nonviolent means, centering facts, legal arguments, and mutual respect.

ICE may attempt to use his participation in the Encampment protest against him, but that would be a complete distortion of reality. Mahmoud has actively included Jewish voices in conversations about Israel-Palestine. In fact, during the first day of Jewish Holy Days of Passover, I asked Mahmoud for his help in hosting a Passover Seder at the Encampment specifically for a non-Jewish audience. Mahmoud was very helpful in connecting me with the leadership of the Encampment and ensuring I had a large, safe space to host the Seder. Not only did he attend the Seder, Mahmoud invited his non-Jewish friends, understanding the importance of including non-Jews in the celebration of this Holy Day. Following the Seder, he commented to me directly, "thank you for hosting and inviting me to this Seder. It was my

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first time being invited to a Passover Seder and I am very thankful to have learned more about Judaism." His gratitude and support of this initiative further highlights his understanding of the value of including Jewish voices in typically non-Jewish spaces. In that moment, Mahmoud saw me, not just as a Jew but as a fellow human being equally committed to his message of nonviolence and peace.

Additionally, ICE and Federal officials may penalize Mahmoud for his visibility during Columbia's protests because he was selected as a press representative from the student negotiating team. Only specific students were selected for these roles to ensure the peaceful purpose of the protests were expressed calmly and without hatred. I watched him on several occasions be tested by the press with leading questions that sought to charge the conversation with antisemitic or extremist messaging, and Mahmoud maintained his calmness, commitment to promoting peace on campus and sensitivity to hateful or extremist rhetoric. His role as a student negotiator underscores his commitment to finding a peaceful end to the Encampment through dialogue with Columbia's administration.

I trust these examples provide insight into Mahmoud's character and context to his participation in nonviolent protests that may be weaponized against him. His commitment to peaceful dialogue, particularly the creation of interfaith spaces, exemplifies what I have personally witnessed: Mahmoud has never engaged in or expressed support for antisemitic nor extremist ideology. He is an incredible advocate, good-faith member of the Columbia Alumni community, and a kind human being.

B. Letter from [redacted], dated March 14, 2025 5

I am writing in support of Mahmoud Khalil. My name is [redacted] and I am an American Jewish woman who believes in the importance of Israel as a Jewish homeland. I have known Mahmoud Khalil for over two years, since January 2023 as his professor, colleague, and friend. I have always known Mahmoud as someone working to be part of the solution towards a peaceful resolution to the conflict in Palestine and Israel. He is committed to peaceful development which is also what our graduate program – the Master of Public Administration in Development Practice (MPA-DP)– trains students on.

I have known Mahmoud in my capacity as his Professor at Columbia University for two semesters [redacted], and then as his supervisor in his role as a Teaching Assistant for the course [redacted]. In between semesters I also interacted with Mahmoud, due to his role as a Program Assistant for the MPA-DP program which I am affiliated with as a Professor and alumna.

I have worked with Mahmoud and directly seen and graded his work. This work has demonstrated a deep and persistent commitment to humanitarian principals and doing work that contributes to peace and stability. Both semesters when he was my student, he focused his semester long project assignments on a non-profit organization (Jusoor, where he also previously worked) providing education services to refugees. I had many conversations with him about how to deepen educational impact and ensure that refugees would have real

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economic opportunities to escape cycles of violence and poverty.

When it came time to choose a Teaching Assistant for the Fall 2024 iteration of the course, I sought out Mahmoud to apply to the position. His deep expertise with organizational management with international development organizations, his high standards for quality work, as well as his integrity were all reasons I thought he would make a great TA. He effectively served the class and students throughout the semester even as he navigated both global and campus events that were directly impacting him and his family.

I can state with full confidence that Mahmoud has never expressed support for Hamas, nor has he ever endorsed any form of extremism. Over the course of our extensive interactions, I have had numerous conversations with him about human rights, justice, and the student protests and I can personally attest to his commitment to nonviolence.

In terms of the campus protests, Mahmoud was my student as these events unfolded and was in the process of being hired as our Teaching Assistant as the encampment was being established. I directly spoke to him about the encampment and Mahmoud emphasised the protesters commitment to peace and non-violence. Mahmoud explained how the student movement was ensuring that Jewish voices were part of conversations and space. He was committed to dialogue and partnership with Jewish voices throughout his time on campus, one example of this was sharing a Jewish Sukkot event with me that he was attending put on by Jewish and Palestinian students on October 16th, 2024.

As our TA in Fall 2024 for a course for which Leadership was a key theme, he clearly spoke about the challenges of being seen as a leader of leaderless student movement. Many things have been incorrectly attributed to him in the media.

Mahmoud has always worked to be part of the solution towards a peaceful resolution to the conflict in Palestine and Israel. He is committed to peaceful development which is also what our graduate program – the Master of Public Administration in Development Practice – trains students on. Choosing to do this program, which trains students for public sector and public interest work also demonstrates his commitment to these issues. Everything he has ever worked on professionally and academically demonstrates his commitment to humanitarian principals including justice, peace, and development.

C. Letter from [redacted]s, dated March 14, 2025 7

My name is [redacted] and I am writing this letter in support of Mahmoud Khalil. I am currently a junior at Columbia University. I grew up in Forest Hills, Queens, raised by my Jewish mother and my American father. From a young age, I was taught the importance of higher education in shaping a well-rounded individual. My father, [redacted] exemplified this belief—he graduated from Harvard in 1993, becoming the first in our family to attend an Ivy League institution.

Judaism has always been central to my identity. I attended Jewish preschool, went to Hebrew school multiple times a week until my Bar Mitzvah in 2017, celebrated Shabbat every Friday,

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and was raised with strong Jewish values. I emphasize this not to exaggerate or embellish, but to paint a clear picture of who I am. My Jewish identity is deeply meaningful to me, and in these past 16 months—an incredibly difficult time for the Jewish people—having a strong support system of kind, understanding, and respectful individuals has been more important than ever. Mahmoud is exactly that.

From the moment I met Mahmoud 16 months ago, he has been nothing short of a selfless friend and an inspiring mentor. I clearly remember one of our first encounters at a peaceful rally on October 12, 2023. Despite how such events are often misrepresented in the media, this rally was a calm and peaceful demonstration in support of Palestinian rights. Mahmoud took on a protective security role that day, ensuring students were safe from any physical or verbal threats. When people hurled insults and profanities at me and my classmates, Mahmoud was the first to step in and de-escalate the situation. He never raised his voice, never used harsh language, never resorted to aggression—he spoke calmly and respectfully, shielding students, including me, a Jewish student, from harm. He put himself between me and an aggressor, prioritizing my safety over his own. That is not the behavior of an antisemite—that is the behavior of an ally and a friend.

In the weeks that followed, I spent many late nights with Mahmoud at friends' apartments, getting to know him and hearing his incredible story—one that led him to work at the U.N. During this time, he also began attending Shabbat dinners I hosted with my friends. He would often bring a dish or a bottle of kosher wine to contribute, embracing the tradition with genuine curiosity and respect. He actively listened to the prayers, enthusiastically engaged with Jewish culture, and always approached our traditions with kindness.

At a later protest in November, I witnessed firsthand Mahmoud's unwavering commitment to protecting Jewish students. When an unaffiliated individual began shouting antisemitic slogans, Mahmoud was the first to intervene, immediately de-escalating the situation and ensuring the safety of those present. This came as no surprise—I already knew that Mahmoud was someone I could trust to stand up for me and my community.

Over the months, our friendship deepened. We shared meals, laughs, and countless memories. Mahmoud was not just a source of strength and support in my life but in the lives of so many others. He was always there—a shoulder to cry on, a friend to lean on, and a wise and compassionate presence in our community.

D. Letter from [redacted] dated March 14, 2025 9

My name is [redacted] I am a Jewish student at Columbia University writing in support of my friend, Mahmoud Khalil. I am writing this letter because I know that if I ever needed him to do it for me, he would, and so much more, because that's the kind of person Mahmoud is. We know each other through sharing space more times than I can count, at protests and at community events and at concerts and Shabbats. He is someone who I trust implicitly. He is someone who always puts himself between those around him and danger, and he does it without thinking and without flinching. He does it even with people who he doesn't know well. We're not best friends but I know that if I was in danger, Mahmoud would do

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everything in his power to protect and help me—as lead negotiator during the encampment this is exactly what he did, protecting me and so many other student protestors who were being punished for speaking up against genocide. This letter is the least I can do for someone who has always selflessly and courageously put others before himself. I can't believe that it's precisely because of these incredible qualities he is being punished in this way. Mahmoud has protected Jewish students at Columbia like myself more than the university ever has. He has even protected us from the university itself. To punish him under the pretence that this kind, brave, gentle person somehow endangered us is the most egregious lie I've ever heard. His strength is only matched by his calmness even in the most stressful circumstances. I've never heard him raise his voice except at protests. I can't describe the sense of immediate comfort that one felt in his presence, and every minute I think of him detained, it hurts.

ADDITIONAL EVIDENCE DEMONSTRATING THE SOCIETY FOR INTERNATIONAL DEVELOPMENT WEBSITE SUBMITTED BY DHS IS OUTDATED, ERRONEOUS, AND DOES NOT ESTABLISH THAT MR. KHALIL WORKED FOR THE UK'S SYRIA OFFICE IN BEIRUT BEYOND 2022

E. Letter from [redacted], President, Society for International Development, dated April 20, 2025, confirming that Mr. Khalil was a speaker at the Society's conference in 2020 and is not a speaker for the 2025 conference 10

The Society for International Development, United States Chapter (SID-US) is a nonpartisan, non-lobbying, nonprofit corporation incorporated in the District of Columbia dedicated to the advancement of sustainable, effective development worldwide since 1957. SID-US serves as a global town square to convene practitioners, thought leaders, and public and private institutions.

In response to your request for information regarding Mr. Mahmoud Khalil's participation in SID-US events, I write to advise you that Mr. Khalil spoke at our 2020 Annual Conference in his capacity of Program Manager at the Syria Office in the British Embassy in Beirut, where, according to the bio we were provided, he lead the Syria Chevening Program. Mr. Khalil has not been invited by SID-US to speak or participate at any SID-US event in any capacity before or since our 2020 Annual Conference.

ADDITIONAL EVIDENCE DEMONSTRATING MR. KHALIL'S PUBLICLY DISCLOSED POSITION AT UNRWA WAS AN INTERNSHIP FOR COURSE CREDIT THROUGH HIS COLUMBIA MASTER'S PROGRAM

F. Letter from [redacted], Director, UNRWA Representative Office, dated April 22, 2025 11

Mr. Mahmoud Khalil served as an intern at the UNRWA Representative Office in New York, on a full-time basis from 7 June to 31 August 2023 and on a part-time basis from 1 September to 30 November 2023 to allow for the continuation of his studies at Columbia University.

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The internship was an unpaid voluntary position in accordance with the practice of the Agency.

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March 19, 2025
[redacted]

Honorable Michael E. Farbiarz
United States District Judge
District of New Jersey
Martin Luther King Courthouse
50 Walnut Street
Newark, NJ 07101

PURSUANT TO 28 USC 1746, I HEREBY DECLARE THE FOLLOWING:

Dear Judge Farbiarz,

I am writing this letter to you in support of Mahmoud Khalil. My name is [redacted] and I am a U.S. citizen and identify as Jewish. I graduated from Columbia University's School of International and Public Affairs (SIPA) in May 2024 and have known Mahmoud Khalil for about two years since he started his studies at SIPA in January 2023.

I consider Mahmoud a colleague, fellow advocate and profound human being. I regard Mahmoud as a thoughtful, committed, highly intelligent, curious and pacifistic person. I developed this understanding of his character through my many interactions with him at Columbia in classrooms, social outings, and advocacy circles. I have had countless discussions with him about international affairs, politics and the Israeli-Palestinian conflict. I can point to several specific examples that highlight Mahmoud commitment to non-violent, respectful language and building an inclusive pro-Palestinian movement on campus.

My first interaction with Mahmoud was in March 2023. Over the prior winter break, I participated in a trip to the Occupied Palestinian Territories organized by PalTrek National. As a follow-up to the trip, a discussion was convened with participants of the trip to highlight our experience. I offered to speak about my experience as a Jewish person who has traveled to Israel on multiple occasions before this trip. I was honest about my participation in Birthright International, a fully-funded trip for American Jewish youth to experience Israel. Birthright has received criticism from anti-Israel groups for its support of resettling American Jews to Israel, often at the expense of Palestinian families. While some students at SIPA expressed valid concerns about including my experience over others from the trip, Mahmoud personally welcomed my inclusion in the panel. Mahmoud saw the importance of including my voice in this discussion and highlighting the complicated pressures on American Jews. Mahmoud, starting at SIPA in January, did not participate in the trip and did not know me beyond my identity as

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Jewish and previous participant in Birthright. Instead of leaning into stereotypes or succumbing to the pressures of others, Mahmoud saw me as a human being with a long and complicated relationship to my religious identity and its connection to the state of Israel.

The next incident I'd like to highlight occurred in October 2023. Following the Hamas-led terrorist attacks on October 7th and subsequent military response by Israel, the Dean of SIPA, Keren Yarhi-Milo, asked to meet with some SIPA students to understand the impact of the war on Palestinian students. Mahmoud was in attendance. Mahmoud began the meeting by asking Dean Yarhi-Milo, an Israeli citizen, how she, her family and community were doing in light of the terrorist attack. In asking the question, Mahmoud condemned the violent, hateful act by Hamas terrorists and expressed grief for the immediate loss of life and continued impact on the communities. Even Dean Yarhi-Milo appeared touched by the question and expressed gratitude for his consideration of her experience of this violence as an Israeli woman.

From October 2023, tensions on campus elevated. I've watched Mahmoud on several occasions de-escalate tense situations on campus, leading with peace to usher a constructive dialogue rather than inciting aggression that leads to hate speech. I saw Mahmoud, as well as other Arab classmates, confronted and, at times, harassed by other students, asking him if he supported Hamas. Mahmoud would not raise his voice or respond with aggression, but instead simply answer the question by condemning Hamas and all forms of violent extremism. Mahmoud recognized this was a tactic to coerce him to promote hateful or extremist language, but he never wavered in his denouncement of all forms of violent extremism, including the actions of Hamas on October 7th.

On October 25th 2023, over 20 students, including myself, were targeted in a doxing campaign by the right-wing media organization, Accuracy in Media. The organization launched an online petition, personal website for each student, and paraded a billboard truck around campus displaying my name and photo under the banner, "Columbia's Leading Antisemite." The false statement was attributed to my position as the President of SIPA's Human Rights Working Group. Mahmoud, not targeted at that time by this doxing campaign, reached out to me personally to check in on my well-being. He recognized that my identity and work experience with Jewish organizations contradicted the claim of antisemitism, and offered his support. He expressed his support not in justification of antisemitism, but as defamatory action to distract from legitimate antisemitism happening on campus, saying to me, "by targeting the Jewish student and ignoring the very real antisemitism happening on campus, [Accuracy in Media] has made it clear their motives are not to protect Jewish people."

I can point to additional incidents that occurred in April 2024 during the Solidarity Encampment at Columbia University. During the Encampment, Mahmoud led community-wide discussions on how to ensure the space was free from hate and discrimination. Through this, he helped develop

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community guidelines for the encampment that indicated any expression of hate speech will not be tolerated. On one occasion, some individuals made remarks that I personally found offensive as a Jewish person. I saw Mahmoud visibly uncomfortable, and instead of berating or verbally attacking the individuals, he approached them calmly to deescalate the situation by saying, "that's not a productive approach. We need to focus on law, not emotion." His priority has always been advocacy through nonviolent means, centering facts, legal arguments, and mutual respect.

ICE may attempt to use his participation in the Encampment protest against him, but that would be a complete distortion of reality. Mahmoud has actively included Jewish voices in conversations about Israel-Palestine. In fact, during the first day of Jewish Holy Days of Passover, I asked Mahmoud for his help in hosting a Passover Seder at the Encampment specifically for a non-Jewish audience. Mahmoud was very helpful in connecting me with the leadership of the Encampment and ensuring I had a large, safe space to host the Seder. Not only did he attend the Seder, Mahmoud invited his non-Jewish friends, understanding the importance of including non-Jews in the celebration of this Holy Day. Following the Seder, he commented to me directly, "thank you for hosting and inviting me to this Seder. It was my first time being invited to a Passover Seder and I am very thankful to have learned more about Judaism." His gratitude and support of this initiative further highlights his understanding of the value of including Jewish voices in typically non-Jewish spaces. In that moment, Mahmoud saw me, not just as a Jew but as a fellow human being equally committed to his message of nonviolence and peace.

Additionally, ICE and Federal officials may penalize Mahmoud for his visibility during Columbia's protests because he was selected as a press representative from the student negotiating team. Only specific students were selected for these roles to ensure the peaceful purpose of the protests were expressed calmly and without hatred. I watched him on several occasions be tested by the press with leading questions that sought to charge the conversation with antisemitic or extremist messaging, and Mahmoud maintained his calmness, commitment to promoting peace on campus and sensitivity to hateful or extremist rhetoric. His role as a student negotiator underscores his commitment to finding a peaceful end to the Encampment through dialogue with Columbia's administration.

I trust these examples provide insight into Mahmoud's character and context to his participation in nonviolent protests that may be weaponized against him. His commitment to peaceful dialogue, particularly the creation of interfaith spaces, exemplifies what I have personally witnessed: Mahmoud has never engaged in or expressed support for antisemitic nor extremist ideology. He is an incredible advocate, good-faith member of the Columbia Alumni community, and a kind human being. I urge you to support his immediate release.

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I DECLARE UNDER PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON 3/19/2025

[redacted]

[redacted]

[redacted]

Thank you for your time and consideration. I sincerely appreciate the Court's attention to this matter. If the Court requires any further information, I can be reached at the contact information above.

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Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Centre Street, New York, NY

Dear Judge Furman,

I am writing in support of Mahmoud Khalil. My name is [redacted] and I am an American Jewish woman who believes in the importance of Israel as a Jewish homeland. I have known Mahmoud Khalil for over two years, since January 2023 as his professor, colleague, and friend. I have always known Mahmoud as someone working to be part of the solution towards a peaceful resolution to the conflict in Palestine and Israel. He is committed to peaceful development which is also what our graduate program – the Master of Public Administration in Development Practice (MPA-DP)– trains students on.

I have known Mahmoud in my capacity as his Professor at Columbia University for two semesters [redacted], and then as his supervisor in his role as a Teaching Assistant for the course [redacted]. In between semesters I also interacted with Mahmoud, due to his role as a Program Assistant for the MPA-DP program which I am affiliated with as a Professor and alumna.

I have worked with Mahmoud and directly seen and graded his work. This work has demonstrated a deep and persistent commitment to humanitarian principals and doing work that contributes to peace and stability. Both semesters when he was my student, he focused his semester long project assignments on a non-profit organization (Jusoor, where he also previously worked) providing education services to refugees. I had many conversations with him about how to deepen educational impact and ensure that refugees would have real economic opportunities to escape cycles of violence and poverty.

When it came time to choose a Teaching Assistant for the Fall 2024 iteration of the course, I sought out Mahmoud to apply to the position. His deep expertise with organizational management with international development organizations, his high standards for quality work, as well as his integrity were all reasons I thought he would make a great TA. He effectively served the class and students throughout the semester even as he navigated both global and campus events that were directly impacting him and his family.

I can state with full confidence that Mahmoud has never expressed support for Hamas, nor has he ever endorsed any form of extremism. Over the course of our extensive interactions, I have had numerous conversations with him about human rights, justice, and the student protests and I can personally attest to his commitment to nonviolence.

In terms of the campus protests, Mahmoud was my student as these events unfolded and was in the process of being hired as our Teaching Assistant as the encampment was being established. I directly spoke to him about the encampment and Mahmoud

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emphasised the protesters commitment to peace and non-violence. Mahmoud explained how the student movement was ensuring that Jewish voices were part of conversations and space. He was committed to dialogue and partnership with Jewish voices throughout his time on campus, one example of this was sharing a Jewish Sukkot event with me that he was attending put on by Jewish and Palestinian students on October 16th, 2024.

As our TA in Fall 2024 for a course for which Leadership was a key theme, he clearly spoke about the challenges of being seen as a leader of leaderless student movement. Many things have been incorrectly attributed to him in the media.

Mahmoud has always worked to be part of the solution towards a peaceful resolution to the conflict in Palestine and Israel. He is committed to peaceful development which is also what our graduate program – the Master of Public Administration in Development Practice – trains students on. Choosing to do this program, which trains students for public sector and public interest work also demonstrates his commitment to these issues. Everything he has ever worked on professionally and academically demonstrates his commitment to humanitarian principals including justice, peace, and development.

[redacted]

[redacted], **March 14th, 2025**

Lecturer at Columbia University's School of International and Public Affairs in the Master of Public Administration in Development Practice [redacted]

[redacted]
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Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall Courthouse
40 Centre Street, New York, NY

Dear Judge Furman,

My name is [redacted] and I am writing this letter in support of Mahmoud Khalil. I am currently a junior at Columbia University. I grew up in Forest Hills, Queens, raised by my Jewish mother and my American father. From a young age, I was taught the importance of higher education in shaping a well-rounded individual. My father, [redacted], exemplified this belief—he graduated from Harvard in 1993, becoming the first in our family to attend an Ivy League institution.

Judaism has always been central to my identity. I attended Jewish preschool, went to Hebrew school multiple times a week until my Bar Mitzvah in 2017, celebrated Shabbat every Friday, and was raised with strong Jewish values. I emphasize this not to exaggerate or embellish, but to paint a clear picture of who I am. My Jewish identity is deeply meaningful to me, and in these past 16 months—an incredibly difficult time for the Jewish people—having a strong support system of kind, understanding, and respectful individuals has been more important than ever. Mahmoud is exactly that.

From the moment I met Mahmoud 16 months ago, he has been nothing short of a selfless friend and an inspiring mentor. I clearly remember one of our first encounters at a peaceful rally on October 12, 2023. Despite how such events are often misrepresented in the media, this rally was a calm and peaceful demonstration in support of Palestinian rights. Mahmoud took on a protective security role that day, ensuring students were safe from any physical or verbal threats. When people hurled insults and profanities at me and my classmates, Mahmoud was the first to step in and de-escalate the situation. He never raised his voice, never used harsh language, never resorted to aggression—he spoke calmly and respectfully, shielding students, including me, a Jewish student, from harm. He put himself between me and an aggressor, prioritizing my safety over his own. That is not the behavior of an antisemite—that is the behavior of an ally and a friend.

In the weeks that followed, I spent many late nights with Mahmoud at friends' apartments, getting to know him and hearing his incredible story—one that led him to work at the U.N. During this time, he also began attending Shabbat dinners I hosted with my friends. He would often bring a dish or a bottle of kosher wine to contribute, embracing the tradition with genuine curiosity and respect. He actively listened to the prayers, enthusiastically engaged with Jewish culture, and always approached our traditions with kindness.

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At a later protest in November, I witnessed firsthand Mahmoud's unwavering commitment to protecting Jewish students. When an unaffiliated individual began shouting antisemitic slogans, Mahmoud was the first to intervene, immediately de-escalating the situation and ensuring the safety of those present. This came as no surprise—I already knew that Mahmoud was someone I could trust to stand up for me and my community.

Over the months, our friendship deepened. We shared meals, laughs, and countless memories. Mahmoud was not just a source of strength and support in my life but in the lives of so many others. He was always there—a shoulder to cry on, a friend to lean on, and a wise and compassionate presence in our community.

Mahmoud has done nothing that I have not done. He has committed no crime, nor has he ever advocated for anything that I have not also stood for. For that reason, I urge you to support his release.

Sincerely,

[redacted]

[redacted]

Friday, March 14th

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Case 2:25-cv-01963-MEF Document 44-4 Page 100 Date Filed 08/20/2025 Page 1 of 74 PageID: 3322

Honorable Jesse M. Furman

United States District Judge

Southern District of New York

Thurgood Marshall Courthouse

40 Centre Street New York

Dear Judge Furman,

My name is [redacted], I am a Jewish student at Columbia University writing in support of my friend, Mahmoud Khalil. I am writing this letter because I know that if I ever needed him to do it for me, he would, and so much more, because that's the kind of person Mahmoud is. We know each other through sharing space more times than I can count, at protests and at community events and at concerts and Shabbats. He is someone who I trust implicitly. He is someone who always puts himself between those around him and danger, and he does it without thinking and without flinching. He does it even with people who he doesn't know well. We're not best friends but I know that if I was in danger, Mahmoud would do everything in his power to protect and help me—as lead negotiator during the encampment this is exactly what he did, protecting me and so many other student protestors who were being punished for speaking up against genocide. This letter is the least I can do for someone who has always selflessly and courageously put others before himself. I can't believe that it's precisely because of these incredible qualities he is being punished in this way. Mahmoud has protected Jewish students at Columbia like myself more than the university ever has. He has even protected us from the university itself. To punish him under the pretence that this kind, brave, gentle person somehow endangered us is the most egregious lie I've ever heard. His strength is only matched by his calmness even in the most stressful circumstances. I've never heard him raise his voice except at protests. I can't describe the sense of immediate comfort that one felt in his presence, and every minute I think of him detained, it hurts.

Please help Mahmoud.

EXECUTED ON Friday March 14th

[redacted]

[redacted]

[redacted]

[redacted]

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Society for International Development
United States

Ms. Shezza Abboushi Dallal
Staff Attorney
CLEAR
2 Court Square
Long Island City, NY
11101
Email: [redacted]

April 20, 2025

SUBJECT: Participation of Mahmoud Khalil in Society for International Development, United States Chapter 2020 Conference

Dear Ms. Abboushi Dallal,

The Society for International Development, United States Chapter (SID-US) is a nonpartisan, non-lobbying, nonprofit corporation incorporated in the District of Columbia dedicated to the advancement of sustainable, effective development worldwide since 1957. SID-US serves as a global town square to convene practitioners, thought leaders, and public and private institutions.

In response to your request for information regarding Mr. Mahmoud Khalil's participation in SID-US events, I write to advise you that Mr. Khalil spoke at our 2020 Annual Conference in his capacity of Program Manager at the Syria Office in the British Embassy in Beirut, where, according to the bio we were provided, he lead the Syria Chevening Program. Mr. Khalil has not been invited by SID-US to speak or participate at any SID-US event in any capacity before or since our 2020 Annual Conference.

Sincerely,

[redacted]

[redacted]
President
Society for International Development, United States Chapter

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unrwa
الاونروا

united nations relief and works agency
for palestine refugees in the near east

وكالة الأمم المتحدة لإغاثة وتشغيل
اللاجئين الفلسطينيين في الشرق الأدنى

representative office
new york

two united nations plaza,
room 0205
new york, n.y. 10017
usa

t: +1 212 963 2255

www.unrwa.org

New York, 22 April 2025

To Whom it May Concern:

Mr. Mahmoud Khalil served as an intern at the UNRWA Representative Office in New York, on a full-time basis from 7 June to 31 August 2023 and on a part-time basis from 1 September to 30 November 2023 to allow for the continuation of his studies at Columbia University.
The internship was an unpaid voluntary position in accordance with the practice of the Agency.

[redacted]

Director
UNRWA Representative Office

المكتب التمثيلي
نيويورك

مبنى الأمم المتحدة ٢
(بلازا ٢)
غرفة رقم ٢٠٥٠
نيويورك، نيويورك ١٠٠١٧
الولايات المتحدة الأمريكية

ف +١ ٢١٢ ٩٦٣ ٢٢٥٥

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CERTIFICATE OF SERVICE

On April 23, 2025, 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 23rd day of April 2025.

Exhibit D

D-1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF VEENA DUBAL

I, Veena Dubal, declare:

1. I am the general counsel of the American Association of University Professors ("AAUP"), a nonprofit membership association and labor union of faculty, graduate students, and other academic. The AAUP is a plaintiff in *American Association of University Professors v. Rubio*, No. 25-cv-10685, (D. Mass. filed Mar. 25, 2025), a case challenging the Trump administration's policy of targeting noncitizen faculty and students for arrest, detention, and deportation on the basis of their participation in pro-Palestinian protests and related expression and association (the "ideological-deportation policy").

2. Attached hereto as **Exhibit A** is a true and correct copy of a sworn declaration I submitted in the above-referenced case detailing some of the ways that the AAUP and its members have been harmed by the Trump administration's ideological-deportation policy.

3. I declare under penalty of perjury that the forgoing is true and correct, and that the attached declaration is true and correct.

Respectfully submitted,

Veena Dubal

June 2, 2025

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS-HARVARD FACULTY CHAPTER,

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS AT NEW YORK UNIVERSITY,

RUTGERS AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS-AMERICAN FEDERATION OF TEACHERS, and

MIDDLE EAST STUDIES ASSOCIATION,

Plaintiffs,

v.

MARCO RUBIO, in his official capacity as Secretary of State, and the DEPARTMENT OF STATE,

KRISTI NOEM, in her official capacity as Secretary of Homeland Security, and the DEPARTMENT OF HOMELAND SECURITY,

TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement,

DONALD J. TRUMP, in his official capacity as President of the United States, and

UNITED STATES OF AMERICA,

Defendants.

Civil Action No. 1:25-cv-10685 (WGY)

DECLARATION OF VEENA DUBAL

I, Veena Dubal, declare and state as follows:

1. I am a professor of law at the University of California, Irvine School of Law and the general counsel of the American Association of University Professors ("AAUP"). I am over the age of eighteen. I have personal knowledge of the facts stated in this declaration, and, if called to testify, I could and would competently do so under oath.

Background

2. The AAUP is a nonprofit membership association and labor union of faculty, graduate students, and other academic professionals. Founded in 1915, the AAUP seeks to promote academic freedom and shared governance at the nation's colleges and universities.

3. The AAUP has campus chapters at colleges and universities around the country. Among those chapters are the AAUP-Harvard Faculty Chapter ("Harvard-AAUP"), AAUP at New York University ("NYU-AAUP"), and Rutgers AAUP-American Federation of Teachers ("Rutgers AAUP-AFT").

4. I have served as the AAUP's general counsel since October 2024. In that role, I provide legal advice to the organization and monitor legal developments that are relevant to the AAUP and its members. I am also a member of the AAUP.

5. In the past few weeks, I have closely followed the Trump administration's policy of arresting, detaining, and deporting students for their pro-Palestinian expression and association (the "ideological-deportation policy"). Because of the policy's effects on the AAUP and its members—described in more detail below—I regularly discuss it with my colleagues in the AAUP's national leadership, leaders of AAUP campus chapters, and AAUP members around the country.

Harm to the AAUP

6. In my role as the general counsel of the AAUP, I have observed firsthand two principal ways in which the ideological-deportation policy has impeded and continues to impede the AAUP from carrying out its mission.

7. *Reducing participation in AAUP events*. The ideological-deportation policy has deterred noncitizen members from participating in AAUP events. Many noncitizen members have stayed away from AAUP gatherings over the last few weeks, particularly those that touch upon the Trump administration's efforts to deport pro-Palestinian students and faculty or to investigate universities for their handling of campus protests relating to Israel and Palestine. I have heard directly from noncitizen members, who explained that they were interested in attending AAUP events addressing these topics but decided not to for fear of being associated with advocacy related to the topics and targeted for deportation on that basis. Noncitizen members who have nonetheless attended recent AAUP events on these topics have generally refrained from speaking.

8. For example, the AAUP recently hosted the first of a series of member gatherings to discuss the destruction of schools in Gaza. The purpose of the series was to inform the AAUP's position on and advocacy relating to the allegation that Israel has engaged in "scholasticide." Crucial to that purpose was hearing from a diverse range of the AAUP's membership, but some noncitizen members did not attend out of fear that the government might target them for their association with the event, and most of the noncitizen members who did appear kept their voices muted. Similarly, the AAUP attempted to organize a virtual event about the threats its noncitizen members face of being targeted under the ideological-deportation policy. But I heard directly from multiple noncitizen members that they would not attend unless the virtual meeting software could anonymize their identities. Because anonymity directly undermined the purpose of the event—

which was to hear the experiences of noncitizen members—the AAUP dropped the idea of member participation and conversation in this event.

9. My colleagues in the AAUP's national leadership and I have had similar experiences with a range of other events, including member discussions about academic freedom and Palestine and a recent event at Columbia University focused on the Trump administration's attacks on the university and how the AAUP should respond. For example, I had hoped to have an open conversation with the membership about the repression of pro-Palestinian speech on campuses, but I heard from many chapter leaders that too many of their citizen and noncitizen chapter members would be afraid to attend, leading to a one-sided conversation.

10. Reduced participation in AAUP events directly frustrates the AAUP's mission. The AAUP's over 44,000 members are the lifeblood of the organization. AAUP leadership engages with members through a democratic process to develop its positions and priorities and carry out its initiatives. Throughout the year, the AAUP hosts in-person and virtual gatherings to discuss academic freedom and other pressing topics in higher education. The gatherings often draw hundreds of members. My colleagues in the AAUP's national leadership and I rely on these conversations to make virtually every decision of substance about the organization's work. When members are afraid to participate in AAUP events, it prevents us from representing their interests in the organization's policymaking, report writing, and public advocacy.

11. *Diverting resources*. The ideological-deportation policy has also forced the AAUP to divert resources that it would otherwise devote to its core mission. AAUP leadership has spent a significant percentage of its time counseling noncitizen members on the risks of deportation for participating in pro-Palestinian protests and connecting noncitizen members with immigration attorneys. I, for example, now devote at least 50 percent of the time that I allot to my AAUP

leadership position to these activities, regularly fielding calls and emails from AAUP members and chapters related to the policy. These activities are not ones that the AAUP or its leadership typically engage in, and they leave me and my colleagues in the AAUP's national leadership with less time to focus on the organization's core mission. For example, I have almost no time to discuss or advise on broader issues of shared governance at the university level or on state legislative attacks on tenure. Many of our members have lost their federal grant funding, and my attention to this critical problem and its implications for academic freedom has been limited.

Harm to AAUP Campus Chapters

12. As the AAUP's general counsel, I routinely speak with leaders of AAUP campus chapters, including leaders of Harvard-AAUP, NYU-AAUP, and Rutgers AAUP-AFT. In these conversations, chapter leaders have relayed three principal ways in which the ideological-deportation policy has impeded and continues to impede their chapters from carrying out the AAUP's mission.

13. *Diverting resources*. Much like the AAUP's national organization, all three of the above-mentioned chapters have diverted resources away from their core missions and towards advising noncitizens who fear that they will be punished under the ideological-deportation policy. For example, Harvard-AAUP has redirected resources from its work promoting shared governance and economic justice to respond to the ideological-deportation policy. Because noncitizen members expressed concern that they could be flagged for deportation based on their social media activity or other online communications, the chapter expended significant effort organizing trainings for faculty seeking to avoid government surveillance of their expressive activities online. NYU-AAUP and Rutgers AAUP-AFT have similarly diverted chapter resources to organize trainings or prepare training materials related to the ideological-deportation policy. NYU-AAUP, for instance, is preparing "know your rights" materials related to immigration enforcement on

NYU's campus. NYU-AAUP and Rutgers AAUP-AFT are also spending time guiding noncitizen members through university immigration resources and connecting them with individual legal support.

14. *Suppressing membership and participation*. The ideological-deportation policy has also chilled noncitizens from joining and participating fully in all three of the above-mentioned chapters, preventing these chapters from advocating for the interests of their full constituencies. This harm is particularly acute for Harvard-AAUP, a relatively new chapter that is attempting to recruit members and build its presence on campus. Its leaders recently learned that some noncitizens who would have been eligible to become members have declined to join the organization out of fear that their membership could put them at risk of deportation. Many Harvard faculty, staff, and graduate students are noncitizens, so losing their participation deprives Harvard-AAUP of opportunities to hear from and associate with an important segment of the community it serves.

15. In a similar vein, I have learned that the ideological-deportation policy has caused noncitizen leaders at AAUP chapters around the country to step back from leadership positions and public appearances out of fear that they will be falsely labeled as "pro-Hamas" and targeted for deportation on that basis. As an organization, the AAUP has been heavily involved in advocacy relating to academic freedom, the suppression of student and faculty discussion of Israel and Palestine on campus, the Trump administration's efforts to punish universities for not suppressing these discussions even more aggressively than they have, and the Trump administration's recent efforts to arrest, detain, and deport noncitizen students and faculty who have participated in pro-Palestinian protests. The leaders at our many chapters around the country participate in this advocacy, but noncitizen leaders are now terrified of being publicly associated with it because of

the risk that the Trump administration will identify them and target them for deportation. I have heard directly from one noncitizen member who has withdrawn from a chapter leadership position, and several additional members who have refrained from making public statements on behalf of their chapter. Chapter leaders have also told me that noncitizen members have declined to attend in-person meetings and events. This has deprived AAUP chapters of experienced leaders and prevented them from engaging in effective advocacy on their campuses.

16. *Impeding campus advocacy*. The ideological-deportation policy has likewise prevented some of the above-mentioned chapters from advocating for their interests on campus in concert with noncitizen faculty and students. For example, members of NYU-AAUP recently delivered a petition to the NYU administration urging the university to drop disciplinary charges against students who had engaged in pro-Palestinian activism. NYU-AAUP members felt compelled to remove the names of all the signatories from the petition due to concerns that noncitizen signatories, including both faculty and students, could be targeted for deportation based on their decision to participate. The NYU administration discounted the petition in part because it lacked the names of the signatories. This undermined NYU-AAUP's ability to effectively advocate before the NYU administration, one of the organization's primary missions.

Harm to the AAUP's Members

17. As AAUP's general counsel, I also routinely speak with individual members of AAUP chapters around the country, including members of Harvard-AAUP, NYU-AAUP, and Rutgers AAUP-AFT. In these conversations, members have explained how the ideological-deportation policy has harmed and continues to harm them. I have also received reports of additional AAUP members who have been and continue to be harmed by the ideological-deportation policy.

U.S. Citizen Members

18. I have heard from U.S. citizen members that the ideological-deportation policy prevents them from hearing their noncitizen students' and colleagues' perspectives. Members have told me about noncitizen colleagues and students who have ceased speaking or writing publicly about Palestine, withdrawn from academic events, or altered their research or teaching plans out of fear that their expression will lead to deportation.

19. In our conversations, U.S. citizen members have underscored how valuable to their scholarship, teaching, and public engagement they find the speech that the ideological-deportation policy suppresses. Some AAUP members I have spoken with study the world outside the United States and rely on noncitizens' perspectives to add texture to their academic work. Others collaborate closely with noncitizen colleagues and students in their teaching or research. U.S. citizen members have had to cancel events—including talks and conferences—and postpone or stop their plans to write grants, conduct research, and produce scholarship with noncitizen members who fear immigration consequences because of the ideological-deportation policy.

20. I have also heard from U.S. citizen members that the ideological-deportation policy prevents them from associating with noncitizen members. U.S. citizen members have conveyed that their noncitizen colleagues and students have stopped attending protests and other public gatherings related in any way to Israel and Palestine, including AAUP events, because they fear that attending these gatherings could mark them for deportation.

21. By way of example, I have spoken directly with some of the U.S. citizen members named in the complaint who have been injured by the ideological-deportation policy. I describe their circumstances below.

22. *Joseph Howley.* Joseph Howley is an associate professor of Classics and the Paul Brooke Program Chair for Literature Humanities at Columbia. Howley's current scholarship and

teaching focus on the history of the book and Greek and Latin literature, among other topics. He is a U.S. citizen and a member of the AAUP.

23. The ideological-deportation policy has limited Howley's ability to hear from and engage with his noncitizen colleagues and students, and it has undermined his teaching. As program chair of the year-long Literature Humanities course in Columbia's Core Curriculum, Howley supervises graduate students who instruct weekly seminars with undergraduate students to discuss significant literary works from a range of perspectives across time and cultures. In his regular teaching sessions with instructors, he has observed that many noncitizen instructors have stopped attending in recent weeks, and that those who do attend are preoccupied with fears of deportation and unable to focus on the course material. One noncitizen instructor told Howley they feared deportation based on their attendance merely as a bystander at a protest last year related to Israel and Palestine. Howley has also heard from noncitizen colleagues that are considering not teaching topics related to Israel and Palestine or political activism that they might otherwise have taught.

24. The policy has also harmed Howley's right to assemble with his noncitizen colleagues and students to engage in public advocacy. Howley joined other faculty and staff members in de-escalation efforts outside the Columbia solidarity encampment in April 2024. Following the police sweep of the encampment on April 18, he appeared alongside Mahmoud Khalil and other speakers at an emergency press conference, to criticize the school president's decision to have police arrest students at the encampment. On April 22, Howley joined hundreds of citizen and noncitizen faculty at Columbia in a walkout protesting that same decision. But when he spoke at a press conference convened by the AAUP following Khalil's arrest this month, he was joined only by citizen members. He understood that noncitizen members who previously

would have joined him were too afraid to do so now, given the threat of deportation under the policy. It is now much more difficult for Howley to coordinate de-escalation efforts with noncitizen colleagues, including one who is now afraid to move freely around the Columbia campus and surrounding neighborhood.

25. *Chenjerai Kumanyika.* Chenjerai Kumanyika is an assistant professor at NYU's Arthur L. Carter Journalism Institute. He specializes in using audio journalism to critically investigate the way Americans understand issues such as race, the Civil War, and policing. He is also the Peabody Award–winning host of the *Empire City* podcast, which focuses on the history of the New York Police Department. Kumanyika is a U.S. citizen, a member of the AAUP and NYU-AAUP, and an elected at-large council member of the AAUP.

26. The ideological-deportation policy has limited Kumanyika's ability to hear and engage with perspectives and scholarship critical to his work. Kumanyika has collaborated in his research and scholarship with scholars across the university working on interdisciplinary initiatives that address issues of inequality and justice in the U.S. and transnationally. These scholars include noncitizens who have concerns about the public visibility of their research and scholarship because of the ideological-deportation policy. Some of these scholars have removed research and scholarship from the internet because they fear this research and scholarship could expose them to deportation.

27. *Vasuki Nesiah.* Vasuki Nesiah is a professor of practice at NYU's Gallatin School of Individualized Study, and faculty director of the Gallatin Global Fellowship in Human Rights. Nesiah's scholarship and teaching focus on human rights and international law. She is a U.S. citizen and a member of the AAUP and NYU-AAUP.

28. The ideological-deportation policy has limited Nesiah's ability to hear from and engage with her noncitizen colleagues and students, and it has undermined her teaching. Prior to the policy's adoption, Nesiah frequently talked with noncitizen colleagues about Israel and Palestine and academic freedom to discuss these and other sensitive issues. Since the policy's implementation, Nesiah's noncitizen colleagues have become increasingly unwilling to discuss these topics in public or private. In a recent academic panel that Nesiah participated in, for example, the panel was simply advertised as a conversation without the names of the panelists or their institutional affiliations because another panelist feared retaliation under the policy. These measures reduced attendance and hindered the dialogue and sharing of research that is critical to Nesiah's academic work. Similarly, many of her noncitizen colleagues who live outside of the United States are now unwilling to attend academic events inside the country for fear that they will be detained and deported. For instance, several colleagues who typically attend the Law and Society Association Annual Meeting (to be held in Chicago in May 2025) have informed her that they will not attend for this reason. Because her field of international law is particularly engaged with the work of scholars who live abroad, these withdrawals hamper Nesiah's research. The policy has also chilled student discussion on campus, with many noncitizen students now avoiding the topic of Israel and Palestine out of fear that they will be targeted for deportation if they discuss it. Some noncitizen students have also expressed concern about even showing up to class, and there have been conversations among her colleagues about conducting classes over Zoom, which Nesiah considers to be a poor substitute for in-person teaching.

29. The policy has also limited Nesiah's ability to associate with noncitizen colleagues. For example, a noncitizen colleague who had signed an open letter related to academic freedom that Nesiah and her colleagues had recently organized asked that their name be removed from the

letter, because they feared that signing the letter would make them a target for deportation under the policy.

30. *Sonya Posmentier.* Sonya Posmentier is an associate professor of English at NYU and the director of graduate studies in the NYU English department. Her research and teaching interests include African American and Black Diasporic literature and culture, poetry and poetics, and abolition. She is a U.S. citizen, a member of the AAUP and NYU-AAUP, and a member of NYU-AAUP's executive committee.

31. The ideological-deportation policy has limited Posmentier's ability to hear and engage with perspectives and scholarship critical to her work. For example, Posmentier had planned to attend a conference concerning Israel and Palestine to hear a noncitizen scholar deliver a talk in their area of expertise, but that individual was forced to pull out of the conference due to a fear of deportation under the policy. As a result, Posmentier missed an opportunity to engage with and learn from that scholar, distorting Posmentier's academic community, which depends on the exchange of ideas and information between scholars. In addition, the NYU chapter of a pro-Palestinian faculty group recently removed all videos of teach-ins and public-facing events since October 2023 out of a fear that leaving the videos up would expose noncitizen colleagues featured in the videos to deportation. These videos focus on a range of topics, including definitions of antisemitism, the global university, and scholasticide. The removal of these videos prevents Posmentier and many others from listening to and learning from those conversations, as well as using them as a resource in research and teaching.

32. The policy has limited Posmentier's ability to associate with her noncitizen colleagues and students. Posmentier has been working with her students on a collaborative publication about abolition movements that addresses, among other topics, the criminalization of

pro-Palestinian protest on university campuses. The group had planned to publish and distribute the publication and hold a launch event including readings and performance. In consultation with her students, however, Posmentier has decided not to move forward with this plan because of student fears that it could lead to noncitizen contributors to being targeted for deportation. This deprives the entire department of the contributors' many valuable insights.

33. In addition to the U.S. citizen members I've spoken with directly, I have received reports about several other U.S. citizen AAUP members who have been injured by the ideological-deportation policy. I describe their circumstances below.

34. *Patricia Dailey.* Patricia Dailey is an associate professor of English and Comparative Literature at Columbia University. She specializes in medieval literature and critical theory. Dailey is a U.S. citizen and a member of the AAUP.

35. The ideological-deportation policy has harmed Dailey's ability to hear perspectives she values as a member of her university community, and to associate with other members of the AAUP. Dailey was a member of an independent and long-running online community made up of Columbia faculty and staff, including other AAUP members. Dailey relied on the community to engage with other members of the Columbia community, including AAUP members, and to stay informed about university-related topics as well as political issues, including issues related to Israel and Palestine. Fearing that the community's content about Israel and Palestine would jeopardize the immigration status of its noncitizen members, however, the organizer of the online community, who is a noncitizen, recently decided to delete it. As a result, Dailey has lost access to views and information she found valuable, and she is no longer able to engage with other AAUP members as she once did.

36. *Maya Jasanoff.* Maya Jasanoff is a professor of History at Harvard. Jasanoff's scholarship and teaching focus on the history of the British empire. She is a U.S. citizen and a member of Harvard-AAUP and the AAUP.

37. The ideological-deportation policy has harmed Jasanoff's ability to hear from her noncitizen colleagues and students. She has recently observed that noncitizen colleagues and students are reluctant to speak publicly about politics and world affairs out of concern that they will be targeted for ideological deportation. The silencing of noncitizen colleagues and students directly impacts Jasanoff's work. Because she studies the British empire, which covered nearly a quarter of the globe at its peak, she relies on the perspectives of students and colleagues from around the world to inform her scholarship and teaching.

38. *Lauren Kaminsky.* Lauren Kaminsky is an associate senior lecturer and the director of studies for the Committee on Degrees in History and Literature at Harvard. Kaminsky's scholarship and teaching focus on European history. She is a U.S. citizen and a member of Harvard-AAUP and the AAUP.

39. The ideological-deportation policy has harmed Kaminsky's ability to hear from, as well as associate and assemble with, her noncitizen colleagues and students. She has observed that noncitizen colleagues—even those who previously felt secure in their immigration status—have recently refrained from teaching classes or speaking publicly on increasingly politicized topics, including Palestine, and noncitizen colleagues and students have recently refrained from writing on these topics. Kaminsky is also aware of several noncitizens who have declined to join Harvard-AAUP in recent weeks out of fear that their membership could put them at risk. She has observed that noncitizen colleagues have been less willing to attend political gatherings in recent weeks.

40. *Rebecca Karl.* Rebecca Karl is a professor of History at NYU. Karl's research and teaching focus on modern Chinese history, as well as the history of social theory, feminism, Mao Zedong Thought and Marxism, and global revolution. Karl is a U.S. citizen, a member of the AAUP, and a former president and now member-at-large of NYU-AAUP.

41. The ideological-deportation policy has limited Karl's ability to hear and engage with perspectives and scholarship she values. As a student of and researcher on histories of repressive regimes, Karl is interested in the multiple ways in which marginalized people understand their lives and worlds. As a Jewish person, she is particularly interested in the history of antisemitism and Zionism and has helped organize educational events at NYU on those topics. In doing so, she has sought out and engaged with the views of citizen and noncitizen colleagues. Following the adoption of the policy, however, some noncitizen colleagues have felt compelled to take down research and scholarly work that was previously available online, and have ceased speaking publicly about issues related to Israel and Palestine; others have declined public speaking opportunities.

42. The policy has undermined Karl's ability to assemble with noncitizen faculty and students to engage in public advocacy. Over the last year and a half, Karl has regularly engaged in pro-Palestinian protests and public advocacy at NYU. Since the implementation of the policy, however, Karl has noticed a significant decrease in the participation of noncitizen faculty and students in pro-Palestinian expression, including petition-signing and public letter signing.

43. *David Kurnick.* David Kurnick is a professor of English at Rutgers University. His research and teaching interests include the history and theory of the novel, narrative theory, and sexuality and gender, with an emphasis on the nineteenth century. He is a U.S. citizen and a member of the AAUP and Rutgers AAUP-AFT.

44. The ideological-deportation policy has limited Kurnick's ability to associate with his noncitizen colleagues and students. Several graduate and undergraduate students that Kurnick associates with have informed him that they have decided to refrain from signing anything related to Israel and Palestine, and to refrain from participating in any pro-Palestinian marches or demonstrations, out of fear of being targeted for deportation. Kurnick has also abstained from any public discussion of matters relating to Israel and Palestine with his noncitizen students. Instead, he has limited his communications with noncitizen students to in-person conversations. Kurnick is also responsible for the English Department's graduate admissions process this year, and some admitted students outside the U.S. have expressed hesitation about coming to study inside the United States because of concerns that the ideological-deportation policy would force them to self-censor.

45. *Judith Surkis.* Judith Surkis is a professor of History at Rutgers University and Director of Graduate Studies in the History Department. She specializes in Modern European History, with an emphasis on France and the French Empire, gender and sexuality, and intellectual, cultural, and legal history. She is a U.S. citizen and a member of the AAUP and Rutgers AAUP-AFT.

46. The ideological-deportation policy has limited Surkis's ability to associate with her noncitizen colleagues and students. As a member of Rutgers Faculty for Justice in Palestine, she has witnessed a radical decline in public engagement by noncitizen students and faculty on the question of Palestine since the announcement of the ideological-deportation policy. She has also noticed that noncitizen faculty are more hesitant to speak about or even attend events that address Palestine. The inability of noncitizen students and faculty to freely participate in these events deprives Surkis of their experiences and insights.

47. The policy has also forced Surkis to modify how she advises noncitizen graduate students in her department. Surkis previously encouraged students to travel abroad to conduct the necessary field research to write their seminar papers, devise their dissertation topics, and ultimately write their dissertations. Now, she is reluctant to recommend that they travel for their studies, because she fears some of these students may be denied re-entry, detained, and even stripped of their visas on return.

48. *Kirsten Weld.* Kirsten Weld is a professor of History at Harvard. Weld's research focuses on modern Latin America and explores struggles over inequality, justice, historical memory, and social inclusion. She is a U.S. citizen and a member of the AAUP and Harvard-AAUP. She also serves as Harvard-AAUP's president.

49. Weld has observed that following the administration's adoption of the ideological-deportation policy, many noncitizen students, staff, and faculty colleagues, particularly those who had been involved in pro-Palestinian organizing, have retreated from ordinary university life. Rather than engaging with the university community and participating in educational and developmental activities, noncitizen students, staff, and faculty have devoted significant attention and resources to preparing for potential immigration consequences that may result from their past expressive activities. Additionally, some noncitizen students who had previously spoken or written publicly about Israel and Palestine have now ceased participating publicly on those issues out of fear that doing so will lead to deportation. Weld valued hearing from noncitizen students on these topics, and is now deprived of receiving the speech of those who have been chilled by the policy.

Noncitizen Members

50. These accounts conform with those I have heard directly from the AAUP's noncitizen members. Many noncitizen members I have spoken to are deeply fearful that they will be targeted for arrest, detention, and deportation based on their expression and association relating

to Israel and Palestine. I have heard directly from noncitizen members who have withdrawn from academic conferences and pulled scholarly articles relating to Israel and Palestine because of these fears. I have also heard from one noncitizen member who has left the United States and plans to fulfill their academic responsibilities remotely for the rest of the semester. Some noncitizen members expressed concern to me that being named or even described in this lawsuit could put them at risk of retaliation under the policy.

51. By way of example, I have spoken directly with noncitizen members—referred to in the complaint as AAUP Member C and D—who have been injured by the ideological-deportation policy. I describe their circumstances below.

52. *AAUP Member C.* AAUP Member C is a legal permanent resident, a member of the AAUP, and a professor at a university in the Northeast.

53. Before the administration adopted the ideological-deportation policy, AAUP Member C regularly published their writing and participated in public advocacy on issues related to academic freedom. Now, due to fears that they will be targeted for deportation based on that writing and advocacy, AAUP Member C has felt compelled to remove previously published writing and scholarship from the internet, and to turn down opportunities to speak at academic talks and other public-facing events that they would otherwise have accepted.

54. The individual has also been chilled from associating with colleagues at their local AAUP chapter. AAUP Member C values the ability to engage in collective action with other chapter members, but because they fear that public association with the chapter could expose them to deportation, they have forgone leadership opportunities within the chapter, reduced their participation in the chapter's public-facing work, and declined to participate in political organizing with the chapter.

55. AAUP Member C has also been chilled from engaging in peaceful political protest and assembly. Although they would like to gather with others to engage in pro-Palestinian advocacy, they no longer do so out of fear of arrest and deportation for lawful political speech.

56. *AAUP Member D.* AAUP Member D is a legal permanent resident, a member of the AAUP, and a professor at a university in the Northeast.

57. AAUP Member D recently withdrew from presenting on a topic related to Israel and Palestine at an academic conference out of concern that this could expose them to deportation under the policy. Also due to the concern about the policy, they have stopped traveling abroad for academic conferences.

58. The individual has also been chilled from associating with colleagues at their local AAUP chapter and colleagues nationally. AAUP Member D no longer signs their name to open letters that their colleagues circulate—including open letters related to Israel and Palestine—for fear of being targeted for deportation. For the same reason, they have also ruled out pursuing a leadership position at their local AAUP chapter.

59. The individual has also been chilled from engaging in peaceful political protest and assembly. AAUP Member D wishes to gather with others to engage in pro-Palestinian speech and advocacy, but now fears that they will be deported for doing so. They do not plan to attend future protests, but, if they do attend, they intend to wear a mask and other clothing to obscure their identity.

60. In addition to the noncitizen members I've spoken with directly, I have received reports about several other noncitizen AAUP members—referred to in the complaint as AAUP Member A, B, and E—who have been injured by the ideological-deportation policy. I describe their circumstances below.

61. *AAUP Member A.* AAUP Member A is a legal permanent resident, a member of the AAUP, and a lecturer at a university in the Northeast whose research interests include race and migration.

62. Before the administration adopted the ideological-deportation policy, AAUP Member A regularly posted on social media and engaged in other public advocacy on issues related to Israel and Palestine. Because of the policy, however, and the fear that they will be targeted for deportation based on their writing and advocacy, AAUP Member A has taken down previously published social media posts about Israel and Palestine and stopped assigning materials about Palestine in the courses they teach.

63. They have also been chilled from engaging in peaceful political protest and assembly. AAUP Member A previously participated in pro-Palestinian protests and public demonstrations regularly and still wishes to gather with others to engage in pro-Palestinian speech and advocacy. They no longer participate in these activities because of the fear that they will be arrested and deported for doing so.

64. *AAUP Member B.* AAUP Member B is a legal permanent resident, a member of the AAUP, and a professor at a university in the Northeast.

65. Although AAUP Member B's academic work has obvious relevance to issues relating to Israel and Palestine, they have decided to forgo opportunities to write about these issues due to concerns that they may face immigration consequences stemming from the policy. They also decided against teaching a class they have offered in the past because the class syllabus would necessarily have included materials related to Palestine. AAUP Member B made this decision out of concern that including that material would put them at risk of deportation under the policy.

66. AAUP Member B has also been chilled from associating with AAUP colleagues. AAUP Member B has worked for over a year with university faculty across the United States, including other AAUP members, on a national organization addressing the concerns of Jewish faculty, including on issues related to Israel and Palestine. Due to the ideological-deportation policy, AAUP Member B no longer feels comfortable having their name associated with the prospective organization or doing any public-facing work for the prospective organization.

67. AAUP Member B has also been chilled from engaging in peaceful political protest and assembly. They previously participated in pro-ceasefire protests and other public demonstrations but no longer do so because of the fear that their lawful advocacy will lead to arrest and deportation.

68. *AAUP member E.* AAUP Member E is a legal permanent resident, a member of the AAUP, and a professor in at a university in the Northeast. As a noncitizen, AAUP Member E was already hesitant to speak about political issues on social media. The ideological-deportation policy has made them reluctant to participate in protests and to engage in expressive or associational activities that require them to disclose their name. As a result of the policy, AAUP Member E no longer feels that they can safely exercise their free speech rights in the United States and will be spending most of the Spring semester outside of the country. Although they are able to conduct research abroad, an extended stay would substantially disrupt their professional activities and daily life.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 1, 2025

Veena Dubal

D-2

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF ASLI Ü BÂLI

I, Aslı Ü Bâli, declare:

1. I am the current President of the Middle East Studies Association of North America ("MESA"), a 501(c)(3) nonprofit membership association of faculty, students, and researchers interested in the study of the Middle East. MESA is a plaintiff in *American Association of University Professors v. Rubio*, No. 25-cv-10685, (D. Mass. filed Mar. 25, 2025), a case challenging the Trump administration's policy of targeting noncitizen faculty and students for arrest, detention, and deportation on the basis of their participation in pro-Palestinian protests and related expression and association (the "ideological-deportation policy").

2. Attached hereto as **Exhibit A** is a true and correct copy of a sworn declaration I submitted in the above-referenced case detailing some of the ways that MESA and its members have been harmed by the Trump administration's ideological-deportation policy.

3. I declare under penalty of perjury that the forgoing is true and correct, and that the attached declaration is true and correct.

Respectfully submitted,

Aslı Ü Bâli

May 30, 2025

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS-HARVARD FACULTY CHAPTER,

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS AT NEW YORK UNIVERSITY,

RUTGERS AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS-AMERICAN FEDERATION OF TEACHERS, and

MIDDLE EAST STUDIES ASSOCIATION,

Plaintiffs,

v.

MARCO RUBIO, in his official capacity as Secretary of State, and the DEPARTMENT OF STATE,

KRISTI NOEM, in her official capacity as Secretary of Homeland Security, and the DEPARTMENT OF HOMELAND SECURITY,

TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement,

DONALD J. TRUMP, in his official capacity as President of the United States, and

UNITED STATES OF AMERICA,

Defendants.

Civil Action No. 1:25-cv-10685

DECLARATION OF ASLI Ü. BÂLİ

I, Aslı Ü Bâli, declare:

1. I am the current President of the Middle East Studies Association of North America ("MESA"), a plaintiff in the above-captioned case. I have held that position since November 6, 2023. In my capacity as President, I regularly communicate with and respond to the interests and concerns of MESA members. I have spoken to and heard reports from many MESA members who have been directly and seriously harmed by the Trump administration's policy of targeting noncitizen faculty and students for arrest, detention, and deportation on the basis of their participation in pro-Palestinian protests and related expression and association (the "ideological-deportation policy").

2. I am a U.S. citizen, and am myself a member of MESA. I am also a member of the American Association of University Professors, another plaintiff in this case.

3. In addition to my role within MESA, I am the Howard M. Holtzmann Professor of Law at Yale Law School. My research and teaching interests include public international law, particularly human rights law and the law of the international security order, and comparative constitutional law, with a focus on the Middle East. As a scholar, I have written on the nuclear non-proliferation regime, humanitarian intervention, the roles of race and empire in the interpretation and enforcement of international law, the role of judicial independence in constitutional transitions, federalism and decentralization in the Middle East, and constitutional design in religiously divided societies.

4. My declaration is based on my experience leading MESA, one of the premier academic and advocacy-oriented organizations that focuses on the study of the Middle East; my conversations with and reports I have received about members of MESA; and my own experience as a scholar who engages in research and teaching about the Middle East. I have personal

knowledge of the facts stated in this declaration, and, if called to testify, I could competently do so under oath.

MESA

5. MESA is a 501(c)(3) nonprofit membership association of faculty, students, and researchers interested in the study of the Middle East (including Southwest Asia, the Arab world, and North Africa). Founded in 1966, MESA's mission is to foster the study of the Middle East, promote high standards of scholarship and teaching, and encourage public understanding of the region and its peoples.

6. MESA accomplishes these goals by organizing programs, publications, and services that enhance education, further intellectual exchange, recognize professional distinction, and defend academic freedom. For instance, MESA hosts for its members an annual meeting, which is the premiere conference for scholars who research the Middle East. MESA also publishes the *International Journal of Middle East Studies*, the leading peer-reviewed scholarly journal on the region, and the *MESA Review of Middle East Studies*. In addition to its academic programming, MESA advocates on behalf of its members through its Committee on Academic Freedom and its Task Force on Civil and Human Rights, which work on issues that are central to MESA's mission of promoting high standards of scholarship and teaching, defending academic freedom, and supporting civil and human rights.

7. MESA has over 2,000 individual members, including faculty and students at universities across the country who work in the field of Middle East studies, as well as more than 50 institutional members and 36 affiliated institutions. MESA's membership is made up of U.S. citizens as well as many noncitizens, and includes members who live outside of the U.S. or who

frequently travel abroad as part of their academic work—all of whom contribute invaluably to the scholarly community MESA seeks to foster.

The Effect of the Ideological-Deportation Policy on MESA's Members

8. I and other members of MESA have been directly and seriously harmed by the Trump administration's ideological-deportation policy. The policy, along with the Trump administration's attendant threats, has created a climate of fear and repression that has caused significant and lasting damage to the community of scholars—both U.S. citizens and noncitizens alike—that MESA represents.

9. Since the ideological-deportation policy began, I have heard from many MESA members who feel the need to self-censor out of fear that their speech and expression could put them at risk of arrest, detention, or deportation. For instance, I know that some noncitizen MESA members have deleted their social media profiles or decided to take down posts that could be interpreted as advocating for pro-Palestinian positions. Some have removed public indicia of their involvement with pro-Palestinian groups on campus. Noncitizen MESA members have told me that they are afraid to organize even ordinary academic programming and events that touch on the issue of Palestine. Similarly, I have spoken to noncitizen members who are concerned that simply teaching about Israel and Palestine in class might put them at risk for arrest, detention, or deportation. As a result of the policy, many noncitizen members of MESA are now terrified of engaging in critical aspects of their research, teaching, and public advocacy, especially when those activities touch on Israel or Palestine.

10. For example, I have spoken with two noncitizen MESA members—whom the complaint refers to as MESA Member A and MESA Member B—who have drastically limited

their scholarly and public engagement because of the ideological-deportation policy. I describe their circumstances below.

11. **MESA Member A.** MESA Member A is a legal permanent resident, a member of MESA, and a professor at a university in the southern United States whose research interests include topics related to Israel and Palestine.

12. Before the administration adopted the ideological-deportation policy, MESA Member A regularly posted on social media about Israel and Palestine, including on topics related to their area of academic expertise, and engaged in other public advocacy on issues related to Israel and Palestine. Other MESA members followed MESA Member A on social media and frequently engaged with their posts. Because of the policy, however, and the fear that they will be targeted for deportation based on their writing and advocacy, MESA Member A has significantly reduced their engagement on social media, and feels compelled to self-censor when posting about Israel and Palestine.

13. The policy has also interfered with MESA Member A's academic research and writing. Out of concern that their current immigration status could be revoked at any moment based on their past expressive activity, MESA Member A now refrains from traveling internationally. This has prevented them from engaging in key aspects of their research, including conducting interviews with people abroad and accessing research materials that are available only abroad. It has disrupted MESA Member A's ability to conduct research for a new book project that relies on those methods. MESA Member A also had to cancel plans to travel to academic conferences in Europe that they otherwise would have attended, preventing them from associating with their colleagues, including other MESA members.

14. They have also been chilled from engaging in peaceful political protest and assembly. MESA Member A previously participated in pro-Palestinian protests and public demonstrations regularly and still wishes to gather with others to engage in pro-Palestinian speech and advocacy. They no longer participate in these activities because of fear that they will be arrested and deported for doing so.

15. **MESA Member B.** MESA Member B is a legal permanent resident, a member of MESA and the AAUP, and a professor at a university in the Northeast whose research interests include gender studies and Middle East studies.

16. Before the administration adopted the ideological-deportation policy, MESA Member B regularly organized workshops, teach-ins, and meetings related to Palestine and shared information about Palestine-related events on social media. Now, due to fears that these activities could lead to deportation, they have declined opportunities to chair academic committees, refrained from publishing work related to Palestine, stopped going to protests or demonstrations, and taken down all their social media posts about events related to Palestine.

17. MESA Member B has also forgone research grants and opportunities that would have required them to travel to the Middle East, due to the risk of being denied reentry based on their pro-Palestinian expression and association. This has harmed their ability to pursue their scholarship, which requires traveling abroad to interview people and attend cultural events that are the subject of their research.

18. The experiences of MESA Member A and B are just two examples. I have heard from and know of many more noncitizen MESA members who have sharply limited their speech and expression on issues relating to Israel and Palestine, out of fear that they may be targeted for arrest, detention, or deportation based on those activities. Indeed, some noncitizen members

expressed concern that even being named or described in connection with this lawsuit could put them at risk under the ideological-deportation policy. Others informed me that they were deeply concerned about having their specific experiences described at all in the lawsuit, even anonymously.

19. The climate of fear and repression created by the ideological-deportation policy has not only harmed noncitizen MESA members, it has also had a direct and significant impact on MESA members who are U.S. citizens by preventing them from engaging with and hearing from their noncitizen colleagues and students.

20. I rely greatly on the insights of my noncitizen colleagues in MESA. As President of MESA, it is important for me to understand the breadth of interests represented in the organization to ensure that I am able to address the most pressing priorities for MESA's membership. Being able to freely communicate with noncitizen members of MESA about their views and opinions is vital to achieving that goal. Because of the ideological-deportation policy, however, many noncitizen members of MESA are concerned about communicating with me about topics relating to Israel and Palestine, especially in writing or over email, even though those topics are salient to their scholarship or to MESA's work defending the academic freedom of its members. Many noncitizen members have also retreated from public engagement on issues relating to Israel and Palestine, which is a crucial area of Middle East study, making it harder for me to stay on top of scholarly and other developments in the field that are important to my role as President of MESA.

21. The policy has also seriously undermined my academic work. I am a legal scholar whose research and teaching focuses on the Middle East. My work has often placed special attention on Palestine. For instance, I have written about and discussed publicly the United

Nations' unique role in the Israeli-Palestinian conflict and the application of international law to Israel and Palestine. I have organized conferences and events on human rights in Israel and Palestine and engaged with colleagues and students about their views on the topic. Because many noncitizen MESA members have restricted their expressive and academic activities out of fear that they may be targeted for arrest, detention, or deportation, I have lost the benefit of many of my colleagues' research and expert views on the issues I am interested in studying, particularly where they relate to Israel and Palestine. Because I understand that my noncitizen colleagues now fear deportation based on their scholarly work, I hesitate to approach them to collaborate on public projects that might put them at risk. For instance, I am reluctant to coauthor blog posts, essays, or articles with noncitizen graduate students or untenured colleagues that touch on issues related to Israel and Palestine for fear of putting these potential coauthors at risk of ideological deportation. These are partnerships I would have enthusiastically pursued prior to the ideological-deportation policy.

22. Additionally, I have become increasingly concerned about the participation of some of my noncitizen colleagues in a conference scheduled to take place in April at Yale Law School. Although I and others have spent over a year organizing this conference and expected the event to take place in-person, I recently proposed moving the conference entirely or partially online due to concerns that noncitizens would not participate in light of the ideological-deportation policy. Some participants have decided to limit their participation by joining virtually rather than risk potential deportation if they traveled to attend in person. This change has already diminished the value I and the other organizers hoped to gain from the conference. Should more participants decide to join exclusively online it would be devastating to the conference, which was intended to bring the participants together in the same space to network and exchange ideas in-person.

23. I also know of, or have heard from colleagues about, noncitizen students who have been significantly harmed by the ideological-deportation policy. Noncitizen students have removed posts from their social media, taken down previously published writing, and removed references to published writing from their own profiles, particularly if the content of the posts or writings touch on Palestine. This is especially damaging for any students who wish to become academics, as it prevents them from developing a public profile of scholarly work in the field. Noncitizen students have also withdrawn from student organizations on campus in order to distance themselves from events relating to Israel and Palestine, because of the fear that being associated with the events could have consequences for their immigration status. The chill that the ideological-deportation policy has produced on student speech directly and adversely affects my own work because my research agenda is ordinarily informed and enriched by ideas and novel issue areas that I develop or learn about in conversation with my students.

24. My experiences are not unique. I have spoken with at least four of my MESA colleagues, whom I describe in more detail below. These members, and many more, have been seriously harmed by the ideological-deportation policy and the broad chilling effect it has had on the expressive and associational activities of noncitizen faculty and students who do work or advocacy related to the Middle East.

25. **Beth Baron.** Beth Baron is a distinguished professor of History at the City University of New York. Baron's scholarship focuses on the history of medicine in Egypt. She is a U.S. citizen and a member of MESA.

26. The ideological-deportation policy has harmed Baron's ability to receive information from her noncitizen students. Several of Baron's noncitizen students, some of whom are members of MESA, are now afraid to travel abroad to visit archives and libraries that have

historical sources critical to their research because they fear they will not be allowed back into the country. This fear of travel due to the policy significantly limits the set of topics Baron's students can research or write about, which diminishes her own, and her department's, ability to benefit from these students' work. Baron has also heard from noncitizen students who have removed content from their social media accounts, taken down images and content from websites, and who are self-censoring in their teaching, especially on topics related to Israel and Palestine and U.S. foreign policy. These students have taken these actions out of a fear that their speech could lead to them being targeted for deportation. Baron has been deprived of these students' insights and experiences, which she otherwise would have valued engaging with.

27. The policy has also limited Baron's ability to associate and assemble with noncitizen colleagues and students. Baron recently attended an academic event related to Palestine that was accessible only in-person because the organizers decided not to allow people to access the event remotely, out of fear that doing so would expose noncitizen participants to deportation. Prior to the policy, Baron attended anti-war demonstrations with noncitizen students and colleagues. Now, many of those individuals have stopped attending protests because they are afraid of being deported.

28. **Nadia Abu El-Haj.** Nadia Abu El-Haj is a professor of anthropology at Barnard College, Columbia University and the Co-Director of the Center for Palestine Studies ("CPS") at Columbia University. Abu El-Haj's scholarship focuses on Zionism, Israel, and Palestine. She is a U.S. citizen and a member of MESA and the AAUP.

29. The ideological-deportation policy has harmed Abu El-Haj's ability to hear from and associate with her noncitizen colleagues and students. One of her noncitizen students, who previously contributed to many events on campus and posted useful updates from Arabic language

news reports on social media, has now ceased participating in events and deleted their social media accounts for fear of losing their student visa. Another noncitizen student, who was once a leading pro-Palestinian voice on campus, has stopped speaking publicly and has gone into hiding since Khalil's arrest, out of fear that ICE might arrest or detain them. In response to her noncitizen students' and colleagues' concerns about ICE raids at campus events, Abu El-Haj cancelled a CPS event that was scheduled to take place in February. She has since felt compelled to cancel two more upcoming CPS events in April for the same reason. The policy has thus impaired Abu El-Haj's ability to learn from and meet with these students and to host CPS events.

30. **Noura Erakat.** Noura Erakat is a professor of Africana studies and Criminal Justice at Rutgers University. Her research and teaching focus on international law, including human rights law. She is a U.S. citizen and a member of MESA.

31. The ideological-deportation policy has harmed Erakat's ability to hear from her noncitizen colleagues and students. Noncitizen colleagues with whom Erakat collaborates closely have paused work on ongoing projects related to Palestine out of concern that they will be targeted for ideological deportation. One colleague, for example, paused their contributions to a legal research project that they are drafting in collaboration with Erakat after learning of Khalil's arrest. Erakat has also observed that noncitizens students are less willing to speak in class and in public about Palestine or related issues, even if those issues relate to their personal experiences. Because her scholarship relies on narratives from conflict zones, her work suffers when noncitizens are chilled from sharing their experiences.

32. **Zachary Lockman.** Zachary Lockman is a professor of Middle Eastern and Islamic Studies and of History at NYU. His research and teaching focus on the modern history of the Middle East. He is a U.S. citizen and a member of the AAUP, NYU-AAUP, and MESA. He chairs

the subcommittee of MESA's Committee on Academic Freedom that seeks to address threats to academic freedom in the United States and Canada.

33. The ideological-deportation policy has harmed Lockman's ability to hear from and engage with his noncitizen colleagues and students. Lockman relies on the perspectives of noncitizen colleagues and students to enrich his work in Middle East studies. Some of his noncitizen colleagues in MESA have recently declined invitations to speak at academic events, however, due to concern that increased visibility could lead to their deportation. Others have censored their syllabi for the same reason. Lockman has also observed that noncitizen students are less willing to speak in class and in public about Palestine or related issues, even if those issues relate to their countries of origin. And he is aware of noncitizen graduate students who have altered their research plans to avoid international travel because they fear having their visas or green cards revoked based on their pro-Palestinian expression or association. As a result, Lockman and his colleagues are deprived of the results of this research.

34. In addition to these four MESA members, I have heard from many more U.S. citizen members of MESA who have lost the benefit of hearing from and engaging with their noncitizen colleagues and students due to the ideological-deportation policy. Some members have reported that they are now required to take on more public-facing work in their departments or other groups due to their noncitizen colleagues' decisions to step back from this work out of fear that they may be targeted under the policy. Some have expressed increasing concern about approaching noncitizen colleagues to collaborate on or co-author any kind of public writing. Others have described canceling or altering planned events out of fear that they might place noncitizen colleagues or students at risk. The result of the ideological-deportation policy has been

to significantly limit the ability of citizen members of MESA to work with and learn from their noncitizen colleagues and students.

The Effect of the Ideological-Deportation Policy on MESA

35. The Trump administration's ideological-deportation policy has also seriously harmed MESA itself.

36. In line with the experiences described above, many noncitizen members of MESA have scaled back their participation in MESA's events and projects due to their fears of being targeted for arrest, detention, or deportation based on their political and scholarly engagement related to Israel and Palestine.

37. Noncitizen members play an especially critical role in the academic community MESA seeks to foster. They often possess unique insights, personal connections, and skills—including heritage language skills—that allow them to become among the most effective ethnographers and researchers working in the discipline. This also gives many noncitizen members special insight into how an academic and advocacy organization like MESA can best serve its community of scholars. Noncitizen members of MESA make invaluable contributions to the organization. That the ideological-deportation policy has compelled many noncitizen members of MESA to step back their engagement with MESA undermines MESA's goal of facilitating the exchange of pedagogical insights, academic expertise, and novel research among its members.

38. The policy has also had a significant negative impact on participation in MESA's annual meeting. As part of its mission to grow and support the academic community that studies the Middle East, MESA hosts an annual meeting, which is the premier academic conference for those who study the Middle East. The meeting consists of four days of academic programming, professional development, networking, and special events. Participants in the annual meeting

attend research workshops, participate in joint projects that help advance the study of the Middle East, form research collaborations, and discuss the issues most pertinent to their work. The meeting is a critical forum for scholarship, intellectual exchange, and pedagogical innovation, and for many MESA members, the annual meeting is the highlight event of the year.

39. Unfortunately, there will be a decline in participation this year as a result of the policy. I have heard from noncitizen members of MESA who are concerned about attending MESA's annual meeting, which is scheduled to take place in November 2025 in Washington, DC. Members have told me that they fear that their attendance at the conference could put them at risk for arrest, detention, deportation, or other immigration consequences. Each year, in preparation for the annual meeting, MESA solicits paper proposals for the conference in mid-February. After the administration's adoption of the ideological-deportation policy, I have noticed a meaningful decline in submissions. This year, the initial deadline for submitting paper proposals was on February 13, 2025. However, a number of scholars who ordinarily submit paper proposals informed me that they were unable to meet the deadline for submissions. Some expressed concerns about attending the meeting, due to its location. In particular, members outside of the U.S. expressed fears that they would be denied entry or harassed because of the administration's ideological-deportation policy. Noncitizen members also reported feeling overwhelmed and unable to focus on making plans for the annual meeting because of their fear that scholarship and speech about the Middle East, the entire focus of their academic careers, might become the basis for being targeted by the government.

40. Submissions at the initial deadline this year were almost 40 percent below where they should have been, based on my estimates from past MESA annual meetings in Washington, DC. Given that sharp decline in submissions by that deadline, MESA's leadership decided to grant

an across-the-board extension to February 20, 2025, something that the organization has rarely done in its history. After we extended the deadline for submissions, there was still a marked decrease in the total number of submissions compared to prior years. Based on the number of submissions, participation in the 2025 annual meeting is projected to fall 10 percent below the level we expected.

41. Due to our members' fears of ideological deportation, MESA's annual meeting will have lower attendance, garner fewer contributions to the scholarly field, and provide a less effective opportunity for intellectual exchange. Additionally, noncitizen members' reports of self-censorship in their research, scholarship, and advocacy based on their fear of being targeted by the government is expected to reduce overall engagement in the annual meeting and reduce submissions to MESA's scholarly publications, particularly on issues concerning Israel and Palestine.

42. The absence of these noncitizen members' voices will have a substantial impact on the annual meeting, depriving MESA and its other members of the important insights, information, and views these scholars would have contributed. Academic conferences, especially ones like MESA's annual meeting, are most effective when a wide-range of backgrounds and viewpoints are represented. Reduced attendance or engagement at the annual meeting will limit the information and ideas shared at the meeting and the opportunities for networking and intellectual exchange that would otherwise be available in the absence of the policy. It will take away from the vibrancy of the conversation and community MESA seeks to foster at its annual meeting, and it will greatly impair MESA's ability to pursue its mission of fostering the study and public understanding of the Middle East.

43. Reduced attendance at the annual meeting will also impose serious financial burdens on MESA. A significant portion of MESA's budget is funded through the registration fees connected to attendance at the annual meeting. Based on the sizable reduction in the number of academic papers submitted for the meeting, which has previously been a reliable predictor of attendance, I anticipate that registrations for the next annual meeting will be seriously reduced, meaning MESA will collect substantially fewer registration fees. Additionally, because the annual meeting is the premier event of the year for MESA members, I anticipate that some individuals who cannot or will not attend the meeting due to concerns relating to the ideological-deportation policy will allow their memberships to lapse, and others who might have joined MESA to attend the annual meeting will not do so due to fears of the potential immigration consequences stemming from the ideological-deportation policy. This would impose an even greater financial cost on MESA given its reliance on dues-paying members for its annual operation budget.

44. The ideological-deportation policy has also required MESA to divert resources to managing and addressing the consequences of the policy for its members, that it would otherwise devote to its core mission. I and other members of MESA's leadership, staff, and volunteer faculty are now required to spend substantial time and attention responding to crises stemming from the ideological-deportation policy, which takes away from MESA's ability to develop and foster scholarship.

45. For instance, MESA's Committee on Academic Freedom and MESA's Task Force on Civil and Human Rights have recently been inundated with requests for assistance from noncitizen MESA members who fear arrest, detention, and deportation under the policy. Before the policy, these advocacy committees addressed each member's request for assistance individually. Now, they spend time developing triage criteria for prioritizing certain requests. The

committees have also needed to shift their focus from addressing threats to MESA's members from foreign governments to addressing threats stemming from the U.S. government's ideological-deportation policy. For example, in past years, a significant portion of the Committee on Academic Freedom's work involved advocacy outside the United States. Now, the committee is forced to devote most of its attention to addressing the concerns of noncitizen MESA members who fear potential immigration consequences stemming from the ideological-deportation policy. Between November 2018 and November 2024, the committee produced 211 letters, of which 85 (or 40 percent) concerned North America. In the first few months of 2025, 80 percent of the letters produced by the committee have concerned North America.

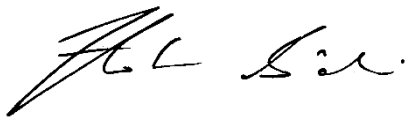
46. MESA leadership has also been required to develop new and different programming aimed at addressing members' concerns related to the ideological-deportation policy. For example, MESA developed and held a know your rights workshop on March 27, which addressed details about the legal options available to noncitizen students and colleagues should they be affected by the ideological-deportation policy, as well as best practices to address risks to our members during travel. MESA has another similar workshop planned for April 1. These are events that MESA leadership believed were necessary to help protect its members from the ideological-deportation policy. MESA leadership is also facilitating meetings between its members and legal services groups on April 9 to respond to member concerns relating to travel and digital security. This is programming that MESA would not typically arrange for its members, and is not the kind of service that a scholarly association regularly provides for its members.

47. Additionally, because so many MESA members are fearful of the immigration consequences stemming from the ideological-deportation policy, MESA has begun to distribute a new monthly message to members to provide them with resources and information about MESA's

response to the ideological-deportation policy. For instance, on February 10 and March 21, MESA's leadership sent members information about threats to academic freedom and MESA's mission arising from the ideological-deportation policy. As a result of this significant shift in focus and attention, MESA has had fewer resources to dedicate to its regular academic programming. This includes supporting the program committee's work in selecting proposals to include in our annual meeting in November 2025, with our usual timeline having had to be pushed back to accommodate new demands on our resources. In addition, more staff time is now dedicated to messaging and communications around the threats to academic freedom and freedom of association in the U.S. due to the ideological-deportation policy.

48. I declare under penalty of perjury that the forgoing is true and correct.

Respectfully submitted,



Aslı Ü Bâli

April 1, 2025

Exhibit E

AFFIDAVIT OF MŨKOMA NGŨGĨ

I swear under penalty of perjury that the following is true and correct:

1. My name is Mũkoma Ngũgĩ, I am a Professor at Cornell University in the Department of Literatures in English and I reside in Tompkins County, New York.
2. I am the author of numerous non-fiction works, novels and volumes of poetry focusing on the struggle of the people of the African continent for liberation from the centuries-long impact of colonial exploitation. My work is recognized and taught world wide.
3. I have been a close associate and friend of Momodou Taal on campus. I have mentored him, I have helped him as he navigates his academic career, and I've also been someone to whom he has often come for personal advice about the best way to maintain his political and personal integrity while also teaching his courses in an objective way. I have great respect for the way he has stood up for himself and expressed his views about what Israel has done to the population of Palestine. His principled stance against all oppressions (including racial, class, gender, sexuality), is something I admire about him. Momodou Taal is a brilliant student that any professor would be happy to have in class.
4. Since the issuance of the executive orders by Trump, I have been deprived of my right to listen to my colleague's views and opinions. I want to help him develop his scholarship, but this is very hard to do under conditions where I am worried about whether the university or outside forces will monitor and report the things that we say to each other, either in class or otherwise.
5. As a result of the executive orders, Momodou and I have stopped engaging with each other in public in the way we used to. It has been hard for me, as someone who always values what he has to say, to reconcile my desire to keep teaching others with my desire to speak up against his being silenced. I truly wish I could call a public meeting—or even invite professors to dinner to

meet with Momodou and hear his perspective on things—but I can't. I'm too worried about putting him at risk of deportation, since I'm also associated with criticism of U.S. foreign policy and the policies of the government of Israel. I do also worry about whether my own association in public with Momodou would be seen as "anti-Semitic." Neither of us has any ill feelings toward our Jewish colleagues and friends who have struggled with us against oppression and state violence.

6. I will say that I am particularly upset that Momodou was forced to miss his book launch. I know that for an author, a book launch is a critical moment in one's academic and intellectual life. There is something about shaking hands with one's readers, hearing their thoughts, talking to them in person, signing their copies—Momodou missed out on all of this because he has a legitimate fear of being turned away at the border for no good reason, given that the things he said while residing in the U.S. should be protected by the Constitution.
7. I am afraid of being subjected to criminal prosecution as a result of the second executive order that mentions "anti-Semitism" without a clear definition. I have been critical of multiple governments (African governments, the Israeli government, the US government) and I don't believe we should conflate criticism of the State with criticism of a State's citizenry.
8. I believe the legal term is "irreparable harm." I certainly feel that I've been harmed in a way that I can't repair unless and until I'm able to speak freely and openly with Momodou Taal again.

Signed,

Date: 14th March 2025

AFFIDAVIT OF SRIRAM PARASURAMA

I swear under penalty of perjury that the following is true and correct:

1. My name is Sriram Parasurama, I am a graduate student at Cornell University and I reside in Tompkins County, New York.
2. I am a second-year Ph.D. student in the School of Integrative Plant Sciences. In 2023, I was awarded the NSF Graduate Research Fellowship to support my research on tree physiology and forest ecology. I have also served as a teaching assistant for the University and I currently maintain a 4.3 cumulative GPA.
3. I was a close associate of Momodou Taal during the demonstrations that protested the Israeli government's actions against the people of Palestine. Since the issuance of the executive orders in question, I have been deprived of my right to listen to my friend's views and insights on what Israel is doing to the people of Palestine. Momodou always brings such a rich historical and cultural analysis to our discussions of the political situation in the US and internationally, but he's been forced to stay quiet since the executive orders came out. We used to meet up all the time, go out for coffee, plan demonstrations, and discuss political issues but, despite our friendship remaining strong, the looming threat of disciplinary action has made our open association infinitely more tenuous.
4. I am not able to interact with Momodou as much as before out of fear of being falsely labeled "anti-Semitic." Additionally, given my own prior prominent involvement in protest activity and subsequent discipline, Momodou is not able to freely associate with me as it might lead officials, either at the university or the government, to believe that he

is engaging in "anti-American" activity. We have been forced to stop seeing each other in public.

5. Having already dealt with criminal allegations, I fear being subjected to further criminal prosecution myself because of the second executive order here. It is unclear what type of speech, such as criticism of the state of Israel, might constitute "anti-Semitism," as I do not harbor any ill will toward Jewish people at all. In fact, many of those who have been involved in protest activity with me are Jewish, and I consider our unity in opposition to American and Israeli government policy regarding Palestine to be a great strength of our movement. Nevertheless, I worry about interacting with my friends and fellow activists for fear of putting all of us at risk of deportation or criminal prosecution.
6. As a scientist researching the impacts of climate change on our great North American forests, I additionally fear that pressure from these executive orders and my open association with Momodou and the Palestinian cause will negatively impact my ability to carry out my critical research. In order to maintain compliance with these directives, I worry that many of my grant and fellowship sources will revoke current funding or refuse to provide future funding for this vital research I conduct. I wholeheartedly believe in the mission of scientists, the pursuit and defense of knowledge and truth, but am restricted by the demonization of my and Momodou's political thought.

Signed, _____ Date: _____

Exhibit F

F-1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF VICTORIA PORELL

I, Victoria Porell, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. I submit this declaration in support of Petitioner Mahmoud's Khalil motion for a preliminary injunction in his above-captioned habeas corpus petition and in particular to address the ways in which the United States government's targeting of Mr. Khalil for his Palestinian rights advocacy is causing him irreparable harm and is contrary to the public interest.

2. Specifically, I write to explain the ways in which, even in the context of a long term campaign to target and silence students advocating for Palestinian human rights, Palestine Legal has observed and documented a substantial increase in concerns expressed by students – and corollary chill to their activism – in direct reaction to the arrest and detention of Mahmoud Khalil on March 8, 2025. I

conclude that the arrest, detention and attempted removal of Mr. Khalil for what the federal government has explicitly attributed to his campus activism on behalf of Palestine has had a considerable chilling effect on activism and particularly student campus activism.

Background on Palestine Legal

3. Palestine Legal (a project of Tides Center) is a non-profit legal and advocacy organization specifically dedicated to protecting the civil and constitutional rights of people in the U.S. who speak out for Palestinian freedom. Palestine Legal tracks and responds to efforts to suppress expression supporting Palestinian rights, particularly those aiming to chill, or wholly eliminate, campus-based organizing. Palestine Legal has advised thousands of students, campus groups, and other advocates whose rights have been violated for expressive conduct supporting Palestinian rights and faced false accusations of support for terrorism, doxing, and other repressive efforts.

4. We have successfully defended the civil and constitutional rights of students advocating for Palestinian human rights through strategic litigation, amicus curiae filings, complaints alleging violations of Title VI of the Civil Rights Act of 1964 based on Palestinian national origin and related associational discrimination, along with other legal advocacy. See., e.g., *Univ. of Md. Students for Just. in Palestine v. Bd. of Regents of the Univ. Sys. of Md.*, No. 24-2683 PJM, 2024 U.S. Dist LEXIS 178359 (D. Md. Oct. 1, 2024).

Qualifications

5. I am a Senior Staff Attorney at Palestine Legal and have worked at the organization since January 2024, primarily representing students and faculty members facing retaliation for their speech in support of Palestine. Prior to my employment at Palestine Legal, from 2018-2023, I was a member of Palestine Legal's attorney network and volunteered on cases referred to me. I also worked as a Legal Intern for Palestine Legal in 2016-2017.

6. At Palestine Legal, I have been serving at the head of our Intake Committee, overseeing all incoming requests for legal support, monitoring trends in requests for support, and ensuring requests are addressed either by a Palestine Legal attorney or a referral from our attorney network.

Requests for Legal Support Following Mr. Khalil's Arrest—By the Numbers

7. The movement for Palestinian rights and freedom has long been hotly contested in the United States. On college campuses, where there is a concentration of advocacy for Palestinian rights, student advocates have consistently faced pervasive threats to their political expression and associational rights via doxing by anti-Palestinian groups, differential treatment and disciplinary processes.

8. Since the onset of Israel's latest military offensive against Palestinians in the Gaza Strip, more and more students have used common protest tactics to express their dissent against the United States' and their own institutions' support for Israel's prolonged military offensive that has killed over 54,000 Palestinians, including over 16,000 children. (*See*, Jay Ulfelder, *Crowd Counting Consortium: An Empirical Interview of Pro-Palestine Protests at U.S. Schools*, Harvard Kennedy School, Ash Center for Democratic Governance and Innovation, (May 30, 2024), https://ash.harvard.edu/articles/crowd-counting-blog-an-empirical-overview-of-recent-pro-palestine-protests-at-u-s-schools/.) With students' protests against the onslaught on Gaza has come unprecedented retaliation: in the 17 months since October 2023, Palestine Legal has received over 3,500 requests for legal support, the majority related to campus-based suppression.

9. Since the onset of the Trump administration in late January 2025, student organizers face a new, dire threat to their political expression: the leveraging of the federal government's vast immigration powers to punish and thereby deter constitutionally protected advocacy for Palestinian rights. These efforts at state-directed political suppression have been deemed "the greatest threat to free speech since the Red Scare." (*See*, Michelle Goldberg, *This Is the Greatest Threat to Free Speech Since the Red Scare*, THE NEW YORK TIMES (Mar. 10, 2025), https://www.nytimes.com/2025/03/10/opinion/mahmoud-khalil-free-speech.html.)

10. Since March 8, 2025[1], the date of Mr. Khalil's arrest and detention by ICE, Palestine Legal has received 409 requests for legal support. In the same amount of time (82 days) immediately preceding March 8, 2025, we received 322 requests for legal support. This amounts to a nearly 30% increase, at a time (since October 2023) when we have been receiving an already heightened volume of requests. As a point of comparison, in all of 2022, we received 290 requests for legal support.

11. I personally responded to 39 of the 409 requests for legal support that we received.

[1] As of May 29, 2025, 9:08pm PST.

12. Of the 409 requests that Palestine Legal received since March 8, 2025, 167 requests were related to educational institutions, the majority coming from students or faculty members from colleges and universities.

13. Many non-citizen students and faculty reaching out for legal support have been targeted and doxed by the same or similar pro-Israel organizations that targeted Mr. Khalil prior to his detention, including Betar, Canary Mission, and Documenting Jew Hatred on Campus. (*See*, Tsehai Alfred, *Mahmoud Khalil, SIPA '24, asked Columbia for protection a day before detainment, lawyers confirm*, COLUMBIA SPECTATOR (Mar. 12, 2025), https://www.columbiaspectator.com/news/2025/03/12/mahmoud-khalil-sipa-24-asked-columbia-for-protection-a-day-before-detainment-lawyers-confirm/.)

14. Palestine Legal does not inquire about the citizenship status of those seeking legal support, so precise numbers are not available, but anecdotally, requests for immigration consultation and representation from students and faculty increased dramatically after March 8, 2025, with many individuals directly referencing the high-profile detention of non-citizen students such as Mahmoud Khalil.

15. After March 8, 2025, Palestine Legal also received a significant increase in the number of requests for "Know Your Rights" presentations and materials, particularly for non-citizens resulting from escalating fear from pro-Palestinian activists about possible retribution by ICE and/or universities.

16. Since March 8, 2025, Palestine Legal staff have participated in at least 13 "Know Your Rights" trainings or other public presentations that reached an estimated audience of over 2,700 people.

Increasing Requests for Legal Support—Individual Examples

17. In the days and weeks following Mr. Khalil's arrest, as we saw an increase in the numbers of requests for legal support, I also saw an intensification of the emotional state of those reaching out for support. Students I spoke to expressed anxiety, panic, and terror at the possibility that they may be disappeared off the street and detained without warning. Multiple student clients, and even one member of Palestine Legal's attorney network, broke down in tears while we were on the phone.

18. A law student organization asked me if they shouldn't have meetings anymore so as to protect their members, especially non-citizens on campus.

19. Multiple graduate students and faculty members (citizens and non-citizens) asked if it was safe to travel abroad or if they should reschedule international conferences and field work. An international graduate student from a US university who was abroad conducting research reached out because he was concerned about his ability to re-enter the US because his name appeared in a news article about a Palestinian rights demonstration.

20. Multiple non-citizen students who were in leadership positions of student organizations or officers in student government asked if they could or should request that their institutions remove their names from internal and external websites. One chapter of Students for Justice in Palestine (SJP) contacted Palestine Legal after their university refused to make private a spreadsheet listing the leadership of student clubs. They expressed that they were especially worried one of their board members, a non-citizen, would be retaliated against by the federal government if this information remained public.

21. Student journalists, from at least two universities, asked if they should remove by-lines from articles having anything to do with the Middle East or campus protests. These questions followed reporting that professors, including Dean of the Columbia Journalism School Jelani Cobb, had publicly told students who were not U.S. citizens to avoid publishing work on Gaza, Ukraine and their former classmate's arrest, and that "nobody can protect you. These are dangerous times." (*See*, Liam Stack and Katherine Rosman, *At Columbia, Tension Over Gaza Protests Hits Breaking Point Under Trump*, THE NEW YORK TIMES (Mar. 12, 2025), https://www.nytimes.com/2025/03/12/nyregion/columbia-university-trump-protests.html.)

22. A non-citizen student expressed that they had not left their apartments out of fear that they would be arrested by ICE.

23. A student who was President of SJP at her University and a United States citizen asked if her non-citizen roommates were at risk because of her position of leadership.

24. A faculty member reported to Palestine Legal that they were supposed to give a lecture in March. However, the event was cancelled at the last minute and the reason provided to the faculty member was that the organizers had concerns about retaliation against non-citizen academics.

25. A member of a graduate student government reached out because they had

received a number of questions from doctoral students about whether they would be able to remain enrolled and/or finish their degrees from oversees if they are deported for their Palestine organizing or have their F-1 student visas cancelled.

26. At least three non-citizen students who had written op-eds about campus protests reached out seeking legal representation because they believed that they may be targeted as a result.

27. Multiple students who had been interviewed or photographed for campus newspaper articles concerning demonstrations asked if they could or should request their names or pictures be removed from previously published articles.

28. Many students asked if it was safe for them to be members of student organizations or attend campus events having to do with Palestine. A first-year doctoral student and legal permanent resident asked whether he was at risk of having his green card revoked for having been a member of SJP and whether he should stop associating with the group.

29. A non-citizen Palestine Legal client who was a lawful permanent resident expressed intense fear of retaliation for being involved in campus activities concerning Palestine and decided to put her application for citizenship on hold.

30. I am attaching as **Exhibit A** an article that Palestine Legal attorneys and clients were consulted on that includes some additional examples that illustrate the climate of fear that has set in on campuses, particularly amongst non-citizen students and scholars.

31. Attached hereto, at the exhibits listed below, are true and correct copies of the following materials:

    A. Attached as **Exhibit A**: Sanya Mansoor, *Will ICE Come to My Dorm Today? International students who protested Israel's war in Gaza grapple with Trump's crackdown.*, THE CUT (Mar. 26, 2025), https://www.thecut.com/article/pro-palestine-student-protesters-worry-will-ice-come-for-me.html.

Dated: June 3, 2025
Oakland, CA

Signed:

/s/ Victoria Porell

F-1
Exhibit A

Will ICE Come to My Dorm Today? International students who protested Israel's war in Gaza grapple with Trump's crackdown.

By Sanya Mansoor, a freelance reporter who covers immigration and Gaza

MAR. 26, 2025

SAVE 22

Photo-Illustration: by The Cut; Photo: Michael Nigro/Sipa USA via AP

Since ICE agents arrested Columbia graduate Mahmoud Khalil in early March, Maryam, a student at Cornell University, doesn't leave the house unless they need to. They started getting groceries delivered and rarely go out to the shops. While they still help support and organize local demonstrations against Israel's war in Gaza, they no longer attend in person. When they do go out to class or to work, they write an employment lawyer's phone number on their body and carry all their documentation. As a person of Arab descent who is in the U.S. on a student visa, Maryam worries that they could be swept up in the Trump administration's crackdown on pro-Palestine activists. Recently, they installed security cameras outside their off-campus apartment. "It felt like a way I could protect myself," they say, if immigration agents were to show up at the door.

On top of all this, Maryam's sister is pregnant and they are now unsure of when they will be able to visit family. If they leave the country, they fear they won't be allowed to return. They try their best to calm down their parents, who are scared of ICE detaining their child. Maryam's mother texts that she loves them more frequently, while their father, who normally talks a lot, now trails off and becomes quiet on the phone. "He understands that it is not in me to be bullied or cowed," they say.

International students across the country like Maryam are spooked by the arrests of Khalil, a U.S. permanent resident, and Georgetown University researcher Badar Khan Suri, an Indian national. (Maryam's name and that of other students in this story have been changed, as they fear the federal government may target them for deportation.) Trump's campaign-trail rhetoric about throwing student protesters out of the country has since become a real threat. The administration rescinded a longstanding policy that protected universities and other vulnerable locations from immigration enforcement; the State Department is launching an AI-driven program to help deport foreign nationals perceived as supporting Hamas; sweeping executive orders threaten deportation or criminal prosecution over actions the administration

views as antisemitic or expressing a "hostile attitude" toward the U.S.; and Trump is pressuring universities to impose stricter protest rules or else lose their federal funding.

This all leaves international students wrestling with how to criticize the U.S.'s continued military support of Israel without jeopardizing their visa status. Several students I spoke with worried that identifying their country of origin or which university they attend, let alone talking about their protest activity, would put a target on their backs. Some are doubling down by engaging more publicly, including by protesting without a mask, while others are paring back their social-media activity and taking more precautions at protests. James, who attends New York University on a student visa, has continued to go to demonstrations and wears a shiesty to obscure his face and cover his eyebrows — "all this stuff we know can stop facial recognition," he explains. Stopping his activism was not an option. "I don't see myself disengaging completely," he says. "It's just a matter of picking different ways of engagement and supporting people who can be more visible." Still, he's nervous that authorities seem to be casting a wide net in their pursuit of pro-Palestine activists. "It's not just lead organizers, it's people who were at protests or signed letters," he says. "That makes me afraid, because how much more can they expand it? How much leeway do they have that I don't know about? Where do I fall?"

Salman, an Arab graduate student at NYU, had briefly met Khalil at a friend's birthday party last year. They didn't speak much, but the interaction was enough to make the news of the Columbia graduate's detention feel less abstract. *If they're deporting someone with a green card, then what protection does my F-1 student visa offer me?* Salman thought. He also saw parallels between his situation and the argument the Trump administration made for detaining Khalil: While he is not an organizer, Salman has frequently posted on social media about protests and policy demands, like calling for a cease-fire and arms embargo. "I don't think I post more or less than your average pro-Palestinian advocate," he says, but he fears that "people can read into what you post in whatever way." He's started to pull back from sharing his personal political opinions on social media. He did go to a protest earlier this month to demand Khalil's release, however, and then to another demonstration to protest Israeli airstrikes on Gaza. He wore a mask after friends and family urged him to take steps to conceal his identity. "I'm not taking a step back on this," he says.

Salman says his parents want him to be safe and finish his degree. "They also understand that I'm at a point in my life right now where even if they were to tell me 'Don't do this' or 'Don't do that,' they know me too well to think that I'm going to become silent all of a sudden out of fear," he says. Salman currently plans to fly to attend his sibling's engagement outside of the

U.S., which he knows involves risk, but he plans to have a lawyer or emergency contact on standby in case he runs into issues reentering the United States.

NYU is one of several universities, including Brown and UC Berkeley, that are urging international students to reconsider traveling out of the country. (Cornell had advised international students to return to campus before Trump took office in anticipation of changing immigration policies.) The U.S. government wields more power and discretion at the border than it does within its borders, and "severe consequences can emerge very quickly," says Golnaz Fakhimi, legal director of the civil-rights organization Muslim Advocates. In the span of a few hours, one interaction with a border agent could lead to a person's removal from the country and a ban on seeking reentry for years. Muslim Advocates is helping students prepare for all scenarios, including ICE detention; that means figuring out a care plan for any dependents and putting a process in place to notify emergency contacts.

Both Muslim Advocates and the advocacy group Palestine Legal tell me they've received an uptick in inquiries recently from non-citizen students who are trying to gauge the risks involved in traveling, living in on-campus housing, protesting, and posting pro-Palestine content on social media. Some students who've reached out to them have a more public profile, but many of them don't and are still worried they may be on the government's radar. Palestine Legal senior staff attorney Radhika Sainath says there has been a subtle shift in the group's approach to providing Know Your Rights training for students, given that "we have an administration in place that does not respect the law." "There's more of a focus on different scenarios and what people might expect given what they said, or who they are, and their citizenship status," she said. Still, she stresses, everybody in the U.S. — regardless of their immigration status — has a right to freedom of speech and expression, which includes criticizing the American and foreign governments.

At Columbia, which has become Trump's biggest campus target, the international student community is rallying together after ICE detained Khalil and attempted to arrest Fulbright student Ranjani Srinivasan, who subsequently left for Canada. Grant Miner, the president of Columbia's student workers union, said that typically about five people come to its international student working group meetings. Following Khalil's arrest, 80 showed up. "People I've never seen before are coming to union meetings," Miner says, "and that's not because we did a good job organizing them, it's because they feel angry." Ph.D. student Allie Wong has been referring these students to mutual-aid funds and friendly lawyers, helping provide walking escorts for those who feel unsafe, and connecting them to healing circles. She's also heard from international students who are considering moving off-campus or want a

secondary place to stay should ICE agents show up at their residence. Some of her peers have expressed interest in helping out, but the Justice Department recently directed federal prosecutors to investigate local compliance with Trump's immigration crackdown. That can include cases where the government believes U.S. citizens are harboring people who are in the country illegally. "This is paralyzing people who do have good intentions, and who want to help their friends, who are not promoting terrorism; they're just trying to get a good education," Wong says.

Some international students are confronting the Trump administration head-on. At Cornell, Momodou Taal, a British Gambian Ph.D. student, filed a lawsuit this month alongside two U.S. citizens that alleged the executive orders Trump is using to crack down on pro-Palestine activists amount to an unconstitutional silencing of their political views. "It got to a point where international students are becoming sitting ducks," Taal says. "We shouldn't be penalized and punished with the threat of deportation because of expressing our views." Residents of Taal's building tipped him off last week that unidentified law-enforcement officers had arrived at his Ithaca home, and in a statement on X he wrote, "Trump is attempting to detain me to prevent me from having my day in court." On Friday, the Justice Department asked Taal to surrender to ICE; his legal team filed an emergency petition seeking to prevent the government from detaining him before a Tuesday hearing on the merits of his case.

Columbia student Yunseo Chung also filed a lawsuit Monday after immigration officials unsuccessfully tried to deport her. Chung is a lawful permanent resident like Khalil, and the government is relying on the same obscure immigration law to argue that her conduct — she was arrested after a campus sit-in — negatively affects America's foreign policy. Chung, who does not appear to have a leadership role in the student protest movement, and her legal team filed a petition that would block her detention while her lawsuit is ongoing, which a judge granted Tuesday.

The crackdown has led several of the students I spoke with, including those from countries that routinely stifle free speech, to question their long-term plans. Even if they want to stay in America because of their strong community ties and a desire to fight for the cause they believe is right, they're grappling with whether it's worth living in a country that won't allow them to freely express their political beliefs. James says he planned to stay in New York after his program ends, "not for nationalistic reasons" but because of the city and the friendships he's built there. But now, he's not sure it'll be possible. "It's not a question of wanting" to remain in

the States, he says. “How long will it be until they find something to use as a reason to not let me in?”

Maryam came to the U.S. to work with particular scholars at Cornell and had no plans to stay in the country longer. Then they got into a relationship with an American citizen. “I started to think, *Maybe I could settle down here. Maybe this is a place where we could have a family and be happy*,” they say. But in the wake of Khalil’s arrest, the couple is talking about living “anywhere that is not here.” The future they envisioned together no longer feels realistic when “international students are being hunted by the federal government,” Maryam says. They’re not surprised that Trump is making good on his campaign promise, but they are increasingly worried that the American public won’t push back enough on the administration’s crackdown. “That scares me more than anything else,” they say. “That the entire world is finding a way to make this a personal failing rather than a structural issue of targeting students who engage in constitutionally protected speech.”

TAGS: POLITICS POWER TRUMP 2.0 THE CLASH ON CAMPUS MORE

SHOW 22 COMMENTS

F-2

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MAHMOUD KHALIL,

Petitioner,

v.

DONALD J. TRUMP, *et al*.,

Respondents.

Civ. No. 25-1963 (MEF) (MAH)

DECLARATION OF GOLNAZ FAKHIMI

Pursuant to 28 U.S.C. § 1746, I declare as follows:

1. My name is Golnaz Fakhimi. I am over the age of eighteen and have personal knowledge of the facts stated in this declaration.
2. I am a civil and human rights attorney, and, since October 2, 2023, I have been the legal director of Muslim Advocates ("MA"), a national legal advocacy and social justice organization.
3. MA's work includes providing education, counsel, and defense to non-citizens at risk of or facing wrongful immigration-related surveillance or scrutiny, denial of immigration benefits or visas, interior immigration enforcement, and/or border enforcement by the U.S. government—on the basis of any protected ground, including viewpoint, race, national origin, and/or religion.
4. MA's work also addresses the interests of U.S. citizens who are harmed by these, and other, wrongful U.S. governmental practices against non-citizens.
5. MA's work on these issues includes conducting related Know Your Rights trainings ("KYRs"); providing legal consults to impacted individuals; providing direct representation to clients in litigation and non-litigation matters; and coordinating and supporting other attorneys in their provision of education, counsel, and defense to impacted people.

6. In the time that has passed since the March 8, 2025, immigration arrest of Mr. Khalil and many others like him—such as Mohsen Mahdawi, Rümeysa Öztürk, Dr. Badar Khan Suri, and Leqaa Kordia (an MA client)—MA has experienced a sharp uptick in contact from non-citizen community members from across the nation who are alarmed by the administration's policy and practice of weaponizing its carceral power under the Immigration and Nationality Act for the purpose of chilling and punishing speech and conduct supportive of Palestinian lives and freedom, critical of U.S. and Israeli governmental conduct that harms Palestinians, or otherwise expressive of viewpoints that the administration does not like.

7. Since March 8, 2025:

    a) Community members have asked MA to conduct approximately eleven (11) KYRs addressing viewpoint-related immigration risks and consequences for non-citizens. Between January 20, 2025, and March 8, 2025, MA had only received one (1) such request.

    b) MA has provided approximately fifty (50) individual consults to non-citizens personally concerned by viewpoint-related immigration risks and consequences. Between January 20, 2025, and March 8, 2025, MA had received few to no such requests.

    c) MA has provided support for the consideration or preparation of anticipatory habeas corpus actions for approximately thirteen (13) non-citizens acutely worried that viewpoint-based immigration custody could precipitate against them, as it has for Mr. Khalil and others. These individuals have included students, professors, and journalists. By contrast, between January 20, 2025, and March 8, 2025, MA had never been asked to support the consideration or

preparation of an anticipatory habeas action concerning viewpoint-based confinement.

d) In the course of the support and coordination that I have provided nationally to other attorneys supporting and defending non-citizens concerned by viewpoint-related immigration risks and consequences in the aftermath of Mr. Khalil's immigration arrest—many such attorneys have expressed to me that non-citizens are now routinely asking them to prepare anticipatory habeas corpus actions for them.

8. Across the aforementioned categories, many non-citizens have directly expressed to me that, in hopes of mitigating or navigating risks of viewpoint-based immigration consequences to them, they have: deleted social media accounts, deleted social media content, reduced social media usage, changed social media settings to "private," decided against protest attendance, decided against domestic air travel, and/or decided against international travel.

9. U.S. citizens have also directly expressed to me having changed their usage of and/or behaviors on social media along the lines described above, in hopes of reducing immigration-related risks to non-citizens with whom they associate.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 4, 2025

Respectfully submitted,

Golnaz Fakhimi
Muslim Advocates
1032 15th Street N.W. #362
Washington, D.C. 20005
Tel: (202) 655-2969
golnaz@muslimadvocates.org

F-3

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF JOSHUA DRATEL, PARTNER AT DRATEL & LEWIS

I, Joshua Dratel, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. I am the founding partner of Dratel & Lewis, one of the law firms representing Petitioner Mahmoud Khalil in the above captioned case. After graduating law school in June 1981, I was admitted to the New York State Bar in March 1982, and have practiced law continuously since, primarily as a criminal defense lawyer. I have handled matters at all stages (investigations, trials, and appeals) in the U.S. state and federal courts – principally in New York – across the U.S., as well as some internationally. Throughout my career, my practice has included a wide range of matters, including "white collar," "organized crime," drugs, sex offenses, cybercrime, terrorism and national security, and capital cases.

2. Currently, I am co-chair (since 2018) of the Defense Function Committee of

the American Bar Association ("ABA"), and co-chair of the *Amicus Curiae* Committee of the National Association of Criminal Defense Lawyers ("NACDL") (since 1994), as well as NACDL's National Security Committee (since 2011). From 2011-2022 I was NACDL's representative on ABA's Criminal Justice Section Council. I am also a member of the New York City Bar's Capital Punishment Committee (since 2002). I am a past President (2005) of the New York State Association of Criminal Defense Lawyers. I am a member of the Criminal Justice Act panel in the Southern District of New York since 1988, and a member of that District's capital representation panel since its inception.

3. I have testified as an expert multiple times in the courts of the United Kingdom and Canada as an expert on various aspects of U.S. law and its criminal legal system, and also in a U.S. arbitration.

4. Dratel & Lewis associate attorney Amy E. Greer, Esq., has been involved in the above-captioned case since Mr. Khalil's arrest March 8, 2025.

5. Since March 9, 2025, Dratel & Lewis has been contacted by more than three dozen individuals and entities representing an extraordinarily diverse group of vocations and professions, including students (undergraduate and graduate), academics, lawyers, journalists, artists (in various disciplines), personnel working for non-governmental organizations ("NGO's"), and activists. Also, spouses and other family members of the above-listed individuals have contacted us as well.

6. The individuals described above also possess all ranges of immigration status in the U.S. – from visa holders to Legal Permanent Residents to naturalized citizens to native-born citizens. Nearly all are without any criminal history, and none have been convicted of a crime (or are currently charged with or accused of any criminal conduct). They also have expressed concern about family members whose status could be used as leverage against them.

7. Notwithstanding this diversity, all of these people and entities who have consulted and/or retained our firm have one factor in common: they each have sought advice and/or representation as a prophylactic measure because they have genuine fear of retaliation by the United States government for exercising their protected speech, expressive activities, and associations related to advocacy for Palestinian human rights and/or against the genocide being perpetrated in Gaza, and/or relating to their particular areas of scholarship and/or work related to Palestine.

8. In addition, some of the lawyers described above have defended others

exercising their First Amendment rights, or engaged in proactive litigation to vindicate the First Amendment rights of others.

9. Mr. Khalil's arrest and nearly three-month-long detention has caused the individuals described in ¶¶ 4-5 above to possess a credible fear – notwithstanding their citizenship or immigration status – of U.S. government retaliation for past and future First Amendment expression that could have an adverse impact their liberty, their ability to continue living, working, and/or studying or teaching in the U.S., their ability to re-enter the U.S., and their ability to retain their current employment, housing, and/or parental rights.

10. The individuals who have sought counsel and a formal relationship with an attorney have done so in large part because the vagueness and lack of standards in the Secretary of States "foreign policy ground" leaves them without sufficient guidance as to what expression would be the subject of an enforcement action of some sort.

10. This reaction across such a broad spectrum – transcending age, economic position, social or professional status, race, gender, religion, and nationality – is unprecedented in my nearly half-century career. It does not have even a remote analog, even among the several cycles of political upheaval that have occurred in the U.S. through the past five decades. The fear and intimidation spread rapidly and widely after Mr. Khalil's arrest and detention, and persists, as we have continued to field such inquiries on a regular basis. Indeed, the steady volume has compelled us to refer some of them to other lawyers.

Dated: June 3, 2025
New York, NY

Signed:

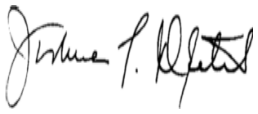


Exhibit G

G-1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF RASHID KHALIDI

I, Rashid Khalidi, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is Rashid Khalidi, and I am the Edward Said Professor Emeritus of Modern Arab Studies at Columbia University, where I taught for 23 years.

2. I declare under penalty of perjury that the foregoing is true and correct.

3. I have personally observed multiple instances of the Trump administration's targeting of Mahmoud Khalil causing many of my colleagues and students to change their behavior. I feel obliged to avoid all identifying details regarding these individuals, out of fear that they might also become targets of the Trump administration and other harassing private actors.

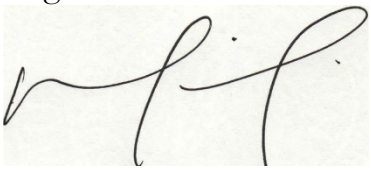
4. These instances include many foreign students, whether they have been involved in student activism or not, who are fearful of detention or deportation on the basis of their real or supposed past, current, or future speech or activity. These students are avoiding travel back to their homes, or travel that is necessary for their studies, out of concern they may be detained or deported upon their return. Foreign students of my acquaintance are all fearful for their future as students in the United States. Some of the students and faculty of my acquaintance at a variety of universities (Columbia, City University of New York, Princeton University) who are permanent residents or have student or work visas have been advised by their institutions not to leave the United States for fear of detention or deportation on their return.

5. These are not imaginary fears. A relative of mine who is an MA student at a Washington area university and was returning recently from a university-sponsored event abroad was detained at a United States airport for 7 hours, had his phone confiscated, and was threatened with deportation, while one of his fellow students, a United Kingdom citizen, was denied re-entry.

6. Two of my PhD students and several MA students and undergraduates who studied with me have been restricting their engagement in political speech on social media, and fear participation in class, or writing about subjects that might be considered objectionable by the Trump administration. This has thrown a chill over both teaching and studying a broad range of topics of this nature, out of fear that one might be deported for saying something in class that might be reported to the Trump administration by fellow students, as has apparently happened in the past.

7. As a result of the climate of fear created by the Trump administration's targeting of Mahmoud Khalil (and others), some of my colleagues at Columbia and other universities have been censoring the content of their instruction and scholarship, have avoided any political activity, and have limited their engagement on social media. Others have chosen to continue their advocacy, but have felt obliged to mask themselves while doing so out of fear that they might also become targets of the Trump administration and other harassing private actors, who appear to be acting in coordination with the administration.

Signed:



Rashid Khalidi

G-2

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF JAMES SCHAMUS

I, James Schamus, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is James Schamus, and I am a Professor of Professional Practice in the School of the Arts at Columbia University. I have been a professor at Columbia for 36 years.

2. The removal and detention of former Columbia student Mahmoud Khalil has had and continues to have a profound and overwhelmingly chilling effect on campus. Students and colleagues of all backgrounds and political orientations are keenly aware that a Columbia student, accused of no crime, has been disappeared from their midst, and they have perhaps rightfully concluded that thoughts and expressions of thoughts may someday retroactively be declared, regardless of citizenship or legal status, cause for their own detention or other punishment. As

we are a community devoted to the sharing and expression of often difficult and challenging thoughts, Mr. Khalil's removal and continued detention cut to the very core of the community.

3. Among the specific examples I can share of the impact of Mr. Khalil's removal are: Students opting not to attend academic talks and other events out of fear that the topics discussed at the talk would draw operatives who would seek to photograph and identify attendees; students telling me they are now hesitant to participate in classroom discussions that might be construed as "political," even about ancient texts and on topics far removed from current debates and protests; students and colleagues, permanent residents and on various visas, cancelling academic research and conference trips abroad out of fear they will be detained and deported should they seek to cross the border. Of course many of these examples (and I can count many more) are informed by subsequent actions taken by the current administration, but all of them are concretized and experienced with the very intimate knowledge that Mr. Khalil served as an inaugural embodiment of and instrument for the administration's instauration of fear among our students; and his continued detention only strengthens the potency of that fear.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 31 , 2025
New York, NY

Signed:

James Schamus

G-3

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF NADIA ABU EL-HAJ

I, Nadia Abu El-Haj, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is Nadia Abu El-Haj, and I am a Professor of Anthropology at Barnard College and Columbia University.

2. Mahmoud Khalil's arrest and continued detention has had a noticeable impact on both students and faculty at Columbia. A green card holder who was arrested under the purview of the Secretary of State for, allegedly, harming US foreign policy has sent a chill through campus life. No one had previously feared arrest on the basis of political speech. Once Mahmoud Khalil, a green card holder at that, was abducted without a judicial warrant and whisked off to a detention center 1000 miles away virtually everyone became fearful. The consequences are clear and the fear palpable. I list but a few of the direct consequences below. I have direct knowledge of the

examples I enumerate either because I was involved in the decision making or because I discussed and/or offered advice to individuals regarding their situations and decisions.

3. A green card holding Palestinian student hid in his apartment for 3 weeks for fear that he would be detained by ICE agents if he was seen walking around.

4. A naturalized U.S. citizen of Palestinian descent was too frightened to come to campus. As a consequence, he moved his class off campus, with the consent of his department.

5. Two Palestinian PhD students who hold Israeli citizenship had planned to return home for the summer in order to do research for their dissertations. Fearing they were more likely to end up on the Department of Homeland Security's radar if they traveled, they decided to stay in New York. This decision was made despite the fact that staying in the city for the summer poses a substantial financial burden on each of them, and they may need to go into debt. (Columbia PhD fellowships provide 9, not 12-month stipends).

6. As Co-Director of the Center for Palestine Studies at Columbia, I canceled our two final events of the semester, one of which was to host a Palestinian lawyer together with a Middle East Studies scholar, and the second writers and translators of literature and poetry. Given that three of the participants are Palestinians in the US on either work or student visas, we did not go forward with the events. After discussions with each participant, we collectively decided that these events, while they certainly would have enriched discussions on campus, put the participants at too high a risk of being targeted by DHS.

7. More generally, Mahmoud Khalil's detention has had a chilling effect on colleagues who are foreigners, U.S. green-card holders, as well as naturalized citizens. Those of Arab and/or Muslim origin are feeling vulnerable and withdrawing from public speech; several are reassessing whether or not to leave the US for academic conferences or vacations out of fear that they will not be allowed to re-enter. What is more, at least one Lebanese-born naturalized citizen is considering not returning to Columbia next year, because she is fearful for her own safety. A naturalized citizen of Israeli (Jewish) origin was told she was on the federal government's radar and was at risk of detention when she returned from traveling abroad; she delayed her return until a law school colleague accompanied her back and through the border. A British professor on a green card cut-off all contact with a student pursued by ICE out of fear that he too would be swept up in the frenzy.

8. In general, there is nothing "normal" about Columbia University's campus today.

Foreign students live in fear of their visas being revoked: many students of myriad national origins took part in pro-Palestinian demonstrations last year, before it became, in effect if not formally, a crime. Likewise, faculty of many national origins stood outside the encampment in an effort to deescalate the situation and, potentially, protect students from a likely police raid. They too live in fear that they will be picked up and detained for merely acting like the adults in the room.

9. The effects of such fear are permeating well beyond the "mood" of campus life. Academic workshops and conferences on a wide range of topics have seen participants withdraw, or have been canceled or moved off campus because many non-Columbia speakers—foreigners, green-card holders and US citizens—are too frightened to participate in events on Columbia's campus. For my part, I canceled a recent talk at Harvard University's Middle East Studies Center after delivering the talk at Princeton. Even though I am unsure what the federal government could do to me for my academic speech, I too felt I needed to withdraw and rethink how I am going to go forward in this increasingly repressive political environment.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 1, 2025
NEW YORK, NY

Signed:

Nadia Abu El-Haj

G-4

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is [redacted]. I am the [redacted] at Columbia University.

2. The effect of Mahmood Khalil's arrest has been profound on myself, my colleagues, and my students. It has created a climate of fear and uncertainty that has chilled speech and political participation, as well as circumscribed our personal and professional activities.

3. One factor in the creation of this climate of fear and uncertainty is the government's invocation of a particular provision of the Immigration and Nationality Act in justifying Mahmood Khalil's arrest. This is due to the way that the government has

classified Khalil's activities as a threat to foreign policy. This classification calls into question that which we understand as protected speech and basic rights. This is frightening to many due to two factors: one, Khalil has engaged in peaceful anti-war speech and protests against Israeli military actions and US support for those actions, and two, the way the certain political groups and the current administration identify a broad array of political speech that is counter their own views as "pro-Hamas." This conflation makes anti-war or protests of government policy the same as support for Hamas. Given that this is a political group classified by the government as a terrorist group, many fear that such an equivalence opens the door to many further forms of government persecution and retaliation.

4. The government's invocation of the INA provision as justification for Khalil's arrest and detention has led us to conclude that any past activities in which we have participated or speech that we have engaged in that espouses views disfavored by the current administration will be used against us, whether we are green card or international student visa holders. For example, after the government announcement that it was using AI to scan social media accounts, many students and colleagues have scrubbed their social media of all mentions of anti-war sentiments, or even just any mention of factual statements about Palestinians or Israel.

5. Many have been told by legal counsel specializing in immigration issues that either their place of origin or their political participation and/or speech—especially if they have been doxed by private organizations—could result in visa revocations, arrests, or, the inability to return to the US if they leave.

6. One colleague who holds a green card fears he will not be allowed back into the US if he goes to visit his family in Lebanon. Other colleagues fear traveling abroad to conduct research necessary to their profession. Many students have been told that they should not leave the country if they have student visas. The inability to leave the country causes psychological hardship, since many students cannot see their families, some of them going on a year with no end in sight. This has resulted in financial hardship because the summer stipend they receive is not sufficient to live in New York.

7. This has also resulted in disruption of progress towards their degrees because they are unable to conduct research or engage in necessary language training. One student has had to change his dissertation topic entirely, since it is not clear when or if he will be able to travel to conduct research. Another student has needed to request an extension in submitting a dissertation proposal because she cannot travel to conduct necessary research for the topic she was accepted into a doctoral program to study.

8. Given that certain groups, who are responsible for carrying out sustained doxing campaigns since October 7, have reported names (such as Khalil's) to the government, many students and colleagues are worried that any current or future activities will invite government scrutiny and retaliation. As a result many censor their social media posts of any mention of Israel or Palestine, or of any disagreement with Israeli or US government policy. Many students and colleagues do not attend any protests, political rallies, or events at which they can be photographed or identified for fear that their names will be given to the government by persons and groups hostile to their political views.

9. This is self-censorship is further reinforced as apparently necessary given the fact that such targeting seems to have been how Mahmood Khalil was identified. That this has resulted in his arrest and prolonged detention has created a deep sense of fear and danger that extends to fear of coming to campus or even answering their doors.

10. One student, who lives in Mahmood Khalil's building and witnessed his arrest from the window was afraid to leave his apartment for a week. Many students and colleagues were afraid to come to campus or walk on streets around campus for the fear of immigration agents, severely inhibiting their ability to participate in their daily personal and professional lives.

11. As a naturalized citizen I am also afraid to speak about politics on social media or attend any kind of public or political event that the current administration views with disfavor for fear of being further doxed. I fear that the way certain partisan groups are giving names to the government, as well as the way the government is using AI to scan social media will result in government retaliation against me at the border.

12. This is also why I wished to submit this declaration under seal. I need to travel for professional reasons and I fear that this will inhibit my ability to do so and result in other amorphous repercussions for my daily life. Part of the fear is also due to the unprecedented nature of government actions against people like Mahmood Khalil and to the vague nature of the justification, which makes it unclear how far the administration will go even against its own citizens.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 2, 2025
New York, NY

Signed:

[redacted]

[redacted]

G-5

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF YANNIK THIEM

I, Yannik Thiem, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is Yannik Thiem, and I am an associate professor in the Department of Religion at Columbia University.

2. I joined the Religion Department at Columbia University as a tenured faculty member at the rank of associate professor in the summer of 2019. Prior to that I was a full-time tenured faculty member in the Philosophy Department at Villanova University in Villanova, Pennsylvania. My teaching and research fall into the area of social and political philosophy and more specifically I work on the relationship of politics and religion as well as on questions of gender and sexuality.

3. I received my first doctorate in Catholic Theology from the University of

Tübingen in Germany and my second doctorate in Rhetoric from the University of California in Berkeley, after having spent a year as a visiting scholar at Harvard University in Cambridge on a Fulbright Scholarship.

4. During the 1980s and 1990s I grew up and went to school in Germany, in an area in former West Germany about 30 minutes from the former German-German border. I mention this circumstance because it points to two aspects that have affected—and continue to impact—my understanding of what it means to be a citizen in a democracy protected by the rule of law. This background also is why I am so gravely concerned by the kinds of alterations in approaching political speech and political activity that I have observed in students and colleagues, but also in myself since Mahmoud Khalil was arrested by ICE on the evening of March 8, 2025.

5. Firstly, for me, what is commonly referred to as "the fall of the Berlin Wall" in November 1989 was and is — as for any of us who lived in proximity to the German-German border — neither mainly about Berlin nor far away nor an abstract concept. Within hours of the opening of the border, the local volunteer fire brigade was driving through our town, using the only vehicles with sound systems able to make announcements, asking everyone who could spare a couch or a cot to take in some of the people who had newly arrived from the East. Nobody knew how long the border would stay open, so people from the East had packed what they could and just left. We in our little town had spent weeks glued to the television watching people come out every Monday in East Germany for demonstrations. It was extraordinary to see the demonstrators assert week after week "WE are the people." But what would happen next was far from certain. I viscerally remember how tense everyone was, both the reporters as well as we, who were watching from our home an hour or so southwest from the closest demonstrations. School was in session at the time, but the tried and tested worksheets and lesson plans were suspended. The world outside on our own doorstep had become the textbook for the time being. The Tiananmen Square massacre had just happened that June. As much as everyone was exhilarated to see people protesting, our teachers' and parents' fear was palpable. (I recall my parents buying inordinate amounts of canned food — which we never ate and would later give away. My father was a child during World War II and my mother had been born during the so-called "hunger years" just after the war. Our parents, as were all the adults around us, were preparing for war.) The haste with which East Germans were coming to our town in November 1989, having left their entire lives behind, and my parents' fear about imminent war have taught me that the power of "we, the people" remains always vulnerable to the might of weapons — physical and psychological. What remains seared into my own memory is how tenuous,

precious, and extraordinary that foundation of all democratic self-governance is — "We, the people" coming together and laying claim to the right to government of the people by the people for the people. But most of all, I carry with me from that childhood experience that if we wish to live in a democracy, the depth of our commitment to the freedom of expression must be matched by an equal depth of a commitment to the freedom to assembly.

6. The other formative aspect of growing up and going to school in Germany was the German high school curriculum and its emphasis on Germany's recent fascist past. During the time when I was in school, the curriculum emphasized not only a detailed reckoning with the unfolding of the atrocities of Nazi Germany, but also confronted us as youth on a yearly basis from seventh grade on with questions such as "How could the authoritarian fascist Nazi regime entrench itself?", "How did which institutions give way to their own Nazification?", "When and how could the Nazis have been stopped by our grandparents and great-grandparents?", "Why did they not do more to resist in the early days?" and "How can we ensure that should anti-democratic forces rear their ugly heads again that we stand up and defend democracy in ways that our ancestors failed?" When I grew up, the phrase "never again" was a given, but the far more vexing ethical and political imperative issued from its corollary: "Fight against the beginnings *(Wehret den Anfängen)*!" The lesson we learned was that authoritarians and those working with them seek to make dissent costly. As I absorbed growing up, when a democracy functions well, it might be uncomfortable to speak out or show up to participate in political speech and activity. But it should not be costly. It should not carry a penalty when we engage in political speech and political activity. In a democracy, nobody should need to be a hero or a saint to participate.

7. The news of Mahmoud Khalil's arrest on the evening of March 8, 2025 was jarring and deeply disconcerting. Since the inauguration in January 2025, many of us had shared a general sense of apprehension about what the Trump administration would mean for a variety of issues and populations, such as immigrants and transgender individuals but also academic freedom and freedom of speech and assembly more generally. But up until Mahmoud Khalil was taken by ICE agents on March 8 that general atmosphere of apprehension had more of a "wait and see" character to it. However, when Khalil was arrested, detained, and labeled as a "threat to foreign policy interests" of the United States, and then subsequently other students and scholars were detained as well, the threat became very real. And since then there has been a noticeable shift in the sense of how risky political speech and activity are but also in how confident we are that academic freedom protections will in fact protect us.

8. Perhaps among the most shocking realizations is that it seems that even Columbia University as represented by its leadership is quite intentionally censoring itself. In the days immediately following Khalil's arrest by ICE we received email communications from Interim President Dr. Katriana Armstrong, Provost Dr. Angela Olinto, and Executive Vice President of the Arts and Sciences Dr. Amy Hungerford. Email correspondence from high-level administrators in the aftermath of events that deeply shake the community are nothing unusual. What was unusual in this instance was that such emails usually name the specifics of the circumstances of what has occurred, but in this case the emails were notable in their vagueness, especially in neither mentioning Khalil's name nor reporting that a student had suddenly been taken from Columbia-owned housing into ICE custody.

9. The first mention of his name in official correspondence from University leadership came in an email on April 28, 2025, with the subject line "Supporting Our International Community." By this time Interim President Armstrong had resigned and the Board of Trustees had appointed the then Co-Chair of the Board Claire Shipman as Acting President. Initially it was not clear to us as University community members why exactly our University leadership would not mention Khalil's name. But it now appears that this too was an instance of the government chilling speech. At Columbia's commencement two weeks ago, Acting President Shipman publicly mentioned Mahmoud Khalil's name and acknowledged that many students were missing his presence. The Education Secretary Linda McMahon immediately commented on how "disappointing" and unnecessary it was to mention Khalil's name in public.[1] It suddenly became apparent that our University's administrators have been adjusting their communications with us, the Columbia University community, to avoid "disappointing" the Trump administration.

10. Immediately following Khalil's arrest many international students were absolutely terrified of leaving their apartments. Provost Olinto's email correspondence March 10, 2025 acknowledged that "this last week has been a stressful time for many on campus" and reminded us "Students may always reach out to their teachers to request accommodation if they are unable to attend class, and we hope that faculty will be as helpful as possible with these requests." My undergraduate class during

[1] "President Shipman is trying to balance different factions, but I was disappointed," McMahon said. Naming Khalil wasn't "necessary for her to say, considering all of the campus unrest that had happened," McMahon said. https://www.wsj.com/us-news/education/trump-college-university-federal-funding-fight-91c2a274?gaa_at=eafs&gaa_n=ASWzDAhSd_NNKxd_AdL0_pHNSlyZ3vfM4Hq39cjA2QCo1b8_XwSTxL5mXHFe79Y-rjQ%3D&gaa_ts=683d60b7&gaa_sig=WrH_tWSqLaq4VzqFkZgJnXjYwLoUYSTPo39Zfw92z42_Eu5m_39KsFE_w3mpRHGgJUODG5X4-igNQwUmztmqvg%3D%3D

the Spring term 2025 met in a building outside of the gates of the Morningside campus. Many students who lived in the dorms had indicated that they were worried about leaving campus since some had been active in campus demonstrations while others had simply shared their political views on social media over the past year. Since there were students who were among those terrified to leave campus, I met my undergraduate class on the Morningside campus during the week immediately following Khalil's arrest. Even then, several students were wrecked with anxiety that there might be an ICE official suddenly appearing to arrest them.

11. Holding normal classes was next to impossible during that week. Even students who were U.S. citizens were concerned not only for Khalil and their peers on visas, but also expressed their own fears of arrest and asked for advice for themselves. Should they get a lawyer, just as a precaution? Is it true that everyone has First Amendment rights or only citizens? But what if the government doesn't respect those rights? Would it be best to delete all political social media content? Students also worried about being in touch with family, friends, classmates, or instructors over Columbia University email, fearing that the University might turn over their emails to the Trump administration.

12. International students and a few native-born but minority students in that undergraduate class became quiet from the time of Khalil's arrest onwards, carrying a palpable sense of fear with them, and several mentioned to me that they remained anxious and worried because they feel that they should be more courageous and participate in political speech and action despite the obvious risks. Several have mentioned that they consider being politically engaged to be what Columbia had taught them it meant to be a citizen of the world.

13. My other course this past Spring semester was a graduate seminar on the work of the German-Jewish thinker Walter Benjamin who died in 1940 while fleeing from the Nazis. On March 11, 2025, a few days after the arrest of Khalil, I sent out an email to my graduate seminar, similar to the email that I had sent earlier to my undergraduate class. The only difference in content was that I planned on meeting the graduate seminar in the usual off-campus building since most students in that seminar did not live on campus already. With the exception of one student on a visa who was concerned about leaving their home, all the students were present in person for this seminar session and expressed their appreciation not only for being able to meet in person but also for the explicitness of the email that I had sent. Among the nearly 20 different instructors which the students had during that semester, apparently I was the only one who mentioned Khalil by name in the email sent to the class.

14. The conversation during that first seminar session after Khalil's arrest focused mostly on why there was such an anxious silence among everyone, as if even stating what had happened or mentioning Khalil's name in writing was dangerous. One student asked whether I had hesitated to send the email that I had sent them. I admitted that of course I had considered that we know that there have already been subpoenas for the correspondence of some Columbia administrators and faculty colleagues. In a large course, I would quite possible not have written the email. I wish I could say with certainty that I would have written this email no matter what, but I am not sure.

15. One student observed that even though many of us do not know Mahmoud Khalil personally, his arrest and continued detention by ICE have catapulted us into a different moment in time. "It hits home differently when they come for a student at your own university, someone in your neighborhood," the student commented. Another student agreed and added that we all have already changed so much in how we act, because we all are now constantly evaluating and assessing the risks of what used to not even cross our minds as a potentially risky political statement. We all already self-censor in ways that we never used to. Even if we overcome our initial fears and say something, that hesitation and the need to wrestle up courage changes things. The students understood this. But still, why, they wanted to know, was there not even one other faculty member who would mention Khalil's name in their email to their class? What does it say about us and who we have become when we are too scared to accord a fellow human the dignity of calling them by their name?

16. Since the end of March, I have had several discussions with graduate students and colleagues about what we should expect in terms of being targeted for working on questions regarding queer and especially transgender communities and individuals and how we should proceed in our academic research. I mention this concern here, because Khalil's detention is also in the background of these conversations. A colleague commented that "They start with non-citizens first and it won't be long until they move on to citizens who they don't like." For a junior colleague with whom I spoke about Khalil's detention, that Khalil appears to remain imprisoned solely for his political activity, prompts the question "Would I be willing to lose my job and possibly even go to jail for this research?" One graduate student explicitly wanted help with thinking about how they could reorient their research because they are concerned about being unable to find academic employment in the United States with a research project focused on the interplay of politics and religion in recent debates on transgender youth.

17. Since Khalil's arrest on March 8 and the other students and scholars who have subsequently been detained or who have fled the country, three non-citizen graduate students have since consulted me about summer travel plans and how they should approach their fears that upon returning to the country they might be denied entry. One is concerned because of the countries in which they will be conducting their research. The other two worry because of the political content that they have posted on social media. Both these students have since deleted the social media content in question and were considering deleting their social media accounts altogether (while understanding of course that "the Internet forgets nothing"). All three of the students were planning to consult with an immigration lawyer before making a final decision on whether they would travel abroad this summer. In the nearly 25 years of having been in the United States first as an F1-visa holder myself and for several decades now working regularly with international graduate students, this is the first time that I am encountering such considerations and worries about being denied reentry to the United States because of a research project topic, the location where such research is undertaken, or public political speech.

18. For myself, I have decided against traveling abroad to see my family in Germany this summer. I am a dual citizen, I am transgender, I am affiliated with Columbia University, and I have not hidden my political views. I made this decision primarily because it remains extraordinarily alarming to me that even though Khalil is a green-card holder and has deep local community ties, including a native-born wife and newborn son, he has been in detention for nearly three months for what looks like nothing more than his political activity in support of freedom and justice for the Palestinian people.

19. It has also been noticeable that at Palestine-related academic events since Khalil's arrest, there are far more people in the audience who now wear face masks than even just a few months ago at the end of the Fall semester 2024. Similarly, several undergraduate students with whom I have spoken have commented on how they felt comfortable last year to attend pro-Palestinian demonstrations without concealing their identities, but now they fear that the risk of being doxed is too high. International students have largely opted not to attend political demonstrations at all, but even students who are U.S. citizens feel the need to conceal their identities.

20. If there is a vagueness to my accounts here, it is because I have omitted the names of students and colleagues because they do not wish to be identified. I omitted one particularly striking instance of academic self-censorship because I was not able to come up with a satisfactorily concrete way of describing the event while at the

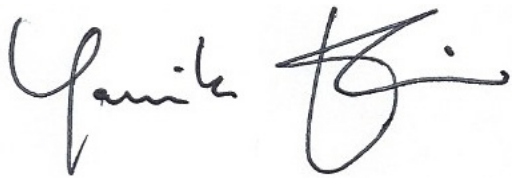
same time protecting the identity of the student to the extent that they and I would feel comfortable with.

21. It is very sobering to observe just how deeply Khalil's arrest in early March 2025 and his continuing detention have impacted how we approach political speech and activity, academic work, and the particulars of our lives where we have good reason to assume that they run counter to the agenda of the Trump administration. Writing these sentences here feels risky. But it is necessary.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 1, 2025
New York, NY

Signed:



Yannik Thiem

G-6

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF HAROLD STOLPER

I, Harold Stolper, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is Harold Stolper, and I am a Lecturer at Columbia University's School of International and Public Affairs (SIPA), where I have taught quantitative methods and data analysis for the past ten years. I submit this declaration in support of Mahmoud Khalil and based on my direct experience as a faculty member working with SIPA students, both in and outside the classroom.

2. In my capacity as a faculty member, I have observed a profound chilling effect on students' sense of safety and willingness to engage in political speech, organizing, and even routine academic activities following the detention of Mahmoud Khalil by federal immigration officers.

3. A noncitizen student from Gaza shared with me that they "would have loved to book an office hour appointment with me but I am avoiding campus for the past few weeks." This student, whose family and friends in Gaza have been killed by Israeli airstrikes, told me they no longer feel safe at Columbia or SIPA and have effectively abandoned the professional goal of working in the United States. Instead, they expressed an urgent desire to leave the country after graduation so they could live and work freely and without fear. They cited Mahmoud's detention as a central reason for avoiding campus and staying largely confined to their home.

4. In the days immediately following Mahmoud's detention, another Muslim student from Saudi Arabia, who to my knowledge has not engaged in public political speech, asked to attend class remotely. They told me that SIPA "is no longer being a proper place to knowledge share and spread education with all this hostility," and expressed fear about being physically present on campus.

5. While I cannot speak to the internal deliberations of my faculty colleagues, I am aware that some have declined to write publicly in support of Mahmoud because they feared doing so could negatively impact their own immigration status or green card applications. This suggests that Mahmoud's detention has caused even faculty members to self-censor and fear professional or legal consequences for acts of solidarity or speech.

6. After Mahmoud's detention in March 2025, several second-year students in my class—students who typically travel abroad for their capstone projects during Spring Break—expressed concern about leaving the U.S. One Muslim student from Indonesia cancelled their planned travel with their capstone group and stayed in New York, telling me they were afraid they would not be allowed back into the country to complete their degree. I recall that they cited Mahmoud's detention as one of the sources of their fear.

7. Based on these and other experiences, I believe Mahmoud's detention has had a substantial chilling effect across SIPA's academic community. The atmosphere on campus has shifted from frustration and exasperation to one of real fear: fear that students, particularly those who are Muslim, Arab, or otherwise visibly associated with advocacy for Palestinian safety and freedom, may be detained, surveilled, or otherwise penalized for their political views or identity.

8. I, too, feel this shift. Even as a U.S. citizen and full-time faculty member, I have found myself more hesitant to speak openly or advocate on behalf of students. I know others share this fear. Many students—citizens and non-citizens alike—worry that even peaceful, non-disruptive expressions of political opinion could lead to federal or institutional repercussions.

9. SIPA's website proudly states that its "graduates and faculty strive to improve social services, advocate for human rights, strengthen markets, protect the environment, and secure peace, in their home communities and around the world." And yet, since the humanitarian catastrophe in Gaza escalated, to my knowledge SIPA has not held any public academic events addressing the crisis, despite its undeniable relevance to global public policy, human rights, and peace and security. I believe that this institutional silence is not accidental. Rather, it reflects the profound chilling effect of Mahmoud's detention and broader governmental and institutional actions that have caused faculty and administrators alike to avoid public discourse on this topic.

10. The fear on campus is not theoretical. It is lived, felt, and daily expressed by students and faculty alike. I am submitting this declaration because I believe the detention of Mahmoud Khalil—without criminal charge and seemingly in response to political advocacy—has cast a shadow over our academic community. It undermines the mission of SIPA and the values we claim to uphold.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 2, 2025
London, United Kingdom

Signed:

Harold Stolper, PhD
Lecturer in the Discipline of International & Public Affairs
Columbia University | SIPA

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G-11

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is [redacted], and I am a lecturer in the Department of [redacted] and a postdoctoral scholar in [redacted] at Columbia University. I also completed my PhD at Columbia University in 2021.

2. I came to study and later research and teach at Columbia University because I was under the impression that it was safe space for Palestinians and Palestine research and discourse. It hosts a dedicated Center for Palestine Studies, has an Edward Said reading library, and has many faculty and librarians with deep interests and commitments to Palestine. Regrettably, this was not my experience.

3. When Trump took office, the stage for further anti-Palestinian hostility on and by campus was already set by the prior actions of the Columbia University administration.[1] As government officials openly spoke about deporting students, doxxers began feeding them names of people to deport, one of whom was of course Mahmoud Khalil. Immediately I noticed students, faculty, and staff take measures to protect themselves – such as putting their social media on private or deleting it all together, or removing themselves from organizations advocating for Palestinian rights for fear of targeting and reprisal.

4. The abduction of Mahmoud Khalil in my building lobby (we are neighbors) brought a very chilling climate of fear, especially among Palestinian students, faculty, and staff. We were warned by lawyers of the risks of ICE abductions on campus that may target anyone, especially those doxxed.

5. As a result of student fears as I had several international students in my seminar, I moved my entire seminar off campus to a nearby venue that offered us sanctuary. Those of us with relatives in Gaza (myself included) have also taken measures to be careful of our own public facing work for the safety of our relatives – as Israel has

[1] Columbia's clear commitment to Israel and its desire to snuff out any presence of Palestine became most evident after October 7, 2023. Palestinians were increasingly made unwelcome and unsafe on Columbia's campus. I myself took leave for the remainder of the semester after my uncle's family was killed by an Israeli missile in November of 2023 in Gaza. There was no open acknowledgement of any of the losses Palestinian staff, faculty, and students faced by Columbia University. Instead, we were punished by the university for trying to even have open discussions about it.

Many Palestinians colleagues began to withdraw their presences for fear of the reprisals and the witch-hunting that came from doxxers—both campus community members and off-campus private parties. This doxxing was not new – Canary Mission has been around a long time, and they have long targeted Palestinian faculty at Columbia University specifically. However, this time it took new heights.

The targeting and harassment were also enabled and enacted by Columbia University's then president, Minouche Shafik, and by Columbia's board of trustees when questioned during the Congressional hearings. Rather than defend their students and faculty, they promised to do more to discipline them. I myself was subject to a "disciplinary hearing," as I was targeted by faculty and staff in my department for speaking out for Palestine on a department listserv. My own complaints to the university for being doxxed and targeted were ignored. As a result of all this, I took mental health leave (FMLA) in the fall of 2024, as the university increasingly became a hostile environment.

been known to target people for public advocacy (such as the late Refaat Al-Areer). As one example: one international student I know but will not name for these reasons, has been laying very low, careful to even walk around alone, and is actively trying to figure out their future as funding has been withdrawn and their visa status is in question.

6. Several non-citizen students or scholars, including legal permanent residents, that I know personally have decided against traveling abroad to visit their families for fear of being barred re-entry.

7. I also know of many, many faculty who have stayed silent on the military assault on Gaza – even if they are opposed to it – for fear of the effects on their careers and livelihoods. Many continue to be doxxed, harassed, and ignored when addressing these matters with the administration (I myself have been ignored). At least 3 librarians have been fired (Barnard and Columbia) for advocating for Palestinian rights. And of course students who protest against the genocide in Gaza continue to be beaten, arrested, suspended, and/or expelled by the university and law enforcement. Columbia University has essentially become a police state in service of the Trump administration's demands, but as explained earlier, it had laid the groundwork itself to ensure the silencing and erasure of Palestine and Palestinians and the criminalization of anyone who protests this.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 2, 2025
New York, NY

Signed:

[redacted]

Exhibit H

H-1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is [redacted], and I am a student at Columbia University pursuing an [redacted]. Much of my community at Columbia are outspoken young advocates and activists who have been chilled by the recent crackdown on free speech, notably in Mahmoud Khalil's case.

2. Mahmoud Khalil's detention in March has had a visible effect on the ability and willingness of students to exercise their fundamental freedoms, particularly as it relates to political speech and behavior. Everybody knows that the United States government, via Secretary of State Marco Rubio, has determined that participating in campus protest and speech in support of Palestinians is contrary to "U.S. foreign policy" and could render a person deportable. As a result, students are less willing

now to attend protests, post on their social media accounts, express support for Palestine, or associate with anyone who does.

3. At least one undergraduate international student has consulted my opinion on transferring to an institution outside of the United States to complete their degree. This student had previously been incredibly vocal about their support for Palestine following the beginning of the Israeli assault on Gaza in 2023. However, they now feel that they can no longer voice their opinions freely in the United States, especially as all students at Columbia University face heightened surveillance by the federal government.

4. Graduate international students have also voiced similar fears. Many feel uncomfortable in their own homes and fear being abducted by Department of Homeland Security agents. For this reason, they have started staying with friends instead of in their own homes or have taken other measures to protect themselves.

5. Students who are American citizens or legal residents have expressed that they are unwilling to publicly voice their support for Palestine for fear that they will be surveilled in public or that their speech on social media will be documented and reported. These students are also wary of potential criminal charges as a repercussion of exercising free speech in support of Palestine, now that Mahmoud has faced three months of detention for his speech alone.

6. One particular student who had written a thesis paper on the First Amendment as it relates to the Free Palestine movement in the US expressed that she wanted to have her writing published in an academic journal, but was reticent about using her real name as this might cause legal problems in the future or cause her to be otherwise targeted. I know of at least one other student who has published a paper online using a pseudonym for this reason.

7. Many students in my community have also expressed hesitation about traveling abroad to visit family or for career opportunities over the summer. They fear being interrogated or their devices being searched at the border since interactions with law enforcement could lead to their arbitrary arrest, even if a crime has not been committed.

8. This chilling effect is due to the circumstances of Mahmoud's detention. As far as the community understands, Mahmoud is being detained for his speech alone. As such, not only are students afraid to speak politically about Palestine, but they are also afraid to publicly associate with others who do exercise their speech in support of Palestine.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 1, 2025
New York, NY

Signed:

H-2

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is [redacted], and I am a recent graduate from Columbia University.

2. The targeting and unjust detention of Mahmoud Khalil has had ripple effects across communities. As we know, Mahmoud was targeted for speaking up against the ongoing genocide in Gaza and for the liberation of his own people, for Palestine. Much of his activism was based at the school we attended, Columbia University. Mahmoud also lived in Columbia housing.

3. In my capacity as a Columbia student at the time of his detention, I have seen a lot of fear for Gaza, for Mahmoud, and for peoples' freedoms in their advocacy for

Palestine. The way Mahmoud is being targeted for deportation and deemed a "threat to U.S. foreign policy," simply because of his speech in support of the Palestinian people, has had direct implications, especially on people who do not have American citizenship.

4. For example, after the government abducted Mahmoud, many students (my classmates) stopped going to their classes. Having noted Columbia's collaboration with DHS, there were students who were afraid to step onto Columbia-owned property. Some students who lived in Columbia buildings moved, out of fear for their safety and freedom. Students who have not been able to move out of their Columbia housing have lived in a perpetual fear and anxiety at the potentially violent outcomes they could face from the school and DHS. Since Mahmoud was detained, some people have barely left their homes out of fear of being detained as he was.

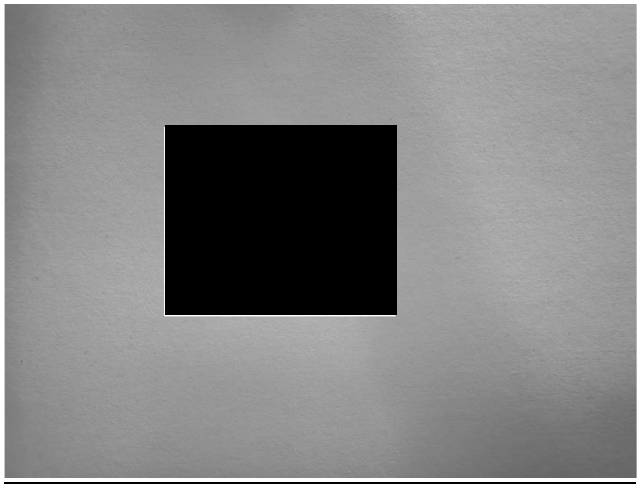
5. I have seen how students and faculty who have publicly spoken up, written, published, and taught in support for a free Palestine and end to the ongoing genocide in Gaza are facing targeting. Some students are afraid to leave the country and be detained upon return and some students have been pushed to leave the U.S. as living here in fear became unsustainable for them. Since Mahmoud's detentions, international students who are Palestinian, and/or advocates for Palestine, have confided in me their fears about articles they've written, or social media posts, interviews, or photos depicting their participation in protests. Many international students are now afraid to attend protests and marches for Palestine, out of the fear of political detention as is being done to Mahmoud. They have lived in a perpetual anxiety at the very real threat of DHS targeting and indefinite detention, as is happening to Mahmoud.

6. Since the targeting of Mahmoud, and the subsequent rampage targeting of Palestinians, pro-Palestine activists, and immigrants by DHS and the Trump administration broadly, many people are always on the lookout, are in constant panic and hypervigilance, many people have not been able to sleep from this fear. This is especially true with students at Columbia because of the way that Mahmoud's activism as a Palestinian student at Columbia has been explicitly used against him to justify his indefinite detention. Many students fear that they are next, and there are many students who have been explicitly threatened by the same inhumane treatment.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 1, 2025
New York, NY

Signed:



H-3

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

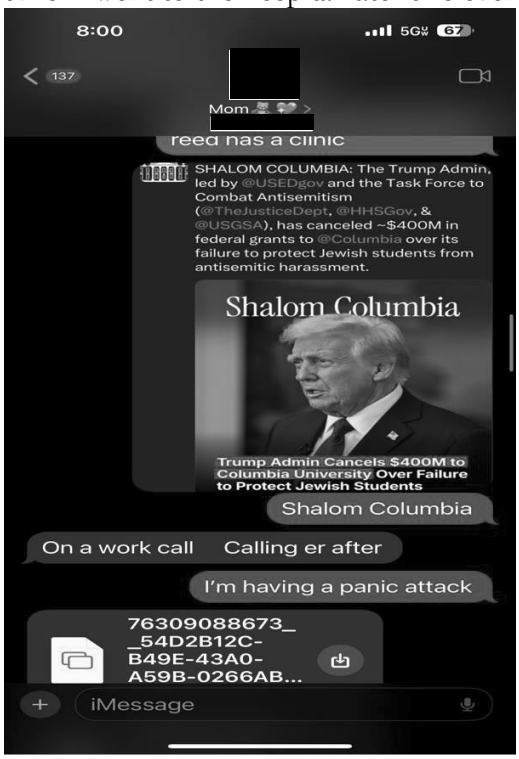
1. My name is [redacted], and I was a Jewish graduate student [redacted]. Attached hereto, are the exhibits listed below, are true and correct copies of the following materials:

   A. After Mahmoud was detained, a chilling effect swept through the Columbia [redacted] student body. As a Jewish American, I felt deeply afraid. The fact that such horrifying actions were being carried out in the name of protecting Jewish students made me fear an increase in antisemitism—not only because of the injustice itself, but because it risked fueling backlash and resentment. Mahmoud's detainment didn't make me feel safer as a Jew—it made me feel more vulnerable.
   B. I served as a board member for a Columbia [redacted] student group at Columbia during the 2024–2025 academic year, alongside several international students. After Mahmoud was detained, one of our board members—an international student—asked to resign out of fear

that their involvement with the group could lead to their own detainment. The atmosphere of fear and repression was palpable.

C. That same international student even asked to leave a group chat simply because Mahmoud was in it—fearing that any association with him could put them at risk of detainment. Out of that same fear, they archived all of their previous anti-war advocacy posts on social media, despite having been outspoken on those issues before. The repression wasn't just chilling—it forced students to erase parts of their identity and activism to feel safe.

D. As a Jewish student, the night I saw President Trump post 'Shalom Columbia,' I texted my mom that I felt like I was having a panic attack. That phrase—meant to suggest Jewish support for his targeting of pro-Palestinian students—was terrifying. It felt like our identities were being weaponized to justify the crackdown on freedom of speech at our tight-knit community of Columbia [redacted]. That night I worried it would lead to a potential detention of one of my peers that I cared about fueling my anxiety. This fear later came to be true when my peer, that I care about Mahmoud Khalil was detained. Please see my text messages with my mother from March 7, 2025, which document my immediate panic and fear in real time. I went to the hospital later this evening.

E. 

F. Immediately after Mahmoud was detained, I helped organize a [redacted]-wide letter-writing campaign so members of our community could send him messages of support. I also did public press to raise awareness about the campaign. Shortly after, a professor pulled me aside and warned me that I could be charged with terrorism simply for publicly advocating for Mahmoud. I was terrified—I broke down in tears and began shaking uncontrollably. It was hard for me to comprehend that advocacy for a peer I know and trust could lead to my own criminalization, but because of everything that had happened to Mahmoud, I was terrified that what this professor warned of could mean I was next.

G. Since Mahmoud's detainment, I've experienced persistent nightmares, insomnia, and an overwhelming sense of fear that I, or another peer that I care about could be taken next—despite being a Jewish American citizen. At one point, I was alone in my Columbia campus

housing when maintenance began banging on my door for a repair. I panicked, broke down crying, and called my mom, terrified that law enforcement had come to find me, or even worse, someone who had wished harm upon me as a Jewish student on one of these doxxing pages had come to hurt me. The constant state of fear has become part of my daily life.

H. On another occasion, I came home from class to find an NYPD car parked outside my Columbia housing. I was so overcome with fear that I couldn't bring myself to enter the building—instead, I walked aimlessly around the neighborhood until the car eventually left. Ever since Mahmoud's detention, I've been living with a constant, irrational fear that I, too, could be targeted or detained at any moment. That's what it felt like happened to him.

I. Columbia [redacted]'s student body is made up of over 50% international students. Since Mahmoud's detainment, many of those students have shared that they no longer feel safe attending class. I've witnessed this firsthand—class attendance has noticeably declined, particularly among international students. Those who do continue to attend are often too afraid to speak up, whether in the classroom or even in informal spaces like our cohort's WhatsApp group. The fear and silence are unmistakable.

Dated: May 31, 2025
New York, NY

Signed: [redacted]

H-4

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

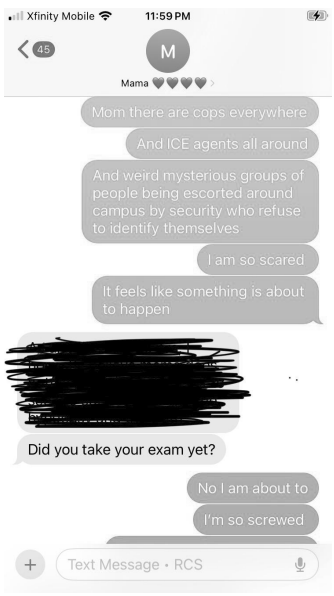
1. My name is [redacted], and I was a Jewish undergraduate student at Barnard College at Columbia University, [redacted].

Case 2:25-cv-25162-MEF-MAH Document 44-4 Page 23 of 65 PageID: 3457

2. Mahmoud's abduction has created a chilling effect and caused mass fear and distress to Columbia students. As a Jewish student, the fact that his detainment was done in the name of Jewish safety was incredibly scary. I fear that tying such a blatant, fascist attack on free speech to the religion I love will only fuel antisemitism and I am heartbroken to see my religion weaponized in the abduction of my peers.

3. Moreover, I am deeply scared for my friends and community. For the month after Mahmoud was taken, I woke up every morning and checked my phone to make sure none of my other friends were taken by ICE. I had trouble sleeping and would wake up in the middle of the night with feelings of dread. I cried almost every day for a month and a half, and had a really hard time keeping up with schoolwork.

4. I recall on one occasion experiencing a bout of panic and distress in anticipation of an [redacted] midterm, and writing to my mother that I feared for my classmates and community members that there would be an ICE raid



5. A few days after my peer, Mohsen Madawi, was also detained by ICE, I broke down sobbing in the middle of my senior thesis seminar, in front of the whole class, because I was so scared. I felt as if no one on campus was safe, and like I was witnessing the rise of fascism and powerless to stop it.

6. Growing up in a Jewish community, I have been taught from a young age to look for the warning signs of fascism. Seeing people I care about deported for their political beliefs and identity filled me with dread. I couldn't comprehend how everyone was continuing to go to class and go about their daily life.

7. I know many of my friends have experienced the same. My boyfriend has been having flare ups of OCD and anxiety attacks due to the culture of fear and apprehension we experienced knowing our community members were at risk of deportation. On one occasion, he experienced a panic attack and walked himself to the hospital because he was having trouble breathing.

8. I know multiple international students who fear for their safety and have been too scared to speak out in support of Mahmoud, or to engage in pro-Palestinian speech. A few days after Mahmoud was taken, I sat next to my international friend at a Purim party as she cried for fear she would be deported too, having attended a few rallies and reposted some posts. She has not felt safe attending protests or engaging in pro Palestinian content on Instagram.

9. Another international classmate told me multiple times how much he wished he could stand with us at rallies, or contribute to our divestment efforts, but he is too scared he will be targeted and lose his visa. As a result of his very real fear, our whole community lost out on the benefit of his voice, opinions, and contributions.

10. Fellow Jewish organizers and I were terrified that any public response to our friend Mahmoud Khalil's abduction, or any type of protest or exercise of free speech that got the Trump administration's attention would trigger

another ICE raid and put our friends at risk. For this reason, we discouraged international students from attending our demonstration and felt it was only safe for demonstrations to be led by Jewish students. Again, this meant that our entire community lost out on the incredible contributions of our international peers because they rightly fear retaliation and potential deportation.

Dated: June 3, 2025
New York, NY

Signed: [redacted]

H-5

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF SHAY LEV ORENTLICHER

I, Shay Lev Orentlicher, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. I am Shay Lev Orentlicher. I am a Jewish student at Columbia University and an organizer with Columbia-Barnard Jewish Voice for Peace.

2. Since Mahmoud has been detained, I have found myself second guessing everything I do. I am afraid that I or people I love will be targeted if I am politically active. Though I have tried to continue to exercise my free speech rights since Mahmoud was taken, I second-guess everything in a way I never did before because the potential consequences feel so much greater not just for me but for my community.

3. I have told my international friends that they do not have to spend time with me in public in case association with me jeopardizes their safety. Out of fear, some of my friends and I now only meet in private spaces to ensure their safety.

4. One of the classes I took last spring was a large political theory lecture about justice. Mahmoud was detained shortly before our midterm examination, and as a result, the professor sent out an email informing us that if any student in the class had real reason to think they were at risk of being targeted by immigration and were afraid to come on campus, they did not have to come in for the midterm and could take it at a later date. A couple weeks later, my Teaching Assistant sent out an email providing information about accommodations for those who had been unable to come in person to take the midterm — indication that students in the class did indeed have to miss the examination out of fear.

5. Later in the semester, the same class included a lecture on Palestine and Israel. Though it is a large class, the professor likes to open it up for discussion and debate, especially when the lectures are on specific issues. We had lively debates about surrogacy, abortion, and hate speech, among other controversial topics without issue. Not a single student raised their hand to voice an opinion when the topic was Palestine. When I went to ask the professor a question after the lecture, he told me he has been teaching this course for over twenty years, and every single time he taught it, the same lively debate ensued for the Palestine-Israel lecture. This was the first time he had taught the course that nobody had been willing to share an opinion. He told me he thought Mahmoud's detention was a huge factor in creating this atmosphere of fear.

6. The scariest moment for me after Mahmoud was taken, when I saw the true depth of this chill, came with Passover. I was inviting all of my Jewish friends to the seder I was organizing for anti-Zionist Jews, and I invited one Jewish friend who was an international student. She said she would love to, especially since she didn't have another seder to attend, but she asked me, "Is this seder the kind of thing that could make me lose my visa?" I did not know how to answer. I clarified that it was a community space for religious ritual, not a political action or protest, but that given Mahmoud's circumstances, I didn't know if that made it safe for her to attend. She did not come to the seder.

7. The atmosphere of fear at Columbia is palpable. What happened to Mahmoud is impossible to ignore, and it has shaped how we interact with one another and our academic environment. When students are afraid to go to class, take exams, raise their hand in lecture, attend religious events, and spend time with their friends,

that constitutes a terrifying chill. It is a chill that undoubtedly has affected international students most, but the rest of us feel it, too.

8. I am afraid of how anything and everything I say will reflect upon international students at Columbia. Before I say anything related to Palestine, I question if my words will be maligned in tabloids that are later submitted as evidence against another international student.

9. I cannot speak freely if my words – for which I and only I should be responsible – will be weaponized by the federal government against my peers in immigration courts.

Dated: May 31, 2025
Indianapolis, IN

Signed:

/s/ Shay Lev Orentlicher

H-6

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is [redacted], and I am a rising third year PhD student and instructor at Columbia University.

2. Prior to Mahmoud's detention, Columbia University was already hostile to pro-Palestinian speech. Students were frequently doxxed, harassed, and harshly disciplined by university faculty and administration.

3. The Trump Administration's abduction of Mahmoud Khalil has had a very chilling effect throughout the campus. His warrantless detention set off a new wave of trauma throughout the campus. Students felt extremely unsafe knowing that the

University administration that was meant to protect them was actively putting them at risk, colluding with the Government to detain our peers for being associated with protest activity. As a result, many students stopped attending classes, missed vital health appointments (which were located on campus), were absent at mandatory meetings, and stepped down from leadership roles at the University, all due to fear of being targeted.

4. The examples I describe in this declaration are the testaments of my classmates, professors, staff, and friends – stories I have been trusted with, and stressors I've first-hand observed in my immediate community.

5. His arrest and detention on university property demonstrated how easily the Department of Homeland Security (DHS) accessed private campus property without a warrant. Several students, including US citizens, sought refuge outside of University housing out of fear of being targeted by the federal government.

6. And for those who had nowhere to go, the loss of housing was a looming concern for many (including some that had minor children), further compounding the stress and fear.

7. Some events hosted by various Departments (including events broadly related to the Middle East) were canceled during this time, fearing DHS would use them as a venue for surveillance and targeting.

8. Several instructors attempted to cancel or relocate their classes to Zoom in order to protect students, but Columbia's Provost expressly prohibited them from doing so. This forced students to choose between pursuing their education and navigating a hostile and repressive campus environment.

9. As a result of this environment, many students also did not travel to academic conferences, refrained from publishing their scholarship, chose not to speak on panels, and ceased their duties as teaching assistants, fearing that those activities might make them vulnerable to the same targeting and detention Mahmoud experienced for their political speech and activity. Graduate student workers found themselves unable to fulfill their academic and professional responsibilities under the same extreme stress.

10. Numerous Palestinian students sought psychological support through Columbia Psychological Services (CPS) during this period. At least half a dozen students expressed experiencing debilitating symptoms including vomiting, diarrhea, paranoia, nightmares, depression, suicidal ideation, anxiety, emotional distress, and

panic attacks. Some were so severely impacted that they had to register with the Office of Disability Services, which is documented in the University's official records.

11. This ongoing crisis interfered with students' ability to meet graduation and academic program requirements. In the case of PhD students like myself, many of whom are required to teach as a condition of their fellowships, the environment constituted a hostile work environment. These students were expected to perform their teaching responsibilities under unreasonably distressing conditions, fearing their classrooms and their students would be targeted by ICE raids. Some attempted to relocate their classes off-campus but were admonished by University administrators for doing so.

12. The fear instilled by doxxing campaigns by University affiliates (student and faculty), who in turn reported individuals to the government, and the abduction of Mahmoud caused some students to hesitate in reaching out to University support systems. This hesitation was intensified by reports of FERPA violations by the University, alleged to have shared protected student information with members of Congress. This breakdown of trust deterred students from seeking institutional assistance during an already perilous time.

13. Staff members also expressed intense fear, both from the University administration and the federal government under the Trump Administration. Many were deeply concerned about the University's documented history of cooperation with law enforcement agencies including the NYPD, FBI, and DHS. As a result, staff were afraid to assist Palestinian and Pro-Palestinian students, to even mention Mahmoud's name in meetings or communications, or to provide meaningful services beyond basic referrals to CPS, fearing legal reprimand from the University and the federal government.

14. Staff were immediately afraid to organize, speak publicly, hold meetings with impacted students, or make any on-the-record statements, once again in fear of legal or professional reprimand, by the University or the federal government. The widespread fear and unwillingness to act reflected the gravity of the repression witnessed at Columbia University during the past 20 months and under the Trump Administration.

15. Similar to the staff, faculty were terrified to speak out, fearing it would make them targets of the Trump Administration—especially those on visas or temporary immigration statuses. Even among U.S. citizens, the vast majority experienced a chilling effect on their First Amendment rights. Many were too afraid to publicly

advocate for their students or address the repression they were witnessing.

16. Students, Faculty and Staff began seeking refuge elsewhere, applying to programs, jobs and positions at other universities, some even outside of the United States.

17. Similar to students and staff, faculty also were either hesitant about or stopped international travel, conferences, panels, publishing, interviews, research, and so on.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 2, 2025
New York, NY

Signed:

H-7

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is [redacted]. I am a U.S. citizen currently residing in Astoria, New York. I was a graduate student at Columbia University's School of International and Public Affairs, also known as SIPA, [redacted].

2. Mahmoud Khalil was also a student at SIPA and graduated in December 2024.

3. SIPA is a professional school of global public policy and international affairs, where approximately 30 to 40 percent of students hold international visas.

4. I submit this declaration to explain how Rubio provision has not only created fear and confusion but also caused concrete harm to students and professionals like

me, particularly in a setting like SIPA, where international perspectives are central to our learning environment.

5. SIPA is intended to prepare future policymakers, diplomats, and global leaders, and its value depends on the open exchange of diverse international perspectives.

6. When students are too afraid to speak, particularly those from regions directly affected by U.S. foreign policy, the entire academic environment suffers.

7. The chilling effect caused by the Rubio provision has undermined the quality of my education because students who should be central to these discussions are silencing themselves out of fear.

8. As a result, classroom discussions, campus events, and peer engagement have all become more constrained, limiting my ability to learn from the very voices SIPA was built to elevate.

9. One of the clearest examples of this was our cohort WhatsApp chat, in which students used to share event invitations and discuss international policy issues.

10. After Mahmoud's detention, several international students expressed fear that even registering for a Palestine-related event or expressing an opinion in the chat could be interpreted as threatening or grounds for surveillance.

11. Some stopped participating altogether because they were unsure what was safe.

12. International students also raised concerns about the very existence of the student group I organize with, which focuses on Palestine, saying they feared being associated with it. Several people said that the group's visibility and outward speech in support of Mahmoud might put a target on their backs and suggested we hold fewer events or speak about Mahmoud less to avoid antagonizing the administration.

13. One alarming incident involved SIPASA, our student government.

14. In the weeks after Mahmoud's detention, SIPASA planned to release a statement acknowledging student concerns about ICE and international students.

15. [redacted]

16. She told her classmates she feared being targeted by the Trump administration and that even a modest show of solidarity could endanger her immigration status.

17. These were not theoretical fears. [redacted] All she was trying to do was avoid scrutiny, risk, and spotlight, and the very act of describing her efforts to stay safe may now violate that intent. That is the irony of this moment.

18. One of our classmates was born and raised in [redacted] and holds a J-1 visa. She told us she feared that her mere presence in the United States could be misinterpreted and used against her.

19. She was here to study public policy and international affairs, yet even speaking in class felt dangerous to her.

20. She was rarely alone in the days and weeks after Mahmoud's arrest. We checked in on her regularly and asked her to sit out of protests and events, even though she wanted to attend.

21. We made these decisions not because she had done anything wrong but because we feared for her safety under this broad and unpredictable law.

22. In my case, I accepted a job offer in February 2025 for the role of Manager, Immigration, with a confirmed start date of April 29.

23. My vacation dates were approved in writing as part of the offer.

24. On April 28, just one day before my scheduled start, I received a message rescinding the offer.

25. I had already completed the onboarding steps and received welcome emails from the team.

26. I believe this decision was not based on performance or communication but rather influenced by my Palestinian identity, my affiliation with student organizing, and my visible support for Mahmoud Khalil.

27. The government's targeting of Mahmoud has created an atmosphere where constitutionally protected speech and association, especially when connected to Palestine, are treated as potential threats. I believe this environment emboldened my employer to view me as a liability, leading to the sudden rescission of my offer with no valid justification.

28. I was also interviewed by a journalist from The Washington Post about Mahmoud's case due to my background in immigration and our friendship.

29. I ultimately declined to go on the record because I feared how it might affect my job prospects and my family.

30. My mother is a 72-year-old noncitizen and my father is a 78-year-old disabled American citizen.

31. They often travel together, and I was afraid that my visibility might create complications for them at the airport. I asked them not to travel to the United States or come visit me for my upcoming May graduation, despite how excited I was to see them.

32. When I visited Mahmoud at the ICE detention facility, I brought my U.S. passport with me instead of my New York State ID.

33. I made that decision because I was afraid I might be misidentified and detained despite being a citizen.

34. These moment crystallized what this law has done to our sense of safety and citizenship.

35. In Louisiana, I was hosted by members of the Palestinian community who supported me but were terrified to be seen entering the prison facility.

36. One elderly man who drove me said, "You believe in this freedom of speech stuff? This is for them, not for people like us."

37. Some community members refused to even speak with me at all because they were all immigrants and feared retaliation.

38. I was born and raised in Saudi Arabia. I came to the United States in part because I believed in this country's commitment to freedom of speech and democratic

values.

39. This experience has profoundly shaken that belief and made me question whether I truly belong in this country.

40. If Mahmoud can be deported under this law, the government is sending a message that Americans like me are not truly welcome here.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 3, 2025
New York, NY

Signed:

[redacted]

[redacted]

H-8

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is [redacted], and I attended [redacted].

2. Following October 7th 2024 and the onslaught of Israel's war on Gaza, surveillance and repression by the Columbia University administration and private actors against anyone calling for the liberation of the Palestinian people had escalated to new levels I had never seen before. Classmates and peers of mine, particularly students of color, became hyper aware of the ways they expressed beliefs that went against the school or government administrations. However, with the horrifying illegal abduction of Mahmoud Khalil and the targeting that led to it, the resulting damages go far beyond just a suspicion of being surveilled. Now, people have actively changed their

behaviors due to fear resulting from Mahmoud's targeting.

3. Not even a week after Mahmoud's detention, an international student had taken the difficult decision to step down from a position of leadership in a student organization at the School of International Public Affairs (SIPA) that held events and focused on political education on the unfolding genocide in Palestine. They expressed a deep concern of being detained after seeing what the state had done to Mahmoud. They expressed to me and our peers that they are afraid to even post anything advertising the student group's events out of fear that their mere association might have repercussions.

4. Similarly, many students at SIPA, where they had hoped to learn and apply policies in the name of justice, have instead found themselves having to alter their lifestyles and silence themselves in order to continue their education and careers, and out of fear that they might be targeted next and, as Mahmoud was, labeled a "threat" to foreign policy interests in the United States. SIPA is majority international students and, in learning about Columbia's cooperating with DHS, they feared for not just themselves but also for their family members. For instance, a peer at the School of International Affairs felt the need to self-censor a public statement they were preparing to make at an event. They confided in me by explaining how they wished they could give more of a platform to speaking about the unjust detention of Mahmoud Khalil, but since they are not an American citizen and have to care for their family members who also are not citizens, they feel more than just their life is at risk.

5. For many students, the fear of DHS and Columbia targeting our loved ones has kept us up at night and has had irreparable effects on our mental health and, consequently, our ability to engage in the community or academic aspects of university life. After finding out what happened to Mahmoud, a friend of mine had suffered an episode of debilitating depression and anxiety that prevented them from attending classes or leaving their home. They feared walking on campus with the unprecedented amount of targeted surveillance on students speaking out for Palestinians.

6. Just like this peer and friend of mine, I shared these debilitating experiences as a result of Mahmoud's detention that prevented me from focusing on my school work or functioning in a healthy way. We would console each other in the harsh reality that we don't feel comfortable speaking to our professors either.

7. The professors at SIPA have their own fears about losing their jobs for speaking out about what happened to Mahmoud, including the Monday after he was taken. Classes resumed with little to no mention of Mahmoud which made me much more

frightful in asking for support.

8. One of the most devastating instances I have encountered of censorship as a result of Mahmoud's targeting and detention is that of a friend whose family members have been directly impacted by the genocide in Palestine, and who has felt too afraid to speak out about the genocide of their own family and Palestinian community. They are afraid of being targeted and detained the same way Mahmoud was, and fully consumed by this understandable fear instead of spending the necessary time and energy focusing on their own wellbeing and healing with their community.

9. The kidnapping of Mahmoud has undoubtedly impacted and instilled immense fear in many students, community members, and people around the world. Students at Columbia know the consequences looming ahead and the threats being made to their futures and lives. Having to choose between putting your life and future at risk or giving up your morals by staying silent while a human is detained for speaking out against genocide should never be the reality.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 2, 2025
New York, NY

Signed:

[redacted]

H-9

March 12, 2025

We, Jewish alumni of Columbia University across a spectrum of political views, schools, and years of graduation, join together to unequivocally denounce the illegal detention of green-card holder and recent Columbia School of International and Public Affairs (SIPA) graduate Mahmoud Khalil by agents of the U.S. Immigration and Customs Enforcement (ICE) merely for exercising his constitutionally-protected rights to free expression.

The Trump administration cynically exploits Jewish feelings of vulnerability and fear to justify its egregious assault on higher education and academic freedom, including on our alma mater. The Republican assault upon the First Amendment and principles of free expression and inquiry which underpin American universities do not make Jews safe. It endangers all of us.

We speak out now to denounce the Trump Administration's assault on higher education, science and the rule of law—and its cruel efforts to divide the Jewish community from our neighbors, colleagues and classmates. We say now, clearly and unequivocally, as Jewish graduates of Columbia, that the Trump Administration's brazen assault on our democracy, including on freedoms protected by the Constitution harms the Jewish community, our neighbors and our loved ones.

We therefore reject in absolute terms the Trump Administration's attempt to characterize its conduct as an act taken in our interests—the interests of our Jewish communities. Seizing, detaining, and threatening with deportation a member of Columbia's broader community for the act of peaceful protest of the acts of a foreign government and of U.S. foreign policy constitutes an assault upon the fabric of our democracy—a democratic society where American Jews have found refuge from absolutist and authoritarian regimes they fled. We refuse to be used to dismantle American democracy, and we accuse the Trump Administration for its cynical exploitation of our people's aspirations for safety and inclusion for its own purposes as itself an act of anti-Semitism.

The Trump administration's actions, first and foremost, endanger Mahmoud Khalil and his family. We hope that they are reunited safely and soon. But these dangerous and unconstitutional acts threaten the foundations of democratic life and free expression which lies at the heart of it.

Signed,

Name	School	Class
Aaron Gans	Medical School	2022
Abby H Lublin	Columbia College	1998
Abby Kamen	Social Work	2021
Abby Shuster	GS, Jewish Theological Seminary	2014
Abby White	Columbia College or Barnard	2019
Abraham Greene	Columbia College or Barnard	1999
Adam Conner-Sax	Columbia College or Barnard	
Adam Jacobs	GS, Jewish Theological Seminary, Teachers College	2001, 2006
Adam S. Levine	Arts and Sciences (Graduate)	2010
Albert Kohn	GS, Jewish Theological Seminary	2018
Alena Graedon	School of the Arts	2007
Alex Fendrich	Columbia College or Barnard	2017
Alexander K Ames	Columbia College or Barnard	1999
Alisa Baer	Columbia College	2002
Alisa Gross Parker	Columbia College or Barnard	2007
Alison (Keimowitz) Spodek	Department of Earth and Environmental Sciences	2006 (PhD)
Aliza Lifshitz	Columbia College or Barnard	2020
Amanda Gersh	School of the Arts	1997
Amara Jaeger	Columbia College or Barnard	2020
Amy Phillips	Columbia College or Barnard	2003
Andrea Floersheimer	Columbia College	2019
Andrew Irving	Columbia Law School	1976
Anna Jesseman	School of Social Work	2011
Anna Kalm	Columbia College or Barnard	2019
Anne Levy	Columbia College or Barnard, Teachers College	2001, 2016
Anya Bernstein	Columbia College or Barnard	1996
Arinn Amer	Columbia College or Barnard	2011
Austen Leah Rose	Arts and Sciences (Graduate)	2013
Avi Allison	Columbia College or Barnard	2011

Name	School	Class
Avi Alpert	Columbia College or Barnard	2006
Avi Hoffman	Engineering and Applied Science	2009
Avidan Halivni	Columbia College or Barnard	2019
Avinoam Joseph Stillman	Columbia College	2017
Avner Gvaryahu	Arts and Sciences (Graduate)	
B. Levitt	GS	2010
Becca Stussman	Engineering and Applied Science	206
Ben Feder	Columbia College or Barnard	1986
Beth Zikronah Rosen	School of International and Public Affairs	2010
Carl Biers	Columbia College	1990
Carlyn Kolker	Columbia College	1998
Chase Henry Mechanick	Columbia Law School	2015
Claire (Chaim) Spaulding	Columbia College or Barnard	2019
Corinne Greenblatt	Columbia College or Barnard College	2020
Daniela Lapidous	Columbia College or Barnard	2016
David Klion		2006
David N. Myers	Arts and Sciences (Graduate)	1991
David Schlitt	Columbia College or Barnard	2004
Debbie Wecksell	Columbia College or Barnard	2014
Deborah Appel	GS	2006
Dina Blanc	Barnard College	1983
Dr. Jennifer A Lupu	Columbia College or Barnard	2012
Edo Roth	Engineering and Applied Science	2017
Elena Ross	School of Social Work	2023
Eleni Malka Zimiles	Social Work	2014
Eli Pinker	Columbia College or Barnard	2021
Eliana Fishman		2018
Emma Kessler	GSAS	2012

Name	School	Class
Emma Sarachan	Columbia College or Barnard	2015
Eric Alterman	Columbia College or Barnard College	1984
Eric Schuman	School of the Arts	2012
Frances Miriam Kreimer	Columbia College or Barnard	2006
Fred Block	Columbia College or Barnard	1968
Gabe Pont	GS, Jewish Theological Seminary	2020
Gabriella Spitzer	Columbia College or Barnard	2013
Gary A. Cohen	Columbia Law School	1986
Gavi Strauss	GS, Jewish Theological Seminary	2019
Hali Weiss	Columbia College or Barnard, Architecture, Planning, & Preservation (Graduate)	1984, 1987
Hannah Christianson	Columbia College or Barnard	2022
Hannah Rose Gorman	Columbia College or Barnard	2016
Hannah Selinger	Columbia College or Barnard	2002
Harry Reis	Columbia Law School	2024
Hollis Architzel	Columbia College or Barnard	2005
Ira Temple	Columbia College or Barnard	2007
Isaac Brooks Fishman	Columbia Law School	2018
Isabel Nelson	Barnard College, Columbia School of Public Health	2016, 2021
Isadora Nogueira	Columbia College or Barnard	2020
Jacqueline Karp	Barnard College, JTS	2017
James Rutherford	School of the Arts	2011
Jamie Klein	Columbia College or Barnard	2011
Jan de Bakker	Columbia College or Barnard, Engineering and Applied Science	2003, 2005
Jeff Alexander	Columbia Law School	2008
Jen Rice	Columbia College or Barnard	2008
Jenn Wyse	Columbia College or Barnard, Social Work	2014, 2007

Name	School	Class
Jenna Barzelay	SIPA	2015
Jenna Zucker	Barnard College	2021
Jennifer Gottlieb	Columbia College or Barnard	1993
Jennifer Rosenstein	Teachers College	2002
Jenny Dubnau	Columbia College or Barnard	1985
Jenny Labendz	Columbia College or Barnard	2002
Jessica Becker	Columbia College or Barnard, Business School	2010, 2014
Jessica Ullian	Barnard College, Journalism	2002
Julie Abbruscato	Columbia College or Barnard	1986
Julie Keefe	Columbia College or Barnard	2005
Juliet Herzberg	Social Work	2013
Justin Singer (JD/MBA '09)	Business School, Columbia Law School	2009
Kalila Jaeger	Columbia College or Barnard	2017
Kalman Victor	Columbia College or Barnard College	2016
Karen Abrams	Teachers College	2001, 2009
Karl Klare	Columbia College or Barnard	1967
Kate Axelrod	School of Social Work	2013
Kate Steiker-Ginzberg	Columbia College or Barnard	2012
Katherine Herman	Columbia College or Barnard	2005
Kayla Ablin	Columbia College or Barnard	
Kyle Lukoff	Columbia College or Barnard	2006
Kyra Bloom	Columbia College or Barnard, Teachers College	2015, 2022
L. Berger	Social Work	2012
Laura Pisoni	Columbia College or Barnard	2006
Laura Shmishkiss	School of International and Public Affairs	2003
Laura Wernick	School of International and Public Affairs, Social Work	1998
Lauren Deitz	Arts and Sciences (Graduate)	2023

Name	School	Class
Lauren Kesner O'Brien	SIPA	2008
Leah Bellow-Handelman	Public Health	2012
Lee Pinkas	Teachers College	2006
Leeza Gavronsky	Columbia College or Barnard	2017
Lena Rudnick	School of the Arts	2014
Leo Goldberg	Columbia College or Barnard	
Linda Slodki	Banard, Arts and Sciences (Graduate)	1972
Lisa Namdar Kaufman	School of the Arts	
Louise Yelin	Department of English and Comparative Literature	1977 (PhD)
Maddie Molot	Columbia College or Barnard	2018
Madelyn Baker	Columbia College or Barnard	2019
Mara D. Kravitz	GS	2013
Matthew Weisberg	Public Health	2022
Max Cohen	General Studies, Jewish Theological Seminary	2007
Max David Finkel	GS/JTS	2016
Maya Porath		2014
Megan Millenky	Columbia College or Barnard	2001
Melanie Pflaum	Teachers College	1995
Micah Nelson	School of International and Public Affairs	2024
Michael Altman-Lupu	Columbia Law School	2020
Michal Richardson	Columbia College or Barnard	2006
Michelle Caswell, CC'97	Columbia College or Barnard	1997
Michelle Kamens	School of Social Work	2004
Miriam Krent M.S.ed, M.S. CCC-SLP	Teachers College	2017

Name	School	Class
Mollie Krent	Columbia College or Barnard	2015
Molly Chilingerian	Teachers College	
Naeta Rohr	Teachers College	2014
Naida Tushnet	Arts and Sciences (Graduate)	1962 (MA)
Naomi Sharlin	Teachers College	2011
Naomi Shatz	Columbia College or Barnard	2004
Naomi Sobel	Arts and Sciences (Graduate)	2009
Nathan Levine	Columbia College or Barnard	2017
Nina Paroff	Public Health	2017
Noa Appleton	Public Health	2016
Noa Kattler Kupetz	Columbia College or Barnard	2018
Noa Myers	Columbia College or Barnard	
Noa Tann	School of International and Public Affairs	2023
Noa Urbach		2025
Noah Schoen	Columbia College	2016
Noam A Lindenbaum	GS, Jewish Theological Seminary	2021
Nora Rodriguez	Columbia College or Barnard	2011
Orli M		2015
Orli M	GS, Jewish Theological Seminary	2015
Phoebe Spanier	Columbia College or Barnard	
Pippi Kessler	Teachers College	2017
Rabbi Aaron Rotenberg	GS, Jewish Theological Seminary	2009
Rabbi Allen Lipson	GS, Jewish Theological Seminary	2015
Rabbi Aryeh Bernstein	GS, Jewish Theological Seminary	1998
Rabbi David Jaffe	Social Work	1994
Rabbi Jennie Rosenn	Columbia College or Barnard College	1991
Rabbi Rachel Goldenberg	Columbia College	1997
Rabbi Rachel Kahn-Troster	Columbia College or Barnard, Jewish Theological Seminary	2001

Name	School	Class
Rabbi Rebecca T. Alpert	Barnard College	1971
Rabbi Solomon Hoffman	Columbia College or Barnard	2014
Rachel Aviv	School of the Arts	2009
Rachel Blau DuPlessis	Columbia College or Barnard, Arts and Sciences (Graduate)	1963, 1970
Rachel Mazor	Columbia College	1998
Rachel Mewes	Teachers College	2020
Rachel Rosenbloom	Columbia College or Barnard	1990
Rachel Tsuna	Columbia College or Barnard	2018
Rae Abileah, Kohenet	Columbia College or Barnard	2004
Raye Farber		2011
Rebecca Grabiner	Social Work	2003
Rebecca Green	Teachers College	2014
Rebecca Rosen	School of International and Public Affairs	2020
Rebecca Schiff	School of the Arts	2009
Rebecca Subar	Barnard	1981
Rebekah Dempsey	Columbia College or Barnard	2017
Rebekeh Packer	Columbia College or Barnard	2017
Robert Newton		2001
Robyn Uri	Columbia College or Barnard	2011
Romi Messer	Columbia College or Barnard	2016
Samuel Gross	Columbia College or Barnard	1968
Samuel Norich	Columbia College or Barnard	1968
Samuel Reider	Columbia College or Barnard	2011
Samuel Sontag	Columbia Law School	2024
Sarah B. Johnson	Social Work	2014
Sarah Chandler	School of International and Public Affairs, Jewish Theological Seminary	2005, 2008
Sarah Deutsch	Columbia College or Barnard	2011

Name	School	Class
Sarah Dorman Sveen	School of the Arts	2014
Sarah Katz	Columbia College or Barnard	1997
Sarah Leonard	Columbia College or Barnard	Yes
Sarah Rosenblatt	Architecture, Planning, & Preservation (Graduate)	2012
Sarah Saadoun	Columbia Law School	2014
Sarah Stone	GS, SIPA	2016, 2019
Sarah Weinstein	Columbia College or Barnard	2016
Senator Julia Salazar	Columbia College or Barnard	2014
Shachar Cohen-Hodos	GS	2019
Shahar Colt	Columbia College or Barnard	2006
Shana Leshko	Columbia College or Barnard	2017
Shana Parker	Columbia College or Barnard	2004
Shara Morris	Columbia College or Barnard	2011
Shari Turitz	School of International and Public Affairs	1995
Shira Botzum	GS, Jewish Theological Seminary	2019
Shira Danan	Columbia College or Barnard	2007
Shoshana Levy	Columbia College or Barnard	2018
Shoshana Williams	Barnard College	2020
Sofia Rubenstein	Social Work	2017
Sophie Ellman-Golan	Columbia College or Barnard	2014
Sophie Finkelstein	Arts and Sciences (Graduate), School of the Arts	2016
Stephanie Krent	Columbia College or Barnard	2011
Steve Quester	Columbia College or Barnard	1985
Steve Weinberg	Columbia College or Barnard, Architecture, Planning, & Preservation (Graduate)	1966, 1968
Suzanne Blanc	Columbia College or Barnard	1974
Suzanne Herman	Columbia College or Barnard	2015

Name	School	Class
Sylvie Rosen	Columbia College or Barnard, Jewish Theological Seminary	2019
Tali Myers	Columbia College or Barnard	2014
Talya Wintman	Columbia College or Barnard	2020
Tess Solomon	Columbia College or Barnard, Public Health	2015, 2019
Tony Kushner	Columbia College or Barnard	1978, 2010 (Honorary Doctorate of Letters)
Valerie Schenkman	School of the Arts	2010
Vanessa Thill	Columbia College or Barnard College	2013
Wesley (Yehudah) Webster	GS, Jewish Theological Seminary	
Yaffa Fogel	Columbia College or Barnard	2017

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is [redacted], and I am a Jewish alumnus of Columbia University. I graduated recently and remain actively involved in the Columbia community.

2. I, along with more than 250 other Jewish Columbia University alumni, signed a letter (see attached exhibit) expressing our unequivocal condemnation of Mahmoud's Khalil's detention by U.S. Immigrations and Customs Enforcement (ICE). I am particularly disgusted and horrified by the federal government's cooptation and abuse of Jewish identity to justify the wrongful detention of a fellow Columbia

graduate. Like many Jewish Americans, my family came to this country fleeing religious persecution, and several members of my family who stayed behind were killed during the Holocaust. I object in the strongest possible sense to the notion that the federal government's targeting of individuals like Mahmoud for detention and deportation based on their political beliefs and constitutionally-protected free speech will ensure the safety of Jewish members of the Columbia University community or Jewish Americans at large. On the contrary, Mahmoud's detention is a violation of many of the essential freedoms that ensure the safety of Jewish Americans from the exact same kinds of persecution our families have faced in the past.

3. In the months since Mahmoud was detained, several international students attending Columbia University have expressed to me their fears that what happened to Mahmoud might happen to them. Some of them deleted their social media accounts, avoided attending class in-person, or stopped leaving the house altogether out of fear. About a week after Mahmoud was detained, I offered to escort an international student to the grocery store so they could buy food. The student confided that they had not left their apartment in a week out of fear.

4. Palestinian Columbia students who are U.S. citizens have also expressed to me their fear of being targeted by the federal government in a similar fashion to Mahmoud. Palestinian students have told me they are afraid to interface directly with members of University leadership, including the Columbia University President, Claire Shipman, because they know Mahmoud was targeted due to his role as a negotiator with the Columbia administration. As a result, these students have been prevented from advocating for themselves and their needs as Palestinian students during this time due to fear.

5. The chilling effect of Mahmoud's detention on members of the Columbia community has not been limited to international and Palestinian students. Although I am a U.S. citizen and no longer a Columbia student, I too have felt afraid to speak out against Mahmoud's detention and participate in peaceful protests as a member of the Columbia community out of fear that any dissent against the federal government by Columbia students, faculty, staff, or alumni could trigger the detention of more Columbia students by ICE, in retribution. In the week after Mahmoud's detention, there were widespread rumors among members of the Columbia community that the federal government would respond to any act of peaceful protest at Columbia with a raid of campus by ICE and mass detentions of non-citizen students. As a result, many Columbia students chose not to speak out publicly against the detention of Mahmoud or the demands of the federal government imposed upon Columbia University at that time out of fear that their

actions could cause their friends and peers to be detained and deported.

6. Since Mahmoud was detained, I have felt profoundly worried for my friends and community. For at least a week after Mahmoud's detention, I regularly refused to go to sleep until the early hours of the morning because I was afraid that I would wake up to the news that another one of my friends or community members had been detained by ICE during the night.

7. Attached hereto, at the exhibits listed below, are true and correct copies of the following materials:

   A. Attached as **Exhibit A**, a letter drafted and signed by Jewish Columbia alumni denouncing the detention of Mahmoud Khalil.

Dated: June 1, 2025 [redacted]

Signed: [redacted]

H-10

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. My name is [redacted], and I am [redacted]

2. I was a student organizer, and a member of a student organization focused on educating the community on Palestine.

3. For the SIPA student community, of which the majority are international students, Mahmoud's sudden abduction has had tangible and irrevocable consequences and has drastically impacted daily life.

4. Mahmoud's abduction and continued detention has been exceptionally impactful for a classmate who I have organized with previously, whose father was a political prisoner, abducted in similar manner, and severely tortured by their government, and who later passed away due to health complications caused by this torture.

5. This friend came to study in the United States to find safety and reprieve from the constant fear of political imprisonment they are accustomed to. Yet they have found themselves in an alarmingly similar position; instead of staying in the United States after graduation as they had hoped, they are planning to immediately flee to a country where they are truly safe from this sort of targeting and violence. They told me that this is the same sentiment many of their friends have expressed following Mahmoud's abduction.

6. This person also was unable to attend their sibling's wedding—the first person in their family to get married—because they feared being denied entry if they left the country and subsequently sought return. I was with them that night, as they had to stay up until 4 in the morning to watch over Zoom as their entire family gathered to celebrate this momentous occasion. They expressed to me their conflicting feelings and guilt for missing this milestone in their sibling's life, contrasting their very real fear of being detained upon return to the U.S. because they have occasionally expressed support for Palestinian life.

7. Another international friend of mine who I have organized with had a terminally ill father whose health began to deteriorate dramatically in April 2025. They had to return home to be with their family and their father in his last moments. Yet, the moment was marred and burdened by planning around visa concerns, by carrying this immense tragedy alongside the very real threat of being rejected or detained at the border.

8. They told me how this anxiety weighed on them throughout the trip, and in their final moments with their father. They expressed grief and frustration at their desire to stay with their family longer after their father's death, but their inability to because of increasing repression and anxiety around their visa status as a graduating student.

9. They told me how this fear affected what they said, what they did, and the way they expressed themselves publicly. They distanced themselves from a student organization they care about deeply because the organization engaged in political activity, they scrubbed their Instagram of any political discourse, and they stopped posting about politics completely.

10. They feel isolated and unable to make new friends because they are unsure of who will take offense to something they say and report them, either to the school (which

would lead to their name possibly being handed over to DHS/ICE), or to the federal government directly. They worried about public deportation campaigns—similar to the campaign Mahmoud suffered—being started against them by bad actors, resulting in federal immigration agents knocking at their door.

11. They are a fantastic political writer who chose to stop writing before their trip, concerned about the scrutiny that comes with publicly engaging in topics like Palestine, and beyond that, politics and current affairs as a whole.

12. Despite having returned to the United States, they have remained silent—fearful of jeopardizing their visa status and of being held in detention, hundreds or even thousands of miles from their community, like Mahmoud.

13. Yet another international friend of mine and fellow organizer told me how they arrived to the U.S. as an international student full of hope, eager to work hard, and with a deep belief in this country's strongly held value of free speech as foundational to our democracy. Yet, they expressed that this belief was shattered on March 8 upon Mahmoud's arrest—and continues eroding with his ongoing detention. They voiced that something inside them broke when they saw him targeted for nothing more than exercising this very right.

14. And they have expressed that this fear is no longer theoretical following the announcement that the U.S. Embassy would pause student visa applications alongside U.S. Secretary of State Marco Rubio's call for mass revocations of Chinese student visas.

15. They told me that after Mahmoud's abduction, they could not eat, they could not sleep, they could not focus. They were admitted to the ER days after his abduction with stress-induced acid reflux that mimicked heart problems. They said that they were so overwhelmed they thought they were dying.

16. They told me that Mahmoud's abduction and ongoing detention feels like a targeted message to all U.S. visa holders—a warning that they are only welcome here as long as they stay silent. His case, they said, serves a broader signal to international students of what this country is both willing and capable of doing. Even someone with far more legal protections than this friend was taken without a warrant.

17. This friend had an internship abroad this summer that they have now had to cancel because they are terrified of the consequences of leaving the country, both because they are a U.S. visa holder and because of their beliefs and expressions in support of Palestinian human rights.

18. I have a friend from Latin America who completed their undergraduate degree at

one of the top 5 universities in the world, and who was accepted into a dual degree graduate program at Columbia for the fall semester. We have spoken at length about his excitement of attending his dream program, of exploring his passions in an environment as challenging as Columbia, of moving to New York and traveling to the United States for the first time in his entire life.

19. In fact, part of this excitement stemmed from the belief that he would have a voice in the conversation on Palestine—a voice that would be respected and heard, given Columbia's visibility and its students' influence in shaping a national discourse that affirms the humanity of Palestinians in the face of their erasure. At the same time, he struggled with the prospect of becoming a passive observer—of being sidelined from both the work and the ongoing discourse on campus.

20. I spoke with him recently about his plans for the fall, and he shared the heartbreak of having to reject his offer—not because he wanted to, but because he feared being detained like Mahmoud. That fear stemmed from his nationality, his political beliefs, his support for Palestinian human rights, and the fact that his program and his own moral compass would require him to speak openly about all these things. Now, he won't be attending any graduate program this fall. He hasn't found an alternative that comes close to what Columbia offers.

21. The culture of fear at SIPA is real. Among students who represent the future of diplomacy, global policymaking, development, and humanitarian action, this fear hinders their learning and engagement in and out of the classroom. This is not only because they fear reprisal for discussing ongoing crises and conflicts, but also because the atmosphere of uncertainty—fueled by the government's seemingly arbitrary abductions—has taken a profound emotional and mental toll.

22. After Mahmoud's abduction, I observed that my classrooms became nearly empty. I spoke with students who were too scared to stay in their campus housing and left to stay with friends or acquaintances off-campus, despite having nothing to do with on-campus organizing. There were students afraid to leave their apartments or even rooms, some students began attending class online, greatly impacting the quality of their education.

23. During a letter-writing campaign to Mahmoud and his family, many international students expressed to me fear at signing their name on a letter to him or even sending a letter at all, scared that they would become ICE/DHS' next targets for merely showing support for a beloved classmate stolen from our community. Some of those letters and the signatures on a petition that went alongside the campaign were signed "From a terrified international student," or similar.

24. Endless op-eds written by our peers smearing Mahmoud's name added to this level of fear because for us he is the shining example of good and moral behavior. Multiple international students have expressed to me that if this could be done to Mahmoud, then anyone could be abducted and have their name dragged through the mud, because Mahmoud did everything right.

25. This also speaks to the level of fear and distrust sowed amongst the student body, which already existed after Trump took office, but which was exponentially amplified after Mahmoud's abduction. Students became fearful of each other, worried about who was listening to their conversations, who was watching, who was recording. Multiple people I know began to self-censor, they became careful who they engaged with or they avoided speaking about politics entirely, they scrubbed their social medias or deleted them altogether, fearful that any one of these things would cause a fellow student to report them to either the University administration, of which there is low trust and good cause to believe they have handed information to the federal government, or directly to ICE/DHS.

26. Mahmoud's detention has had massive implications for the student organization I am a part of. Prior to his abduction, our group was a popular and well-respected organization at our school and across campus, our events and talks were always well-attended, we engaged students across the political spectrum and differing levels of interest and knowledge.

27. However, after Mahmoud's kidnapping, our engagement and active membership dropped drastically. People became terrified to interact or become publicly associated with us. We lost a board member who was panicked at the idea of losing their visa for merely being on the board of this student organization.

28. Boards of other student organizations asked to withdraw their sponsorship from our campaign in support of Mahmoud—not because they didn't care or support the cause, but because international board members now feared that publicly supporting him, or any cause connected to Palestine, could jeopardize their visas—and, by extension, their degrees.

29. After Mahmoud's abduction, this student organization became completely occupied with protecting its international students from the same fate. Instead of organizing educational panels or conversations intended to build understanding amongst the diverse perspectives that make up this student body, our focus was forced to shift; our time and energy were consumed with organizing in support of Mahmoud and in providing services, such as Know Your Rights trainings, to a terrified student body.

30. The organization itself was consumed by fear and grief caused by Mahmoud's sudden and traumatic forced disappearance. Because of this now very real and immediate threat to the safety of our active members, our decision making changed, with protecting our international students being our top priority. We spent hours discussing the implications for U.S. visa holders of decisions we had already made—or ones that we would have otherwise reached consensus on with ease. Every choice we made felt weighty and totalizing; suddenly, our friend's material safety hung in the balance with every decision we made.

31. We did almost nothing after March 8, except organize around Mahmoud, field outside threats, and try to restructure so that our vulnerable members were safe. We could not fulfill the organization's mission: to educate our peers about Palestine and provide a safe space on campus for students to engage in open, critical discourse.

32. For myself, an American citizen, Mahmoud's abduction deeply impacted my wellbeing and my ability to organize and speak freely about Palestine. My circle got smaller as I saw the devastating impact of being too open and trusting. Every single person I did not know became a person I could not trust, became a person who could put me or someone I love in harm's way.

33. I stopped going to class in person—as someone who is very outspoken with my beliefs, and who chose Columbia partially because of its history of fierce protection of the First Amendment and academic discourse, I became afraid of being reported to university administration or the federal government for merely expressing those beliefs. I worried about federal agents showing up to class for either myself or one of my international peers.

34. For me, Mahmoud's abduction and ongoing detention points to a horrifying trend this country seems to be following. I am worried that post-graduation, my job may put me at risk because it will be political by nature. I worry for my brother's safety, who works with trans-youth in the Midwest.

35. Right now, the government is disappearing international students without regard for whether they are here legally, or whether the government itself is acting legally. They are sending people to super-max prisons in El-Salvador for having tattoos. They are detaining entire families in courtrooms—people who are following the law and trying to stay in the United States legally. I believe it's only a matter of time before they start doing the same to American citizens, and that weighs on me every time I speak out—or stay silent. I fear getting a job and being stuck here in the United States as things continue to deteriorate. Yet I also worry about leaving my loved ones behind, without protection or plan. I feel paralyzed, and this paralysis began on March 8 with Mahmoud's abduction.

36. None of the stories I have shared in this declaration are unique or unusual. I could share many more with the Court. Still, what I have observed—and what I experienced myself—is just a small glimpse into what is happening in communities across the country. I want to impress upon the Court the devastating impact Mahmoud's abduction and ongoing detention has had on countless communities — it is not only those who know and care for him who are affected. Far from it.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 2, 2025
New York, NY

Signed:

H-11

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. I am [redacted], and I graduated from Columbia University in [redacted] with a [redacted] degree. I am Jewish and consider it to be an important part of my identity. I have family members who live in Israel and whose homes were destroyed on October 7th.

2. Since Mr. Khalil was arrested, the chill in speech I have observed on campus and experienced firsthand has been drastic and far-reaching. It has even influenced my decision to have my name publicly redacted in this statement as I do not wish to receive unwanted attention or become a target of the US government.

3. My senior year roommate was an international student who did not give much thought to political issues such as the Israel-Palestine conflict. Since Mr. Khalil's arrest, they told me that they avoided going anywhere near campus protests, not because they felt threatened by the protestors, but because they feared being seen or associated with any campus protest would lead to them potentially being detained and deported.

4. This past April, I took part in a protest in support of the release of Mr. Khalil on Columbia's campus. [redacted]

5. The combination of Mr. Khalil's arrest and detention, as well as [redacted] has had the effect of making me hesitant about publicly expressing my beliefs about the Israel-Palestine conflict and engaging visibly in protests on university property.

Dated: June 2nd, 2025
[redacted]

Signed: [redacted]

/s/

H-12

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. I am [redacted], a graduate [redacted] from Columbia University.

2. **Many of my friends who are international students have confided in me about their fears of being targeted for deportation if they exercise their right to freedom of speech.**

3. **I know the people I am speaking of are not even able to write in support of Mahmoud Khalil because of the danger they are in. They have told me they won't follow certain accounts on Instagram, or are deleting Instagram posts. Some of my friends have made their accounts private or deleted them altogether.**

4. **Many of my friends who were excited to start their lives post graduation in New York City are considering, or have ultimately decided to, move back to the country they came from. These are some of the smartest, most creative and kind people I know. Some of the reasons they've told me behind their decisions are that they don't like seeing their gay friends being harassed, they feel unsupported by the university, and most of all, the targeting of Mahmoud has made them afraid they'll be next.**

5. **It is obvious to me that the effect Mahmoud Khalil's detainment has had has been an increase in fear among my friends from other countries and a transformation of their view of the United States. No longer do my friends from around the world think of America as a free country that they can start their life in, but instead they view it as a dangerous place that is becoming more unstable every day. These are compassionate people, dedicated scholars, and principled human beings and I have seen them be transformed by fears of surveillance and governmental oppression.**

6. **Personally, as a Jewish student it is a cruel irony that I have spent the last months trying vainly to comfort my friends who are afraid that they will be taken by the government in the name of keeping me safe.**

Dated: June 2nd, 2025

[redacted]

Signed:

[redacted]

Exhibit I

Honorable Michael E. Farbiarz
United States District Judge
District of New Jersey
Martin Luther King Courthouse
50 Walnut Street
Newark, NJ 07101

DECLARATION OF JOHN RAPHLING

I, John Raphling, declare as follows:

1. I am an associate director and researcher for Human Rights Watch's US Program. I submit this declaration to inform the court about the likely impacts of the US government's efforts to deport Mahmoud Khalil on the right to free expression throughout the United States, especially on university campuses.

2. Human Rights Watch has serious concerns that the Secretary of State's invocation of "foreign policy grounds" as a basis to deport Mahmoud Khalil serves as a pretext for violating his right to free expression under international human rights law and is intended by the Secretary to punish and deter protected speech, particularly among international and non-US citizen students.[1] This is creating a climate of fear on campuses across the country.

3. Human Rights Watch (HRW) is an international research and advocacy organization that investigates alleged violations of international human rights law throughout the world and advocates for accountability for perpetrators, reparations for victims, and changes of policy to prevent ongoing and future abuses.[2] HRW has conducted investigations in over 90 countries, advocating before international bodies, like the United Nations, before local and national governments, including on many occasions U.S. Congressional committees, and to the public. The United States Program at HRW investigates human rights issues in the US, including violations by immigration enforcement agencies and within criminal legal systems.[3] The US Program also investigates government actions that may undermine democratic processes and institutions.

4. I have conducted research for the US Program at HRW for over eight years.[4] My primary area of expertise is the criminal legal system and systems of government coercion. I have researched free expression issues, particularly on US university campuses in the context of protests related to the Israeli assault on Gaza. Prior to working for HRW, I was a lawyer for over twenty years who represented protesters, political activists, and organizers in civil and criminal courts in cases related to their rights to free expression.

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[1] Human Rights Watch, "US: End Campaign of Draconian Campus Arrests," *HRW*, April 3, 2025, US: End Campaign of Draconian Campus Arrests | Human Rights Watch.
[2] Human Rights Watch, "About Us," *HRW*, 2025, https://www.hrw.org/about-us.
[3] Human Rights Watch, "United States," *HRW*, 2025, https://www.hrw.org/united-states.
[4] Human Rights Watch, "John Raphling," *HRW*, 2025, https://www.hrw.org/about/people/john-raphling.

5. Officials for the Department of Homeland Security arrested Mahmoud Khalil on March 8, 2025, have detained him since, and seek to deport him, despite his status as a lawful permanent resident.[5] The US government has supplied an undated memorandum from Secretary of State Marco Rubio invoking the 1952 Immigration and Nationality Act (INA) Section 237(a)(4)(C) as a basis for these actions.[6] In the memorandum, the Secretary acknowledges that Khalil's actions, statements and beliefs are lawful, but he "determines" that his presence in the US would have "potentially serious adverse foreign policy consequences and would compromise a compelling US foreign policy interest." The Secretary cites no specific actions or beliefs, but he refers to Khalil's participation in protests which he claims are "anti-Semitic." He provides no evidence for this claim, although that INA provision requires "reasonable ground" for such a determination.[7]

6. Khalil, along with tens of thousands of other students, faculty and staff, participated in protests on US university campuses in the months following the Hamas-led attack on Israel on October 7, 2023[8], and during Israel's ongoing military operations in Gaza. As the death toll in Gaza has soared amid allegations of grave human rights violations carried out by Israeli forces[9], campus protests proliferated and over 3,000 students were arrested nationwide in the spring of 2024, though Khalil was not one of them.[10]

7. Opposition to Israel's actions, to US support for those actions, and to university policies including their investments in companies that profit from abuses in Israel, are legitimate

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[5] Tsehai Alford, et al., "Palestinian activist Mahmoud Khalil, SIPA '24, detained by Immigration and Customs Enforcement, lawyer says," *Columbia Spectator*, March 10, 2025, Palestinian activist Mahmoud Khalil, SIPA '24, detained by Immigration and Customs Enforcement, lawyer says.

[6] In the matter of Mahmoud Khalil, "U.S. Department of Homeland Security's Submission of Documents," Case No. REDACTED, April 9, 2025, https://www.documentcloud.org/documents/25894412-newly-released-memo-from-rubio-details-governments-only-evidence-in-effort-to-deport-mahmoud-khalil/.

[7] 8 U.S.C. section 1227, https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1227&num=0&edition=prelim.

[8] Human Rights Watch, "I Can't Erase All the Blood from my Mind," *HRW*, July 17, 2024, https://www.hrw.org/report/2024/07/17/i-cant-erase-all-blood-my-mind/palestinian-armed-groups-october-7-assault-israel.

[9] Human Rights Watch, "Israel: Starvation Used as Weapon of War in Gaza," *HRW*, December 18, 2023, Israel: Starvation Used as Weapon of War in Gaza | Human Rights Watch; Human Rights Watch, "Gaza: Israeli Military War Crimes While Occupying Hospitals," HRW, March 20, 2025, Gaza: Israeli Military War Crimes While Occupying Hospitals | Human Rights Watch; AJLabs, "Israel-Hamas war in maps and charts: live tracker," Al Jazeera, April 17, 2025, https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker; Tinshui Yeung and Neha Gohil, "Palestinian health ministry says 60 killed, 284 injured in past 24 hours," *BBC*, May 31, 2025 https://www.bbc.com/news/live/c628n68zpj6t; Human Rights Watch, "'Hopeless, Starving, and Besieged': Israel's Forced Displacement of Palestinians in Gaza," *HRW*, November 14, 2024, "Hopeless, Starving, and Besieged": Israel's Forced Displacement of Palestinians in Gaza | HRW; Human Rights Watch, "Israel's Crime of Extermination, Acts of Genocide in Gaza," *HRW*, December 19, 2024, Israel's Crime of Extermination, Acts of Genocide in Gaza | Human Rights Watch.

[10] The New York Times, "Where College Protesters have been Arrested or Detained," *New York Times*, July 22, 2024, Where College Protesters Have Been Arrested or Detained - The New York Times.

political viewpoints, the expression of which is protected by US and international human rights law.[11] Such free expression is at the core of a democratic society.

8. As the protest movement grew on college campuses, it emerged as a flashpoint during the 2024 presidential election. As a candidate, Donald Trump falsely equated protests against the Israeli military's extensive bombardment of Gaza with antisemitism and support for terrorism. He threatened "any student that protests, I throw them out of the country."[12] The Republican Party platform included a commitment to "[d]eport pro-Hamas radicals and make our college campuses safe and patriotic again."[13]

9. Upon taking office, President Trump said: "To all the resident aliens who joined in the pro-jihadist protests … we will find you, and we will deport you."[14] Following Khalil's arrest, the official White House X account declared "Shalom, Mahmoud" and announced a campaign against "terrorist sympathizers."[15] Trump personally posted that "[t]his is the first arrest of many to come."[16]

10. The Trump administration has claimed generally, as in Khalil's case specifically, that their right to revoke immigrants' legal status is based on that same provision of the INA that allows the secretary of state to determine that a person's presence in the country "would compromise a compelling United States foreign policy interest."[17]

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[11] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 UNTS 171, entered into force March 23, 1976, ratified by the US in 1992, arts. 9, 19 and 21, International Covenant on Civil and Political Rights | OHCHR; Human Rights Watch, "US: States use anti-boycott laws to punish responsible businesses," *HRW*, April 23, 2019, https://www.hrw.org/news/2019/04/23/us-states-use-anti-boycott-laws-punish-responsible-businesses.

[12] TOI Staff, "Trump says he'll deport anti-Israel student protesters if elected—report," *Times of Israel*, May 28, 2024, Trump says he'll deport anti-Israel student protesters if elected — report | The Times of Israel.
[13] Donald J. Trump, "2024 GOP Platform: Make America Great Again," 2024, rncplatform.donaldjtrump.com.
[14] President Donald J. Trump, "Fact Sheet: President Donald J. Trump Takes Forceful and Unprecedented Steps to Combat Anti-Semitism," *The White House*, January 30, 2025, Fact Sheet: President Donald J. Trump Takes Forceful and Unprecedented Steps to Combat Anti-Semitism – The White House.

[15] The White House, X posting, March 10, 2025, The White House on X: ""We will find, apprehend, and deport these terrorist sympathizers from our country — never to return again." –President Donald J. Trump us https://t.co/M3vDyAdDHE" / X.

[16] House Foreign Affairs Committee Majority, X posting, March 10, 2025, House Foreign Affairs Committee Majority on X: "Shalom Mahmoud https://t.co/xgS2wnOUYo" / X

[17] Gaby Del Valle, "Trump is bringing back McCarthyism to go after Mahmoud Khalil," *The Verge*, March 12, 2025, Trump is bringing back McCarthyism to go after Mahmoud Khalil | The Verge; Steve Vladeck, "Five Questions About the Khalil Case," *One First*, March 10, 2025, 131. Five Questions About the Khalil Case

11. DHS Deputy Secretary Troy Edgar cited to "pro-Palestinian activity" as the reason for Khalil's impending deportation and refused to answer whether protesting itself was grounds for deportation.[18]

12. There are other recent examples of this arbitrary targeting of people for their viewpoint on Palestinian rights. On March 25, 2025, masked and camouflaged federal agents wearing black hooded sweatshirts seized Rümeysa Öztürk, a Tufts University doctoral student from Türkiye and Fulbright scholar on a student visa, from a public sidewalk near her home in a Boston suburb, and took her into custody.[19] The federal government transported her over a thousand miles away to a detention center in Louisiana and said it intends to deport her. DHS officials alleged that Öztürk "engaged in activities in support of Hamas," apparently because she co-authored an opinion piece[20] in a student newspaper calling on Tufts University to "acknowledge the Palestinian genocide"[21] and divest from investments connected to Israel. DHS has also sought to arrest and deport Yunseo Chung, a Columbia University undergraduate and lawful permanent resident from South Korea who has lived in the US since childhood following her arrest during a campus protest.[22]

13. The administration's justifications for the arrest and planned deportations of Khalil and several other students are illegitimate and false and violate international human rights law.[23]

14. These actions reflect the administration's larger pattern of exerting pressure on universities to silence protests related to the ongoing hostilities in Gaza.[24] The administration has terminated government funding[25] and initiated Department of Justice

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[18] Michel Martin and Destinee Adams, "DHS Official Defends Mahmoud Khalil Arrest, But Offers Few Details on Why It Happened," *NPR*, March 13, 2025, DHS Deputy Secretary Troy Edgar defends Mahmoud Khalil arrest : NPR.

[19] Niha Masi, et al., "Tufts student detained by masked officers, video shows," *The Washington Post*, March 27, 2025,Tufts student Rumeysa Ozturk detained by federal officers, video shows - The Washington Post.

[20] Rumeysa Ozturk, et al., "Op-ed: Try again, President Kumar: Renewing calls for Tufts to adopt March 4 TCU Senate resolutions," *The Tufts Daily*, March 26, 2024, Op-ed: Try again, President Kumar: Renewing calls for Tufts to adopt March 4 TCU Senate resolutions - The Tufts Daily.

[21] Human Rights Watch, "Israel's Crime of Extermination, Acts of Genocide in Gaza," *HRW*, December 19, 2024, Israel's Crime of Extermination, Acts of Genocide in Gaza | Human Rights Watch.

[22] Jonah E. Bromwich and Hamed Aleaziz, "Columbia Student Hunted by ICE Sues to Prevent Deportation," *New York Times*, March 24, 2025, Columbia Student Hunted by ICE Sues to Prevent Deportation - The New York Times.

[23] Human Rights Watch, "US: End Campaign of Draconian Campus Arrests," *HRW*, April 3, 2025, US: End Campaign of Draconian Campus Arrests | Human Rights Watch

[24] Isaac Arnsdorf and Susan Svrluga, "Trump says pressure on Columbia is only the beginning for college campuses," *The Washington Post*, March 15, 2025, Trump says pressure on Columbia is only the beginning for college campuses - The Washington Post.

[25] Alan Blinder, "Trump has targeted these universities. Why?" *New York Times*, May 27, 2025, https://www.nytimes.com/article/trump-university-college.html; Stephanie Saul, "Trump pulled $400 million from

investigations[26] against universities it alleges promote antisemitism based on claims that they have not suppressed pro-Palestine activism on campus sufficiently. Officials have demanded that universities provide the names and nationalities of protesters and activists to law enforcement officials.[27]

15. The arrest, detention, and efforts to deport Mahmoud Khalil and others have created a climate of fear among international students and US citizens who understand that the Trump administration seeks to punish people for speaking out in a way the administration disagrees with on this important public issue. That threat of punishment has suppressed people's free speech and expression as they seek to avoid drawing attention to themselves.

16. I am aware of numerous reports from campuses across the US of students, researchers and faculty members experiencing pervasive fear in response to the threat of punitive actions exemplified by the detention and possible deportation of Mahmoud Khalil. [28] Actions taken

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Columbia. Other schools could be next." *New York Times*, March 8, 2025, https://www.nytimes.com/2025/03/08/us/columbia-trump-colleges-antisemitism.html; Michael Casey, "Trump administration freezes $2.2 billion in grants to Harvard over campus activism," *AP News*, April 15, 2025, https://apnews.com/article/harvard-trump-administration-federal-cuts-antisemitism-0a1fb70a2c1055bda7c4c5a5c476e18d

[26] Ty Roush, "Trump administration investigates these 60 colleges over antisemitism allegations," *Forbes*, March 11, 2025, https://www.forbes.com/sites/tylerroush/2025/03/11/trump-administration-investigates-these-60-colleges-over-antisemitism-allegations/.

[27] Laura Meckler, "New Trump demand to colleges: name protesters—and their nationalities," *The Washington Post*, March 25, 2025, Trump demands colleges name protesters and their nationalities - The Washington Post

[28] Lubna Kably, "Hundreds of international students wake up to an email asking them to self deport for campus activism," *The Times of India*, March 29, 2025, https://timesofindia.indiatimes.com/world/us/hundreds-of-international-students-are-waking-up-to-an-email-asking-them-to-self-deport-for-campus-activism-or-even-sharing-posts-on-social-media/articleshow/119679695.cms; Brandon Drenon and Robin Levinson-King, "Anxiety at US colleges as foreign students are detained and visas revoked," *BBC*, April 18, 2025, https://www.bbc.com/news/articles/c20xq5nd8jeo; Adrian Florido, "These students protested the Gaza war. Trump's deportation threat didn't silence them," *NPR*, May 21, 2025, https://www.npr.org/2025/05/21/nx-s1-5400644/these-students-protested-the-gaza-war-trumps-deportation-threat-didnt-silence-them; Daniella Silva, et al., "Trump takes aim at foreign-born college students, with 300 visas revoked," *NBC News*, March 27, 2025, https://www.nbcnews.com/news/us-news/trump-administration-takes-aim-immigrant-students-rcna198346; Vimal Patel, Miriam Jordan, and Halina Bennet, "Nearly 300 students have had visas revoked and could face deportation," *New York Times*, April 7, 2024, https://www.nytimes.com/2025/04/07/us/student-visas-revoked-trump-administration.html; Faiza Patel, "U.S. AI-driven "Catch and Revoke" Initiative Threatens First Amendment Rights," Brennan Center for Justice, March 20, 2025, https://www.brennancenter.org/our-work/analysis-opinion/us-ai-driven-catch-and-revoke-initiative-threatens-first-amendment-rights; Dawn White, "Trump administration revokes almost 80 North Texas student visas," *CBS News Texas*, April 10, 2025, https://www.cbsnews.com/texas/news/trump-administration-revokes-almost-80-north-texas-student-visas/; Killian Baarlaer, "Amid free speech concerns, pro-Palestinian students take caution on Kentucky campuses," *Courier-Journal*, May 9, 2025, https://www.courier-journal.com/story/news/education/2025/05/09/pro-palestinian-students-concerned-about-free-speech-at-kentucky-colleges/83049198007/; Trevor Hughes, "19 State AGs ask federal judge to block Trump's student visa cancellations," *Courier-Journal*, April 11, 2025, https://www.courier-journal.com/story/news/nation/2025/04/11/attorneys-general-lawsuit-trump-student-visa-cancellations/83048386007/; American Association of University Professors, et al. v. Marco

in response to the threat include, among others, making preparations for arrest every time they leave their homes, hiding their identities in public, not attending classes, changing career plans, cancelling travel or opting to return to their home countries. International students have stopped engaging in classroom discussions about controversial topics, particularly Israel and Palestine, declined to attend protest or educational events that they otherwise would attend, stopped posting on social media about these topics and removed previous posts that might attract attention from the government, stop publishing papers, speaking on panels, conducting research, teaching classes, decline job offers, and otherwise retreat from speaking out publicly, and even privately.

17. My colleagues at HRW who speak on campuses about Israel and Palestine conflict report hearing repeatedly from students raising these same fears and describing similar actions, including from students who are US citizens. The silencing of students, researchers, and faculty not only harms those individuals, it deprives everyone on campus of the benefit of their viewpoints and scholarship, diminishing academic freedom and the quality of education for all. It discourages foreigners from coming to the US to study, conduct research and teach, depriving the country of their contributions.[29]

18. Punishing people for exercising their rights to free speech and assembly is a violation not only of the First Amendment of the US Constitution, but also of the International Covenant on Civil and Political Rights (ICCPR), which the US ratified in 1992, including Article 9, which forbids arbitrary arrest and detention, Article 19, which protects free expression, and Article 21, which protects freedom of assembly.[30] Under the ICCPR, noncitizens have these rights as well.[31] HRW has documented how authoritarian regimes throughout the world detain, deport and otherwise punish critics of government policy in order to silence them.[32]

Rubio, et al., Civil Action No. 1:25-cv-10685, "Complaint for Declaratory and Injunctive Relief," filed March 25, 2025, https://clearinghouse.net/doc/157588/.

[29] Vimal Patel, Miriam Jordan, and Halina Bennet, "Nearly 300 students have had visas revoked and could face deportation," *New York Times*, April 7, 2024, https://www.nytimes.com/2025/04/07/us/student-visas-revoked-trump-administration.html.

[30] ICCPR, Arts. 9, 19, and 21.

[31] UN Human Rights Committee, CCPR General Comment No. 15: The Position of Aliens Under the Covenant (Art 11 (1) of the Covenant), April 11, 1986, CCPR General Comment No. 15: The Position of Aliens Under the Covenant | Refworld

[32] Human Rights Watch, "'All conspirators': How Tunisia Uses Arbitrary Detention to Crush Dissent," *HRW*, April 16, 2025, https://www.hrw.org/report/2025/04/16/all-conspirators/how-tunisia-uses-arbitrary-detention-crush-dissent; Human Rights Watch, "India: Arrests, Raids Target Critics of Government," *HRW*, October 13, 2023, https://www.hrw.org/news/2023/10/13/india-arrests-raids-target-critics-government; Human Rights Watch, "Two Authorities, One Way, Zero Dissent," *HRW*, October 23, 2018, https://www.hrw.org/report/2018/10/23/two-authorities-one-way-zero-dissent/arbitrary-arrest-and-torture-under; Human Rights Watch, "We Try to Stay Invisible," *HRW*, October 8, 2024, https://www.hrw.org/report/2024/10/08/we-try-stay-invisible/azerbaijans-escalating-crackdown-critics-and-civil-society; Human Rights Watch, World Report 2024: Egypt, events of 2023, *HRW*, January

19. The Trump administration is claiming the authority to punish and remove noncitizen dissenters at will, without providing any meaningful justification. These actions not only violate the rights of those being targeted, but by intimidating others into silence, they represent a much larger threat to the right of free expression for all people in the US, citizens and non-citizens alike.

20. If the US government succeeds in deporting Mahmoud Khalil, it sends a direct message to everyone residing in this country that, if they speak out in a way the administration disagrees with on this major public issue, they risk severe consequences.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Dated: June 4, 2025

John Raphling
Declarant

2024, https://www.hrw.org/world-report/2024/country-chapters/egypt; Human Rights Watch, "Turkiye: Free Turkmen Activist; Halt Deportation," *HRW*, June 3, 2025 https://www.hrw.org/news/2025/06/03/turkiye-free-turkmen-activist-halt-deportation.

Exhibit J

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF STEFANIE FOX, EXECUTIVE DIRECTOR OF A JEWISH VOICE FOR PEACE

I, Stefanie Fox, declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. I am Executive Director of A Jewish Voice for Peace ("JVP"), a U.S.-based, grassroots membership organization mobilizing Jewish communities to advocate for a just society in Palestine/Israel. I have been Executive Director of JVP for 5 years, and a staff member prior to that for 16 years.
2. With 720,000 members and supporters, JVP is one of the largest progressive Jewish organizations in the world.
3. JVP partners with other U.S.-based organizations who advocate for civil rights and

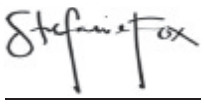
justice in the United States and Palestine/Israel.

4. JVP and its members are impacted by and concerned about (a) the brazen public arrest and detention of Mahmoud Khalil, a lawful permanent resident of the United States, and (b) the government's insistence that Mr. Khalil's protected, lawful speech is an appropriate basis for the revocation of his green card and grounds for deportation.
5. This position and the current administration's corresponding policies and orders have chilled the speech of JVP and its members. Non-citizen members of JVP, including students, are afraid they will be targeted for exercising their First Amendment rights in advocating for Palestinian human rights. U.S. citizen members of JVP are similarly afraid of being targeted by the government.
6. JVP members across citizenship and visa statuses have curtailed their speech and silenced themselves for fear of reprisal, retaliation, and targeting by the government. Several JVP members who are not U.S. citizens have entirely stopped exercising their First Amendment rights because they fear they will be unlawfully arrested and detained by the government, just like Mr. Khalil was. They worry about the possibility of deportation, something lawful permanent residents and visa holders did not worry about before Mr. Khalil's arrest. Deportation would fundamentally alter their lives.
7. With respect to students and student chapters, specifically, members are afraid that unlawful arrest, detention, or deportation will prevent them from completing their studies and will derail their education and future careers. They face a decision no Jewish lawful permanent resident or U.S. citizen should have to face: choosing between speaking out against a genocide that the state of Israel claims to carry out in the name of Jews and completing an education that is necessary to secure their future. Many students have stopped speaking about Palestine/Israel entirely.
8. Dozens of JVP members, including students, who are being, or feel they may be,

targeted for their protected speech have requested help, support, advice, and assistance securing legal representation from JVP. The number of requests has increased significantly since Mr. Khalil's arrest. JVP has had to expend significant time and resources responding to these requests and assisting its members and partners.

9. The most recent example relates to JVP's National Member Meeting ("NMM"), which occurred in May 2025. In the weeks and days before the NMM, several presenters informed JVP they would not attend because they were concerned about government retaliation. Presenters who live outside the United States were afraid of unlawful arrest and detention while inside the United States. They cited the administration's arrest and detention of Mr. Khalil as an example of what could happen to them and the reason they could not safely attend the NMM.
10. The chilling effect JVP, its members, and its partners are experiencing will increase if the government continues to unlawfully detain Mr. Khalil and deports him for exercising his First Amendment rights.

Dated: June 2, 2025



STEFANIE FOX, EXECUTIVE DIRECTOR
OF A JEWISH VOICE FOR PEACE

Exhibit K

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL, *Petitioner*, v. Donald J. TRUMP, et al., *Respondents*	Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF IRA J. KURZBAN

1. My name is Ira J. Kurzban. I submit this declaration to provide context on the decision by the Department of Homeland Security to detain lawful permanent resident respondents in removal proceedings pursuant to allegations that the respondent committed prior immigration-related fraud or misrepresentations.

Qualifications

2. I am an immigration practitioner and have been a partner in the law firm of Kurzban, Kurzban, Tetzeli, & Pratt P.A. of Coral Gables, Florida for over four decades, and serve as chair of the firm's immigration department.

3. Since 1977, I have been active in all aspects of immigration law. I and the attorneys I supervise regularly practice in immigration courts across the country, as well as in federal courts in immigration-related matters.

4. I am the author of *Kurzban's Immigration Law Sourcebook*, one of the most widely used immigration-law secondary sources in the United States. The book is in its Nineteenth Edition (2024) and is regularly cited by federal courts. *See, e.g.*, *Al Otro Lado v. EOIR*, 120 F.4th 606, 627 n.16 (9th Cir. 2024); *Gonzalez Hernandez v. Garland*, 9 F.4th 278, 289 (5th Cir. 2021) (Costa, J., dissenting); *De La Paz v. Coy*, 786 F.3d 367, 376 (5th Cir. 2015); *Gonzalez v. Holder*, 771 F.3d 238, 243 (5th Cir. 2014); *United States v. Juarez*, 672 F.3d 381, 389 (5th Cir. 2012); *Gonzalez v.*

Reno, 212 F.3d 1338, 1355 (11th Cir. 2000); *Viveiros v. Holder*, 692 F.3d 1, 3 (1st Cir. 2012); *Patel v. Ashcroft*, 378 F.3d 610, 612 (7th Cir. 2004); *Socop-Gonzalez v. INS*, 208 F.3d 838, 842 n.3 (9th Cir. 2000).

5. As a practicing attorney, I am actively involved in the immigration bar. I am the Past President of the South Florida Chapter of the American Immigration Lawyers Association. I was the national president of the American Immigration Lawyers Association in 1987-88, and I thereafter served as its General Counsel. The American Immigration Lawyers Association is an affiliate organization of the American Bar Association. It has over 14,000 members in 35 chapters in the United States and four international chapters. I am also certified by the Florida Bar as a specialist in immigration law and served on the first committee to draft and grade the certification exam for Florida lawyers.

6. Since 1977, I have litigated a variety of immigration-related cases and over 75 published decisions in the federal courts. Among other cases, I have been counsel of record in the United States Supreme Court in *Patel v. Garland*, 596 U.S. 328 (2022); *McNary v. Haitian Refugee Center, Inc*., 495 U.S. 479 (1991); *Commissioner v. Jean*, 496 U.S. 154 (1990); and *Jean v. Nelson,* 472 U.S. 846 (1985).

7. Through my over four decades of experience as a practitioner in both the federal courts and immigration courts, I am well qualified to opine on how the immigration-court system differs from the federal courts and the other matters addressed below.

Framework for Detention Pending Removal Proceedings

8. The Immigration and Nationality Act ("INA") authorizes the detention of noncitizens who are placed in removal proceedings. *See* 8 U.S.C. 1226(a).

9. In some cases, the INA makes detention mandatory—as in the case of certain "criminal aliens" 8 U.S.C. § 1226(c) or certain suspected terrorists, *id.* § 1226a.

10. If a noncitizen placed in removal proceedings is not subject to any of the mandatory detention grounds, the Department of Homeland Security need not detain the noncitizen pending removal proceedings. *Id.* § 1226(a).

11. Noncitizens who are arrested by ICE, issued a Notice to Appear, and placed into removal proceedings are routinely released on their own recognizance by ICE after consideration as to whether they pose a flight risk or danger to property or persons. *See, e.g.*, 8 C.F.R. § 236.1(c)(3). Such noncitizens appear at their removal proceedings in a non-detained setting before immigration judges who handle the so-called "non-detained docket."

12. If ICE declines to release a noncitizen on their own recognizance, a noncitizen who is not subject to mandatory detention may seek a bond from the immigration judge.

13. An immigration judge should grant bond unless the noncitizen poses a flight risk or a danger to the community.

14. In practice, lawful permanent residents charged with removability grounds that do not subject them to mandatory detention are in most cases not detained pending their removal proceedings—particularly when the allegations and removability charges leveled against them do not suggest a danger to the community.

15. In my experience, it is extremely unusual for a lawful permanent resident charged with removability under INA § 237(a)(1)(A) for being inadmissible at the time of admission for committing immigration fraud or making material misrepresentations to be detained pending removal proceedings absent aggravating circumstances such as a criminal record.

16. Such detention would be even more unusual if the lawful permanent resident has strong ties to the United States, such as a U.S. citizen spouse or child.

17. Additionally, in my experience it is rare for ICE to amend a Notice to Appear in a case involving a lawful permanent resident to add additional factual allegations and charges of removability particularly given the nature of the allegations added in this case.

18. Based on the above, the Government's decision to amend the Petitioner's Notice to Appear to add an allegation that he obtained residency by committing fraud or misrepresentation through failure to disclose organizations is extraordinarily unusual.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Dated: June 4, 2025

Ira J. Kurzban

Exhibit L

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF STACY TOLCHIN

I, Stacy Tolchin, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. I am an attorney licensed to practice law before the State of California. I have been practicing immigration law since 2002.

2. I am admitted to practice before the United States Supreme Court; the United States Court of Appeals for the Ninth, Tenth, and Second Circuits; the United States District Courts for the Northern District of California, Eastern District of California, Central District of California, and Southern District of California; the United States District Court for New Mexico; and the U.S. Court of Federal Claims.

3. I received my Juris Doctorate from the University of California at Los Angeles

in 2001 and have been practicing law for over 23 years.

4. I am a recipient of the American Immigration Lawyers' Association of Southern California Chapter's 2019 Pro Bono Champion Award, University of California at Los Angeles Law School's 2018 Alumni Public Service Award, the National Lawyers Guild of Southern California 2017 annual award, the American Immigration Lawyers Association's 2009 Jack Wasserman Award for Excellence in Immigration Litigation, the 2009 American Civil Liberties Union of Southern California Equal Justice Advocacy Award, the 2008 National Immigration Law Center Annual Award, the 2007 "Unsung Hero" Award for the National Lawyers Guild of the Bay Area, and was recognized in 2003 by the Arab-American Anti-Discrimination Committee of San Francisco. I have also been named to "Super Lawyers" from 2012-2024.

5. I have represented noncitizens in applications for adjustment of status (i.e., green card applications) and naturalization for more than 20 years, and have represented noncitizens in removal proceedings during that time as well.

6. Both the applications for adjustment of status and naturalization have historically had a question on them requesting information on whether the applicant has ever, at any time, been associated with or a member of any organization in the United States or anywhere in the world.

7. This question is vague and ambiguous and has always been problematic in that applicants do not understand how to answer. It is unclear if the question requires a response about the applicant's place of worship, book club, sports team, university, fraternity/sorority, place of employment, video or computer game circles, or political party.

8. I have been at many interviews where the applicant has volunteered the name of an organization, such as a professional organization, and we have been told by the adjudicating official that the question does not really pertain to such organizations and not to provide details of association with the organization on the application.

9. The vast majority of my clients answer "NO" to the question in its entirety. In the few occasions when it turned out that an adjudicating officer asked more direct questions about memberships and affiliations that my clients answered and the officer deemed relevant, the officer sometimes simply made a note and moved on, and sometimes stated that the question was not asking about that type of membership/association and never even noted the response in the

application.

10. It is difficult to advise clients what to put on the application regarding this question because people are not able to remember their "associations" at "any time" "anywhere in the world." Even I would not know what to put on the application if I were completing it for myself.

11. The naturalization application was in fact changed on April 1, 2024 to eliminate this question. Now the question in the naturalization application asks only about membership or association directly in terrorist or totalitarian organizations.

12. The adjustment of status application continues to contain the vague and ambiguous question regarding membership and association. However, I have been in many interviews where the adjudicators skip the question altogether.

13. In the rare instances where the membership/association question has been at issue, courts have held that the government must still prove that the missing information is material and the individual had an intent to deceive or made a willful misrepresentation. In some of the cases I have litigated, courts have held that the government has failed to prove those critical components. For example, I have seen denials of naturalization, for instance, where the applicant failed to list their donation to a Palestinian rights organization. This was litigated after a naturalization denial before the U.S. District Court for the Central District of California in Hamdi v. United States Citizenship & Immigr. Serv., No. EDCV1000894VAPDTBX, 2012 WL 13135302, at *10 (C.D. Cal. Aug. 29, 2012), and the district court found that the failure to disclose the association was not done with the subjective intent to defraud.

14. I also was involved with a case where the government attempted to denaturalize an individual from Iran due to his failure to disclose his Iranian military service under the membership/association question on the naturalization application. This case was litigated before the Ninth Circuit in United States v. Mousavi, 378 F. App'x 667, 669 (9th Cir. 2010), and the court held that the failure to disclose the military membership was not material to the naturalization application.

15. I have never seen things like the omission of a student internship or student club membership being the basis for a material misrepresentation charge.

16. As relevant to Mr. Khalil's case, it is incredibly rare to see a lawful permanent resident detained and placed into removal proceedings for having failed to disclose a past membership or association on the application for adjustment of

status. In order to do so, the Department of Homeland Security would have to show the applicant made a false representation and, in doing so, intended to deceive, or willfully failed to disclose a fact that was material, which is very difficult because most associations/memberships are not material. Further, the question on the Form I-485 and Form N-400 is so open-ended and ambiguous that it is hard to show that there was an intent to hide such information, or that it was willfully done. In the vast majority of cases, the question is just usually irrelevant, and without further instruction or prompting, applicants are left without sufficient information to know how to answer the question.

17. I have represented at least ten permanent residents who have been placed into removal proceedings after they were denied naturalization. The only ones who were detained were those who had criminal convictions that DHS believed made them removable, in addition to being ineligible for naturalization.

18. Lawful permanent residents who are charged with removal for fraud or willful misrepresentation at the time of admission (i.e., when they adjusted their status to that of a lawful permanent resident) are eligible for a waiver under 8 U.S.C. § 1227(a)(1)(H). In order to qualify for the waiver, the applicant must have a spouse, parent, or child who is a permanent resident or a U.S. Citizen. I have handled roughly five to seven of these waivers before immigration judges, and these are straightforward waivers that do not require a showing of hardship at all. Once the applicant is deemed eligible (in that they adjusted status and have a qualifying family member), the only inquiry for the immigration judge is the consideration of discretionary factors. These waivers are even available in cases where the applicant has been found to have purposefully committed marriage fraud for purposes of an immigration benefit. I have never had one of these waivers denied by an immigration judge.

19. If the sole charge of removal against Mr. Khalil were 8 U.S.C. § 1227(a)(1)(A), due to what is perceived to be fraud or a material misrepresentation committed by him at the time he adjusted his status to that of a lawful permanent resident, and an immigration judge were to sustain that charge, then he would qualify for a waiver under 8 U.S.C. § 1227(a)(1)(H). Under those circumstances, I believe that he would be granted the waiver in the exercise of discretion given his relationship to his U.S. citizen wife and child, and the lack of any criminal history in his case.

////

Dated: June 4, 2025
Pasadena, CA

Signed:

STACY TOLCHIN

Exhibit M

DECLARATION OF JOSH PAUL

I, Josh Paul, declare as follows, pursuant to 28 U.S.C. §1746:

1. 8 U.S.C. §1227(a)(4)(C) requires that the Secretary of State "has reasonable ground to believe" that the presence or activities of an alien in the United States would have potentially serious adverse foreign policy consequences. I write as former State Department official to address the "reasonable ground" standard in this statute.

2. I am familiar with statutes affording the President and/or the Secretary of State with discretion in matters of foreign policy based on my employment for over a decade as a Director in the Bureau of Political-Military Affairs. For instance, I was a part of the policy process to make determinations under 22 U.S.C. §2753 and 22 U.S.C. §2776 which relate to the transfer of arms to foreign countries. Such transfers require a formal notification to Congress, triggering a 'notify and wait' period to allow for Congressional action, unless, to quote typical language that is reflected in four places in the above statutes, "the President states in his certification that an emergency exists which requires the proposed export in the national security interests of the United States" (22 U.S.C. §2776(c)), in which case the notification to Congress is waived, and the sale proceeds immediately. In this most weighty matter of arms transfers, which could involve the transfer of a major weapons system such as a fleet of fighter jets, with lasting global defense and foreign policy consequences, there is no modifying language to the President's authority to certify that an "emergency exists." Indeed, as we were advised by the Department's Attorney Advisors when making a series of such emergency certifications in 2019 for deeply controversial arms sales to the Middle East, and in the absence of what any of us believed to be any compelling reason to bypass the Congressional notification process beyond the then-Secretary of State's desire to do so, under this statute an "emergency" is whatever the President, or the Secretary of State acting under his delegated authority, says it is.

3. The same does not apply to the statute at question in this case, because it not only includes a significant caveat to the determination process – "reasonable ground to believe" – but applies this caveat in a circumstance which is far less likely to have the broad and lasting national security impact of a major weapons export. As a foreign policy practitioner who is experienced in the application of statutes to circumstances, it is my view that the inclusion of this qualifying language is significant. Unlike the example cited above that relates to weapons transfers, it is clear that the intent of 8 U.S.C. §1227(a)(4)(C) is not to provide absolute discretion to, in this case, the Secretary of State, as is the case for the emergency certification authority for arms sales, but rather to circumscribe their authority only to cases in which there is "reasonable ground to believe" that the circumstances otherwise meet the requirements of the statute.

4. This caveat having been established, we come to the consideration of whether there is, indeed, "reasonable ground to believe" that the "presence or activities" in the United

States of the Respondent, Mahmoud Khalil, would "have potentially serious adverse consequences." In my view as a former State Department official, there is not.

5. Khalil is a graduate student of international affairs at Columbia University and is not charged with any crime. The Secretary of State's determination pursuant to 8 U.S.C. §1227(a)(4)(C) only argues that the basis for the Secretary's assessment regards "the participation and roles of... Khalil in antisemitic protests and disruptive activities, which foster[s] a hostile environment for Jewish students in the United States."

6. I note first of all that there is no prima facie evidence for any antisemitic activity on the part of Khalil; indeed, Khalil has been joined in his first amendment activity by many Jewish students, and has publicly made clear that his protest activity concerns the actions of a political entity (i.e. the State of Israel) and not any specific religion or ethnicity.

7. But even were Khalil's actions somehow antisemitic (I aver, again, that they are not) or disruptive, I am not aware of any circumstances in which the conduct of such activities by a graduate student would in any way mean that their presence in the U.S. would have "potentially serious adverse foreign policy consequences." Having both been at one point a graduate student of international affairs, and having worked in academia after that service to teach U.S. and international students about the conduct of foreign policy, I can rather attest to the contrary – that in my experience the words and actions of international affairs students are most often of no consequence whatsoever!

8. Indeed, if there is anything that sets apart the American educational system, particularly at the graduate studies level, it is the freedoms that accompany it – the freedoms to express unpopular ideas and to probe and tackle common assumptions. At no time in American academic history am I aware of a circumstance in which the voice of a student posed "serious adverse foreign policy consequences." Rather, it would be the silencing of such voices, or the deportation of said students, that would pose "serious adverse foreign policy consequences" to the United States.

9. This is because, as the U.S. Government itself has long recognized, the presence of foreign students strengthens American national security. For instance, the State Department itself funds a program, International Military Education and Training (IMET) which the official Security Assistance Management Manual (SAMM) describes as "one of the most important security cooperation (SC) engagements the U.S. has with another country," because "[l]ong after a country purchases, utilizes, and disposes of U.S. military equipment, what remains are the experiences the international military student (IMS) had during training. Through exposure to the American way of life and direct observation of U.S. commitment to universal human rights, the IMS comes to understand and appreciate American democratic ideals." It is my view that not only is there no "reasonable ground" for the Secretary to believe that the presence of Respondent Khalil poses any potentially serious adverse consequences to U.S. foreign policy, but that it is the Secretary's determination itself, by undercutting the basic appeal of American

academic freedom, and disincentivizing the next generation of global leadership in their respective fields from coming to America and building the lasting cultural familiarity and friendships with our nation and its people, which poses the only "serious adverse foreign policy consequences" to the United States emanating from this case.

10. In sum, unlike the broad discretion that is often available in law to foreign policy decisionmakers such as the President or Secretary of State, the statute at hand in this case imposes a limitation in the form of a standard, and that standard has not been met. I urge the court to reject the Secretary's determination, and to permit Khalil to remain.

I declare under penalty of perjury that the foregoing statement is true to the best of my knowledge, information, and belief. Executed on this 12th day of May 2025 at Washington, D.C.

Josh Paul
Declarant

Exhibit N

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL, *Petitioner,* v. Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice, Respondents.	Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF CHRISTOPHER J. LE MON

I, CHRISTOPHER J. LE MON, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge:

1. I submit this declaration in connection with Petitioner Mahmoud Khalil's motion for a preliminary injunction in his above-captioned habeas corpus case. In particular, I address an issue before the Court of whether it is in the "public interest" for noncitizens to be subject to the determination of the Secretary of State that the individual's continued presence or activities in the United States would "compromise a compelling foreign policy interest" (*See* Memorandum from Marco Rubio, Secretary of State, to Kristi Noem, Secretary of Homeland Security ("Rubio Determination") (ECF 198-1), at 1, where the activities in question amount to constitutionally protected expression.

2. As a former senior White House, National Security Council, and State Department official with significant international relations and foreign policy experience, including analyzing, assessing, promoting, and protecting internationally-recognized human rights, I believe Secretary Rubio's use of the Determination to punish nonviolent student speech and activism is contrary to internationally-recognized human rights, contrary to longstanding

bipartisan U.S. foreign policy and national interests, and contrary to fundamental American values as set forth in the U.S. Constitution and as expressed vocally by Presidents of both parties and by America's founders. The longstanding and bipartisan American tradition and foreign policy objective of promoting and respecting the fundamental human right to freedom of expression and opinion, particularly speech that expresses dissent from U.S. foreign policy, overwhelmingly demonstrates that the Rubio Determination and the arrest, detention, and attempted deportation of Petitioner is in fact *contrary* to the public interest of the United States.

3. The arrest, detention, and attempted deportation of Petitioner, and his deprivation of liberty solely as a response to his protected speech, beliefs, and/or opinions, is antidemocratic activity that is commonplace in any number of autocratic countries whose abuses I monitored and sought to prevent when I served at the White House and Department of State, including countries like Egypt, Saudi Arabia, or the United Arab Emirates. For decades, the U.S. Government has condemned the similar autocratic tactic of silencing critics through arrest, detention, or deportation, as being contrary to internationally-recognized human rights and as contrary to longstanding, bipartisan U.S. foreign policy interests in promoting and protecting these universal rights worldwide, regardless of the citizenship status of the individual exercising those rights.

Background and Qualifications

4. I have over 20 years' experience in international law and policy, including as a senior U.S. Government official. I served as Deputy Assistant Secretary in the Bureau of Democracy, Human Rights, and Labor at the U.S. Department of State between January 2021 and January 2025, where I oversaw the offices of Near Eastern Affairs and Security and Human Rights. Previously, from 2017 to 2021 I was the Washington Director at Crisis Action, an international human rights advocacy NGO. I served on the National Security Council staff at the White House from 2016 to 2017 as Special Assistant to the President and Senior Advisor for Multilateral Affairs and Human Rights, and from 2013 to 2014 as Director for Multilateral Affairs. From 2014 to 2017, I served at the White House as Special Assistant to the President for Presidential Personnel (National Security), and from 2009 to 2013 I served as Senior Advisor in the Bureau of International Organization Affairs at the Department of State. Prior to my public service, I was an international lawyer in private practice from 2004 to 2009, and from 2003 to 2004 I clerked for Judge Thomas Buergenthal at the UN International Court of Justice. I received my law degree from New York University School of Law, and received my B.A. from the University of California, Santa Cruz, and am a member of the Council on Foreign Relations.

The Public Interest in Safeguarding Free Expression Rights of Dissenters and Preventing Arbitrary Detention

5. I understand the basic facts surrounding Mr. Khalil's case from the publicity that his case has generated, and from the widely-publicized news media reporting about other similarly situated noncitizen students who have been detained by ICE and been subject to

deportation pursuant to the Rubio Determination. In preparing this declaration, I further reviewed the publicly-accessible Rubio Determination, which comprises only three paragraphs.[1]

6. As I understand the facts of this case, Mr. Khalil is a Syrian national of Palestinian ancestry and a Legal Permanent Resident of the United States who was a student pursuing a graduate degree in Public Administration at Columbia University's School of International and Public Affairs. On campus, he became a prominent advocate and spokesperson for Palestinian human rights, and a strong critic of Israel's military campaign in Gaza following the Hamas terrorist attacks of October 7, 2023, as well as a critic of the support the United States government – and he believed, Columbia University itself – has provided to Israel's military campaign. In other words, Mr. Khalil, as a Palestinian student enrolled at Columbia University, vociferously disagreed with, dissented from, and strongly and vocally spoke out against U.S. foreign policy toward Israeli-Palestinian issues, and against what he perceived as his university's support for that policy. I am unaware of any credible evidence that Mr. Khalil personally engaged in any activities involving violence, or that he personally engaged in any antisemitic conduct or speech. I am of course aware that antisemitic speech and conduct has occurred at some student protests against Israel's military campaign, which I strongly and unreservedly condemn.[2]

7. In reviewing the Rubio Determination, I understand Secretary Rubio has determined that "the activities and presence" of Mr. Khalil in the United States "would have potentially serious adverse policy consequences," which the Secretary based on a conclusion that the protests Mr. Khalil was alleged to be engaged in were "antisemitic" and "disruptive," such that Mr. Khalil's continued presence in the United States would "undermine U.S. policy to combat anti-Semitism around the world and in the United States, in addition to efforts to protect Jewish students from harassment and violence in the United States." However, nowhere does the Rubio Determination accuse Mr. Khalil of committing any crime, of engaging in any acts of violence, of posing any physical danger or harm to anyone, or of personally engaging himself in any antisemitic speech or conduct. Nor does the Rubio Declaration accuse Mr. Khalil of any specific or concrete actions that would undermine a foreign policy interest of the United States. I am unaware of any accusation or suggestion that Mr. Khalil's speech sought to or did incite violence or other unlawful conduct. Instead, the basis of the Rubio Determination, and of the United States' arrest, detention, and attempted deportation of Mr. Khalil (and other students), appears exclusively to stem from Mr. Khalil's exercise of his constitutionally-protected rights to dissenting speech, nonviolent protest activity, and nonviolent advocacy that criticized U.S. and Israeli policy, and it appears that it is in fact this exercise of rights that the Trump administration finds objectionable.

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[1] However, I am unaware of and thus have not reviewed any publicly available substantive legal or policy analysis by the U.S. Government that would support the Rubio Determination's sweeping conclusions.

[2] As detailed in this Declaration, alongside my strong condemnation of any and all antisemitic speech or conduct (and of all hate speech, no matter the target), I do not believe nonviolent expression is legitimate grounds for legal punishment (including deportation), given First Amendment protections. Nor do I believe that the existence of such condemnable speech or conduct on U.S. soil produces adverse foreign policy consequences for the United States that are not far outweighed by the adverse foreign policy consequences to accrue were the U.S. Government to punish such nonviolent free expression through detentions, deportations, or other deprivations.

8. It is important to highlight that the weaponization by the Trump administration and others of the term "antisemitism" to target individuals nonviolently criticizing policies of the Israeli government not only violates the right to freedom of expression and undermines democratic debate, but also recklessly erodes the moral clarity needed to confront the sincerely worrying rise in actual antisemitism worldwide, making the fight against that scourge even more difficult by diluting and politicizing the underlying principle.

The Historical Importance of Human Rights as an Element of U.S. Foreign Policy and as a Public Interest

9. From the early words of the Declaration of Independence to the first sentence of the Bill of Rights, certain fundamental rights rest indisputably at the heart of American history and America's identity as a nation. Reflecting on the centrality of human rights to America's founding, President Carter observed that "America did not invent human rights. In a very real sense, it is the other way round. Human rights invented America."[3]

10. Nearly two centuries after the founding of the United States, the robust American constitutional tradition of protecting free expression and free assembly drove the United States to lead in crafting and promoting the now universally-recognized international human rights norms around these and other fundamental freedoms following the Second World War, including the adoption of the Universal Declaration of Human Rights ("UDHR") in 1948 and the International Covenant on Civil and Political Rights ("ICCPR") in 1966. Over nearly eight decades since the concept of human rights became an international legal reality, Presidents of both parties – despite at times wide differences in foreign policy priorities across administrations – nonetheless consistently have asserted that the promotion and protection of human rights is not just an essential U.S. foreign policy interest,[4] but is central to American identity.[5] Democratic and

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[3] Remarks by President Carter, Jan. 14, 1981.

[4] See, e.g., Remarks by President Carter, Dec. 6, 1978 ("human rights are not peripheral to the foreign policy of the United States… Human rights is the soul of our foreign policy. And I say this with assurance, because human rights is the soul of our sense of nationhood."); Remarks by President Reagan, Dec, 10, 1985 ("The United States will never cease to be in the forefront of the noble battle for human rights."); Remarks by President Clinton, Dec. 9, 1997 ("advancing human rights must always be a central pillar of America's foreign policy"); Remarks by President Obama, May 19, 2011 ("The United States supports a set of universal rights. And these rights include free speech, the freedom of peaceful assembly, the freedom of religion, equality for men and women under the rule of law, and the right to choose your own leaders… Our support for these principles is not a secondary interest. Today I want to make clear that it is a top priority that must be translated into concrete actions, and supported by all of the diplomatic, economic and strategic tools at our disposal"); Remarks by President Biden, Aug. 16, 2021 ("I have been clear that human rights must be at the center of our foreign policy, not the periphery.").

[5] See, e.g., Remarks by President Eisenhower, Jun. 4, 1958 ("Basic to our democratic civilization are the principles and convictions that have bound us together as a nation. Among these are personal liberty, human rights, and the dignity of man."); Remarks by President Carter, Jan. 19., 1978 ("The very heart of our identity as a nation is our firm commitment to human rights… The world must know that in support of human rights, the United States will stand firm."); Remarks by President Reagan, Dec. 3, 1987 ("The United States declared its independence with a document that proclaimed rights to be inalienable gifts from God, not just those who could make it to our shores but to all people, everywhere."); Remarks by President Bush, Jan. 29, 2002 ("America will always stand firm for the non-negotiable demands of human dignity: the rule of law; limits on the power of the state; respect for women; private property; free speech; equal justice; and religious tolerance. America will take the side of brave men and

Republican Presidents alike also have insisted that, aside from the inalienability and intrinsic value of human rights, improving respect for human rights at home and abroad advances other U.S. national interests and buoys U.S. credibility and global standing,[6] and have warned that diminished respect for human rights poses serious national security risks for the United States and the world.[7] Of course, every Presidential administration without exception has taken foreign policy decisions that deviated at times from its publicly-stated commitment to prioritize human rights. But the Trump administration stands all but alone in recent American history in suggesting that the exercise or defense of human rights, whether domestically or internationally, is *contrary* rather than *fundamental* to U.S. foreign policy or to U.S. national interests; indeed, every other President in recent memory has asserted the exact opposite. Among America's chief diplomats, the same is true: a survey of public remarks by Secretary Rubio's predecessors over the past several decades demonstrates remarkably consistent public commitment[8] to the importance of human rights in U.S. foreign policy by previous Secretaries of State across administrations of both parties, making the Trump administration's public and transparent abandonment of this principle even more ahistorical and appalling.[9]

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women who advocate these values around the world, including the Islamic world, because we have a greater objective than eliminating threats and containing resentment. We seek a just and peaceful world.")

[6] See, e.g., Remarks by President Reagan, Dec. 10, 1985 ("Respect for human rights is essential to true peace on Earth. Governments that must answer to their peoples do not launch wars of aggression. That's why the American people cannot close their eyes to abuses of human rights and injustice, whether they occur among friend or adversary or even on our own shores."); Remarks by President Clinton, Dec. 9, 1997 ("As long as America is determined to stand for human rights, then free people all around the world will choose to stand with America."); Remarks by President Obama, Dec. 10, 2009 ("peace is unstable where citizens are denied the right to speak freely or worship as they please; choose their own leaders or assemble without fear… No matter how callously defined, neither America's interests – nor the world's – are served by the denial of human aspirations."); Remarks by President Biden, Oct. 15, 2021 ("Demonstrating that our commitment to human rights begins at home is among the most powerful and persuasive tools in our foreign policy kit.").

[7] See, e.g., Remarks by President Reagan, Dec. 10, 1984 ("The American people recognize that it is the denial of human rights, not their advocacy, that is a source of world tension."); Remarks by President Reagan, Nov. 21, 1985 ("We Americans believe that history teaches no clearer lesson than this: Those countries which respect the rights of their own people tend, inevitably, to respect the rights of their neighbors. Human rights, therefore, is not an abstract moral issue; it is a peace issue."); Remarks by President Obama, May 28, 2014 ("America's support for democracy and human rights goes beyond idealism – it is a matter of national security… Respect for human rights is an antidote to instability and the grievances that fuel violence and terror.").

[8] Again, the foreign policy *conduct* of many administrations has fallen far short of public commitments on human rights, including through highly selective criticism of violations and a willingness to turn a blind eye toward human rights abuses by U.S. partners. But rhetorical commitment by Presidents and Secretaries of State throughout modern history demonstrates the continuing importance of the principle to U.S. national and foreign policy interests.

[9] See, e.g., Remarks by Secretary Blinken, Mar. 30, 2021 ("We will bring to bear all the tools of our diplomacy to defend human rights and hold accountable perpetrators of abuse… Standing up for human rights everywhere is in America's interests… Standing for people's freedom and dignity honors America's most sacred values."); Remarks by Secretary Pompeo, Mar. 13, 2019 ("our committed defense of human rights stems from America's founding principles."); Written Statement by Secretary Tillerson, Mar. 6, 2017 ("Promoting human rights and democratic governance is a core element of U.S. foreign policy… Our values are our interests when it comes to human rights."); Remarks by Secretary Kerry, Apr. 19, 2013 ("promoting human rights isn't a foreign policy priority simply because it's the right thing to do. It's tied to our own security. It's tied to the possibilities of prosperity and of nations living by rule of law and of nations living in peace… Because part of the American spirit is the fierce belief in the dignity and potential of every single person, part of American leadership is speaking out for

Targeting Dissent as a Tool of Autocracies and Other Undemocratic Governments

11. Among my duties as Deputy Assistant Secretary of State for Democracy, Human Rights, and Labor, I daily monitored and assessed human rights conditions across the Middle East and North Africa, as well as human rights issues relating to the provision of U.S. security assistance worldwide. This included reviewing diplomatic, intelligence, media, and NGO reporting; meeting and speaking directly with human rights defenders, journalists, civil society

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people who can't speak for themselves. It's also standing up for those who fight for their own rights – as I said, sometimes in the most desolate places, without support. It is our effort to stand up for the universal rights of all people."); Remarks by Secretary Clinton, Apr. 8, 2011 ("Here at the State Department, human rights is a priority 365 days a year… because it actually is in line with our values, our interests, and our security."); Remarks by Secretary Rice, Mar. 8, 2006 ("Our promotion of human rights and democracy is in keeping with America's most cherished principles and it helps to lay the foundation for lasting peace in the world."); Remarks by Secretary Powell, Mar. 4, 2002 ("the American people are united in the conviction that active support for human rights must be an integral part of American foreign policy. The United States will be a steadfast friend to men and women around the world who bravely seek to improve the observance of international human rights standards within their own countries and worldwide."); Remarks by Secretary Albright, Dec. 6, 2000 ("Respect for human rights belongs within the heart of American foreign policy… That is where it ought to stay for many years to come."); Remarks by Secretary Christopher, Dec. 10, 1996 ("We have to be vigilant in defending human rights and political freedom"); Remarks by former Secretary Baker, Apr. 10, 2011 ("I think we need to be clear that we're going to always support our principles and values, that is the promotion of democracy and the protection of human rights, politically, diplomatically and economically"); Remarks by Secretary Schultz, Feb. 22, 1984 ("moral values and a commitment to human dignity have been not an appendage to our foreign policy but an essential part of it, and a powerful impulse driving it. These values are the very bonds that unite us with our closest allies, and they are the very issues that divide us from our adversaries… It is the difference between tyranny and freedom – an age-old struggle in which the United States never could, and cannot today, remain neutral."); Remarks by Secretary Haig, May 15, 1981 ("Let me deal first with the question of whether a concern for human rights is compatible with the pursuit of America's national interest. My answer to this is a resounding 'yes.' The supreme American national interest is simple and compelling: we want a world hospitable to our society and our common ideals. As a practical matter, our national interest requires us to resist those who would extinguish those ideals and are hostile to our common aspirations… Human rights are not only compatible with our national interest, they are an integral element of the American approach – at home and abroad."); Remarks by Secretary Muskie, Aug. 7, 1980 ("There are those who suggest that the freedom of other people is none of our business, that with enough military hardware our freedom can be secure while the freedom of others is stifled, that our purpose in the world is to preserve the status quo. I say, and I believe you say, that is an invitation to trouble. It is a narrow vision of ourselves and of the world… If we do not promote freedom in the world, there will be less freedom in the future for Americans."); Remarks by Secretary Vance, Apr. 30, 1977 ("Our concern for human rights is built upon ancient values. It looks with hope to a world in which liberty is not just a great cause, but the common condition. In the past, it may have seemed sufficient to put our name to international documents that spoke loftily of human rights. That is not enough. We will go to work, alongside other people and governments, to protect and enhance the dignity of the individual."); Remarks by former Secretary Rusk, ca. 1985 ("I know that there are countries in which human rights are in a better position because of the continuous and steady influence of the United States… a number of places where human rights matters were taken more seriously because of us. I would hope that we would continue to work at it that way."); Remarks by Secretary Marshall, Sep. 23, 1948 ("Not only is it appropriate that we should here reaffirm our respect for the human rights and fundamental freedoms, but that we should renew our determination to develop and protect those rights and freedoms… Systematic and deliberate denials of basic human rights lie at the root of most of our troubles… It is not only fundamentally wrong that millions of men and women live in daily terror of secret police, subject to seizure, imprisonment or forced labor without just cause and without fair trial, but these wrongs have repercussions in the community of nations. Governments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people, and are likely to seek their objectives by coercion and force in the international field."); cf. Statement by then-Senator Rubio, Mar. 31, 2021 ("As Americans who are blessed to live in this great country, we have a moral obligation and a strong national security interest to defend and promote the fundamental rights of all people.").

activists, and foreign government officials; and collaborating with experts across the State Department, the broader U.S. Government, and nongovernmental organizations in the United States. Beyond this daily human rights diplomacy and analysis, I also supervised the compilation of the Department of State's annual Human Rights Reports for countries across the Middle East and North Africa covering calendar years 2020 through 2023.

12. Under international human rights law, all persons are entitled to the right to freedom of expression[10] and the right to freedom of peaceful assembly,[11] and are entitled to be free from arbitrary detention.[12] For detention to be considered "arbitrary" under international law, it must not be unlawful under domestic law, and also must not be unjust, unpredictable, or disproportionate to a legitimate state interest pursued by the government.[13] Over the decades since the UDHR and ICCPR were adopted, judicial and scholarly interpretations of the interplay between these rights has established that when an individual is deprived of liberty in response to their exercise of fundamental rights like freedom of expression, that detention is by definition "arbitrary."[14] International jurists have clarified further that any government restrictions on the fundamental rights to freedom of expression or freedom of peaceful assembly not only must be in pursuit of a legitimate state interest (vice designed merely to quash the exercise of those

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[10] See UDHR, art. 19 ("Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."); ICCPR, art. 19(1)-(2) ("Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.").

[11] See UDHR, art. 20(1) ("Everyone has the right to freedom of peaceful assembly and association."); ICCPR, art. 21 ("The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.").

[12] See UDHR, art. 9 ("No one shall be subjected to arbitrary arrest, detention or exile."); ICCPR, art. 9(1) ("Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.").

[13] See UN Human Rights Committee, General Comment 35, Dec. 16, 2014, para. 12 ("An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of 'arbitrariness' is not to be equated with 'against the law,' but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.").

[14] See, e.g., UN Human Rights Committee, General Comment 35, para. 17 ("Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the [ICCPR] is arbitrary, including freedom of opinion and expression, freedom of assembly, freedom of association, freedom of religion and the right to privacy.") (internal citations omitted); UN Working Group on Arbitrary Detention, Op. No. 2022/24 (Belarus), May 25, 2022 (finding the politically-motivated detention of an opposition lawyer was "arbitrary" as it was "quite clear to the Working Group that the basis for the arrest and subsequent detention of Mr. Znak was in fact his exercise of freedom of expression and freedom of assembly as well as the right to take part in public affairs of Belarus. There is no evidence whatsoever that any of his actions have been violent, that he incited violence or that his actions have indeed led to violence perpetrated by others."); UN Working Group on Arbitrary Detention, Op. No. 2020/86 (Saudi Arabia) (finding the detention of a Shi'a cleric in response to his criticism of sectarian violence and sectarian discrimination to be "arbitrary" given his detention "resulted from the active exercise of civil and political rights").

rights), but also must be undertaken in the manner that is least intrusive to the exercise of those fundamental rights.[15]

13. Arbitrary detention is a silent weapon of modern autocracy. Undemocratic governments the world over employ arbitrary detention to suppress dissent, entrench power, and stifle protest movements, attempting to stem public outcry and prevent the legitimate public criticism, protest, and debate that is essential to functional democracy. By targeting dissent and other critical speech through arbitrary detention, undemocratic regimes seek to sever the lifeblood of protest movements, including the ability of individuals and groups to communicate, organize, and express political will, aiming to incapacitate political critics and to infect society with fear and intimidation. Particularly when employed against individuals criticizing government policy, arbitrary detention seeks to punish the very acts (e.g., protests or speech aimed at raising public awareness) that otherwise could enable legal or political accountability for the disfavored policy. Frequently used selectively to publicly target high-profile protestors, arbitrary detention is a tool of repression calculated to inspire fear in individuals, communities, and movements who disagree with government policies, sending the chilling message that the mere exercise of fundamental freedoms of expression or assembly could lead to detention, imprisonment, deportation, or disappearance.

14. Within the region on which I worked most closely during my most recent service at the Department of State, such abuses are sadly commonplace. In Egypt, the el-Sisi government has arrested and detained many thousands of human rights defenders, journalists, activists, opposition politicians, and even ordinary citizens, abusing vaguely-worded laws to detain or imprison for years individuals whose only "offense" was criticism of government policies. The Iranian regime has arrested and tortured thousands of protesters and dissenters, especially during and after the 2022 protests sparked by Mahsa Zhina Amini's death in custody, citing vague national security charges and consistently depriving defendants of due process as punishment for protests demanding simply respect for basic human rights. In Saudi Arabia, women who have demanded equal treatment under law and ordinary citizens who have criticized the autocratic behavior of Crown Prince Mohammed bin Salman have found themselves sentenced to lengthy prison sentences after closed trials by state security courts; some were convicted after being pressured to repatriate or extradited from other countries on charges related to critical speech, while others like Washington Post columnist (and U.S. Legal Permanent Resident) Jamal Khashoggi have faced fates far worse than arbitrary detention, including torture and extrajudicial execution at the hands of the government. In the United Arab Emirates, authorities have imprisoned activists, lawyers, and students, holding many of them incommunicado for long periods of time simply for forming an independent advocacy group that publicly recommended changes to government policy, even going so far as to re-convict and re-sentence many of them on the same charges years later to ensure their continued detention.

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[15] See, e.g., UN Human Rights Committee, General Comment 34, Jul. 29, 2011, para. 23 (government restrictions on the exercise of freedom of expression "may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with [ICCPR] article 19.").

15. There are myriad further examples of governments in other parts of the world as well that utilize arbitrary detention to target the expression of critical or dissenting speech. The Chinese government has institutionalized arbitrary detention as a tool of ideological control and political repression, systematically targeting lawyers, journalists, and civil society activists under vague statutes that criminalize "picking quarrels and provoking trouble," and detaining or disappearing rights advocates and government critics; its massive incarceration of more than a million Uyghurs and other ethnic minorities in "re-education camps" in Xinjiang aims to silence not only individual critics, but entire communities. Russia under Putin has aggressively used arbitrary detention to extinguish political opposition, control public narratives, and prevent widespread protest; beyond the poisoning and imprisonment of iconic human rights defender Alexei Navalny (who later died in a Siberian gulag), the Russian government has preemptively detained thousands of demonstrators nationwide ahead of planned protests using broad laws banning "unauthorized" gatherings and legislation criminalizing public statements that "discredit" the Russian military. The Lukashenko regime in Belarus used mass arbitrary arrests to quash 2020 pro-democracy protests, sentencing and imprisoning opposition leaders through closed-door trials that came nowhere near international standards for fairness. In Maduro's Venezuela, authorities routinely have detained activists, opposition politicians, and even government employees and health workers, for criticizing government maladministration, relying on a controversial and vague law criminalizing acts that "incite hatred." Cuba's one-party state has long used speech-related detention to maintain political control, including in response to protests demanding adequate food and medicine, relying on vague criminal laws covering contempt and public disorder to punish and suppress criticism of government policies and government shortcomings.

16. Details of the practice of arbitrary detention have been well documented historically in the annual Human Rights Report by the Department of State; sadly, even more examples abound in countries beyond those noted above.[16]

17. The use of arbitrary detention by governments to suppress criticism and speech is particularly potent in extinguishing fundamental human rights when a country's judiciary lacks independence, or where the judiciary is overly influenced by the executive. In these instances, judges perform little to no independent fact-finding to test the government's assertions that an individual has committed a criminal act, or they fail to appropriately tailor the government's overbroad interpretations of laws and thus allow the criminalization of speech or conduct constituting the exercise of universal human rights. In each of the countries noted above as well as numerous others, judges effectively operate as arms or subsidiaries of the executive, lacking the independence from the government needed for them to preserve the rule of law and respect for fundamental freedoms. Some, like Saudi Arabia's Specialized Criminal Court or Egypt's terrorism courts and state security emergency courts, have been reported to all-but-explicitly take direction from government officials. Others, like courts in Egypt, the UAE, or Iran, regularly have convicted protestors and dissidents on vague charges like "spreading false news" or "inciting hatred" in response to critical speech. Still others, like Qatar, have deported immigrants who held legal status after they peacefully protested mistreatment, in a clear effort to

[16] For recent examples, see generally Department of State, 2023 Country Reports on Human Rights Practices; Department of State, 2022 Country Reports on Human Rights Practices; Department of State, 2021 Country Reports on Human Rights Practices; Department of State, 2020 Country Reports on Human Rights Practices.

silence criticism by demonstrating protestors' vulnerability as noncitizens. In these and other countries, courts have based convictions of government critics on unreliable evidence, including coerced confessions and biased media or other sources. The lack of judicial independence and the inability or unwillingness by judges to stand up against governments targeting critics and dissidents potently multiplies the harm and risk of arbitrary detention.

18. Both globally and in the United States, the protection of speech and especially of the expression of dissent or criticism of government policy remains essential for the health of a country's democracy. From its founding through to the present, the United States has uniquely emphasized the paramount value that free expression has for the very concept of America, and has infused that commitment and principle into U.S. foreign policy. In my service at the Department of State, this primacy of free expression regularly invited tensions with counterparts from undemocratic governments, who argued it was better to emphasize societal cohesion or the preferences of the government or a popular majority (actual or simply imagined by a leader unbound by fair elections) over the rights of an individual to express criticism or dissent toward government policy. Even some of America's closest allies and partners in Europe, themselves robust democracies with admirable human rights records, advanced slightly more restrictive definitions of the right to free expression than the United States, in part given their histories with inciteful hate speech leading to catastrophic violence. No matter the interlocutor, I communicated to foreign counterparts, just as countless U.S. diplomats for decades have done, that not only does protecting critical or dissenting speech reinforce universal human rights; doing so also *enhanced* societal stability, by permitting grievances to be aired peacefully, and promoted more effective governance and policy by allowing feedback from civil society as well as legal and political accountability where government policies or programs fall short of their goals or of public desires, or where government policies or programs were marred by corruption or mismanagement.

19. The dangers of abandoning protections for dissenting or critical speech can be seen in the present and the past in societies across the Middle East and North Africa and elsewhere around the world. When a government is allowed to decide which speech it will tolerate and which speech it will not, the result throughout history has been a broadening crackdown that puts any government critic – citizen and noncitizen alike – squarely in the crosshairs of state repression. As noted above, critics or dissidents in countries with undemocratic governments unchecked by the rule of law or by independent judicial bulwarks regularly face grim fates, ranging from arbitrary detention to torture to disappearance and extrajudicial execution. Their societies suffer similar decay. The instability inherent in a system where dissent is met with detention or violence regularly leads to increased criticism and protest of that intolerance and abuse, which the government usually meets with further suppression of freedoms. Historically, this downward spiral that begins with government intolerance of critical or dissenting expression typically continues toward one of two outcomes: either a population crumbles under government repression, accepting official censorship and even self-censoring to avoid punishment, or a society decides it is unwilling to live without the ability of individuals to freely express themselves without fear of reprisal, and seeks to replace wholesale a repressive government with one that better respects their human rights.

20. During my service as Deputy Assistant Secretary in the Bureau of Democracy, Human Rights, and Labor at the Department of State, I observed firsthand how one of the most important tools of American diplomatic influence and power was the resilience and strength of our democratic values, including the importance of protecting human rights both at home and abroad, especially for individuals expressing criticism or dissent from government actions. In my official travels to the Middle East and North Africa, I met with numerous human rights defenders, journalists, activists, opposition politicians, academics, and business leaders, each keen to highlight threats to human rights or rule of law they and others faced in their country, and each eager to learn about and recommend avenues that the United States could follow to support progress and greater respect for human rights. I never approached these conversations, or those with foreign government officials with whom I raised concerns over their human rights practices, by presenting the United States as having achieved perfection or anything approaching it when it came to our own human rights record. Rather, I reflected with pride upon the constitutional and statutory guarantees the United States had enacted to protect human rights at home; reflected with humility on the yawning gaps between the promises of those guarantees and their actual implementation over American history, especially for Americans from marginalized populations; and reflected with commitment on the ongoing efforts by the U.S. Government to work to further close that gap.

21. My interlocutors in civil society, each of them fighting for progress on human rights issues in their own country, understood as I do that the struggle to protect human rights is not just generational, but likely unending. Yet the brave human rights defenders with whom I met (sometimes amid visible surveillance by their government) also recognized the deep contribution to global progress on human rights that came not only from concrete improvements on these issues in the United States (halting and uneven as those have been), but also from America's consistent and continued rhetorical and philosophical commitment to human rights as a core element of our foreign policy and of our approach to governments around the world. I was repeatedly told that the continued attention of the U.S. Government to human rights conditions in their countries was a powerful tool to prevent or mitigate abuses, and that the bathing of America's historical founding in the language of human rights gave the United States unique standing on the issue. When asked on a trip to Egypt in mid-November 2024 whether that fundamental American commitment and precept would disappear with the re-election of President Trump, I urged Egyptian human rights advocates to recall the strength of American institutions – including the judiciary, legislature, and rule of law – as checks against an executive that might try to abandon the bipartisan history of U.S. commitment to human rights.

22. Just a few short months after that confident exhortation about the strength of American institutions, Mr. Khalil's case has obtained world-wide notoriety, as have the cases of other student protestors in the United States whom the government has arrested and detained pursuant to Determinations by Secretary Rubio that their free expression and other speech activities supposedly undermine the foreign policy interests of the United States. Amid a yearslong trend of democratic backsliding worldwide, the clear commitment of the United States to universal human rights – especially the right to free expression and the ability to peacefully dissent and criticize government policy without reprisal – is needed more than ever. Should the U.S. Government be permitted to claim that suppressing the ability of individuals in the United States to exercise universal human rights enshrined in the U.S. Constitution, that precedent will

diminish the capability of the United States to execute the longstanding bipartisan foreign policy objective of standing up for human rights and democracy worldwide, an objective that has been pursued (unevenly, admittedly) across administrations of both parties for decades. Moreover, allowing the Federal government to carry out reprisals against individuals as a response to dissent, protest, or critical speech that the current administration dislikes would strike a serious blow against the health and stability of American democracy; would deal serious damage to U.S. credibility worldwide on human rights issues; and would make every person in the United States – noncitizens and citizens alike – far less safe and far less free.[17]

Christopher J. Le Mon

Sworn on this 4th day of
June, 2025

[17] See, e.g., Letter from George Washington to Officers of the Army, Mar. 15, 1783 ("For if Men are to be precluded from offering their sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of Mankind; reason is of no use to us – the freedom of Speech may be taken away – and, dumb & silent we may be led, like sheep, to the Slaughter.").

Exhibit P

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF KERRY E. DOYLE

DECLARATION OF KERRY E. DOYLE

I, KERRY E. DOYLE, hereby declare and state:

1. The facts set forth in this declaration are based on my personal knowledge, unless otherwise indicated, and, if called as a witness, I could and would testify thereto. I am over eighteen years of age and of sound mind to declare to the facts stated herein.

2. I am currently Of Counsel with Green and Spiegel, LLC, which is an immigration firm based in Philadelphia, Pennsylvania. I graduated *cum laude* from American University, Washington College of Law with a J.D. and The George Washington University with a B.A. in Political Science. I am a member of the Commonwealth of Massachusetts Bar, the Supreme Court Bar and the bars of Several Federal Courts of Appeals and U.S. District Courts.

3. I served as Principal Legal Advisor (PLA), for Immigration Customs Enforcement

(ICE) from September 2021 through September 2024. In that role, I oversaw the more than 1,500 attorneys and staff who work for the Office of the Principal Legal Advisor (OPLA) across the country. As PLA, I was responsible for establishing the direction and priorities of our office in alignment with the Office of General Counsel (OGC), ICE, and DHS leadership. During that time, I also served on detail as Acting Deputy General Counsel, Office of General Counsel (OGC), Department of Homeland Security (DHS) from February 2024 through May 2024 and as Deputy General Counsel from October 2024 through December 2024. I was appointed as an Immigration Judge and served in that position from December 2024 through mid-February 2025.

4. In private practice, I have represented many hundreds of noncitizens in removal proceedings. I am a recognized expert in complex immigration issues, including immigration court removal proceedings. I have been a frequent speaker at immigration conferences and national lawyer trainings, including recurring trainings co-hosted by the Boston Immigration Court (part of the Executive Office for Immigration Review (EOIR)) and the New England chapter of AILA, with a specific focus on training pro-bono attorneys volunteering to represent noncitizens in immigration bond hearings. I have been recognized as an expert witness on immigration law topics before both state and federal courts. In light of my expertise, while in private practice, I was selected by the Immigration Court to represent detained individuals who have been deemed incompetent through the National Qualified Representative Program. In the past, I worked closely with the Massachusetts Immigrant and Refugee Advocacy Coalition and the Massachusetts Law Reform Institute providing technical assistance and public testimony on various immigration-related policy issues before the state legislature and the Boston City Council. More recently, I have testified before the Federal Law Enforcement subcommittee of the Government Oversight Committee in the U.S. House of Representatives.

5. I am providing this declaration in my personal capacity. The opinions herein should

not be construed to represent the position of DHS or any components therein, the Department of Justice, or Green and Spiegel, LLC. Moreover, while the views I express herein are generally based on my over twenty-five years of immigration law practice, including extensive experience in both private practice and government service, no part of this declaration includes, references, reflects, draws upon, confirms, or denies privileged, confidential, deliberative, sensitive, or classified information.

6. I have reviewed Mahmoud Khalil's Third Amended Petition for Writ of Habeas Corpus and Complaint, ECF 236 ("Petition"). While I do not represent Mr. Khalil and I have no first-hand knowledge of the facts from this case, I understand from the Petition that Mr. Khalil is confined at the Central Louisiana ICE Detention Facility in Jena, Louisiana. I also understand from the Petition that Mr. Khalil has never been convicted of a crime nor arrested (prior to his apprehension by ICE on March 8, 2025).

7. Mr. Khalil's overnight transfer to Louisiana is highly unusual.

8. Indeed, it is extraordinarily rare for DHS to transfer someone, overnight, from one part of the country, such as New York or New England, all the way to Louisiana. This is particularly true where that person's family and attorneys are in the greater New Jersey area. Historically, a noncitizen is most likely to remain in the general geographic area where they are living before being detained, barring an extremely unusual situation. I cannot recall a situation in which something similar happened to one of my clients in my twenty-five plus years of private practice.

9. I cannot recall the U.S. government detaining a lawful permanent resident of the United States with no prior criminal involvement or arrests and then placing that person in removal proceedings charging primarily 8 U.S.C. 1227(a)(4)(C), based even in part on that person's constitutionally protected political speech in the United States. This case is the first such instance

of which I have become aware of this occurring.

10. In fact, I do not recall the U.S. government ever citing 8 U.S.C. 1227(a)(4)(C) as a ground of removability in any removal case not involving a current or former foreign government official. This case is the first such instance of which I have become aware.

11. I understand from the Petition that senior U.S. government officials made statements after Mr. Khalil's apprehension, explicitly referencing his detention to send a message to others that they, too, should fear arrest. If that allegation in the Petition is accurate, it would also be extraordinary in my view.

12. I believe that there is a strong governmental and public interest in protecting noncitizens from retaliation through immigration enforcement because freedom of speech is a bedrock of democratic governance and the rule of law.

13. This holds particularly true in the immigration context, where the U.S. government has limited enforcement resources and must exercise wide prosecutorial discretion in a fair and legitimate manner. Even the appearance of retaliation as the main motive for an enforcement action risks undermining the rule of law.

14. DHS guidance has publicly reiterated the agency's commitment to honoring noncitizens' First Amendment rights and avoiding enforcement against a noncitizen solely based on First Amendment protected activity. This includes then-Acting Secretary of Homeland Security Kevin K. McAleenan's May 17, 2019 guidance titled "Information Regarding First Amendment Protected Activities" and then-Secretary of Homeland Security Alejandro N. Mayorkas's September 30, 2021 guidance titled "Guidelines for the Enforcement of Civil Immigration Law."

15. Targeting a noncitizen for apprehension, detention, and removal based solely on that noncitizen's speech would be contrary to these principles and I believe would risk undermining the perceived legitimacy of immigration enforcement.

16. It is also unusual that DHS added a second charge of removability alleging misrepresentations in Mr. Khalil's immigration applications in the absence of any pending immigration application triggering review, and only after he was apprehended and filed a habeas corpus petition.

17. Moreover, in light of the fact that the new charges appear challenging for the government to prove, this development highlights the government's concern that the original charge for removal may not be proven and that they are eager to have Mr. Khalil removed at any cost. The arrest, detention and aggressive posture of the government in this case, evidenced by the amended charges, will, in my view, chill the free speech rights of citizens and noncitizens.

18. Lawful permanent residents of the United States are not typically placed in removal proceedings, and certainly not detained, based solely on the types of allegedly missing information described in the second charge (as detailed in the Petition). That such a charge was added creates an even broader fear among noncitizens. While not all noncitizens who have engaged in political speech may have Mr. Khalil's public profile, most have submitted various immigration applications to DHS and probably now fear that their applications will become a pretext for targeting.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: June 4, 2025

/s/ Kerry E. Doyle

KERRY E. DOYLE

Exhibit Q

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Mahmoud KHALIL,

Petitioner,

v.

Donald J. TRUMP, in his official capacity as President of the United States; William P. JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Yolanda PITTMAN, in her official capacity as Warden of Elizabeth Contract Detention Facility; Caleb VITELLO, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; Marco RUBIO, in his official capacity as Secretary of State; and Pamela BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

Case No. 25-cv-01963 (MEF-MAH)

DECLARATION OF [redacted]

I, [redacted], declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge.

1. I am a licensed psychologist with expertise in cultural psychology, trauma and minority mental health. I submit this declaration in support of Mahmoud Khalil's motion for a preliminary injunction. In particular, I seek to offer evidence regarding a question I understand is under the Court's review: whether the invocation of the determination of Secretary of State Rubio that Mr. Khalil should be arrested, detained and removed from this country because of allegations that his advocacy for Palestinian human rights would cause Mr. Khalil "irreparable harm." Based on my experience and a review of relevant clinical literature, I conclude that it would be reasonable to presume Mr. Khalil would likely experience "irreparable harm."

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2. As I detail below, even within a broader context of rising Islamophobia and anti-Arab and anti-Palestinian sentiment and discrimination in this country, the recent and dramatic escalation of charges that activism for Palestinian human rights is somehow (and falsely) the equivalent of antisemitism is itself a reflection of Islamophobia and anti-Palestinian bias. Particularly when lodged against already marginalized Arabs and Palestinians in this country, such a conflation ultimately depends on the problematic stereotyping of Palestinians and Arabs, who are deemed incapable of invoking universalist calls for justice and the vocabulary of international human rights without also coming from a place of violence or hatred.

3. Mr. Khalil, a prominent and well-respected leader in the Palestinian human rights movement in this country has been derided – at the highest levels of the United States government – and without evidence or substantiation as a dangerous "anti-semite" and someone who is a supporter of Hamas. Essentializing his activism as a form of antisemitic hatred or terrorism suggests that Islamophobia and anti-Palestinian animus is operating at the highest levels of government and accordingly being disseminated via his high-profile case, across the country and the world.

4. The social science literature predicts – and amply supports – that such forms of Islamophobia and anti-Palestinian bias, could result in stigmatic harms, injury to identity and other forms of psychological pain that are not, the literature suggests, easily remediated.

BACKGROUND AND QUALIFICATIONS

5. As an [redacted], and with the majority of my research over the last decade has focused on the experiences of Arab, Middle Eastern, and North African (MENA) Americans with special attention to discrimination, racial trauma, psychological well-being, and ethnic identity development, I am qualified to offer my expert opinion on the way in which Mr. Khalil has been targeted by the administration would produce distinctive harms to a Muslim, Palestinian like Mr. Khalil.

6. I received my Ph.D. [redacted]

7. Additionally, I have published numerous first-author manuscripts in high-impact peer-reviewed psychology journals, [redacted] including studies focused on resilience among trauma-exposed Syrian refugees, perceived discrimination among

Arab Americans, and more recently, the intergenerational transmission of trauma among Arab/MENA families in the U.S.

CHARGES OF ANTI SEMITISM

8. Given the prominence of Mr. Khalil's case in the media, as well as wide reporting about other similarly situated students who have been apprehended and detained by ICE and subject to deportation pursuant to the Secretary of State's Determination, I have an understanding of the basic facts surrounding Mr. Khalil's case. As I understand the facts of this case, Mr. Khalil, a Syrian national of Palestinian ancestry, was a graduate student pursuing a degree at Columbia University. On campus, he became a prominent advocate and spokesperson for Palestinian human rights, and a strong critic of Israel's military campaign in Gaza and the support he believed the United States government and Columbia University itself provided to Israel's military campaign, which international courts of law and international human rights organizations have determined is an ongoing genocide.

9. I understand that the legal authority claimed to arrest and detain and deport Mr. Khalil is Secretary of State Rubio's Determination, that "the activities and presence" of Mr. Khalil in the United States "would have potentially serious adverse policy consequences," which the Secretary based on a conclusion that the protests Mr. Khalil were engaged in were "antisemitic" and "disruptive" such that his continued presence would "undermine U.S. policy to combat anti-Semitism around the world and in the United States, in addition to efforts to protect Jewish students from harassment and violence in the United States." Mr. Khalil is not accused of committing any crime, causing any acts of violence or posing any physical danger or harm to anyone. Instead, the entirety of his detention and attempted deportation rests on a claim that his Palestinian human rights activism is "anti-semitic."

10. Even more, he has been smeared as a supporter of terrorism at the highest levels of the United States government. President Trump described Mr. Mahmoud Khalil as a "Radical Foreign Pro-Hamas Student on the campus of Columbia University" (Second Amended Complaint, ¶73), the official page of the administration accused Mr. Khalil of "[leading] activities aligned to Hamas" (SAC ¶74), and Press Secretary Karoline Leavitt accused Mr. Khalil of "siding with terrorists"(SAC ¶79) when responding to questions about his arrest. Additionally, on March 9, 2025, the White House posted on X/Twitter a mocking and threatening post that centered Mr. Khalil's photograph with "Shalom Mahmoud" and the White House logo just below Mr. Khalil's face. The text of the tweet

stated, "We will find, apprehend, and deport these terrorist sympathizers from our country — never to return again."[1] (SAC ¶8).

11. Additionally, the current administration has accused Mr. Khalil of espousing antisemitic views, with Secretary of State Marco Rubio noting during a press conference "if you tell us that you are in favor of a group like this [Hamas], and if you tell us . . . I intend to come to your country as a student, and rile up all kinds of anti-Jewish . . . anti-Semitic activities," and "if you end up having a green card . . . we're going to kick you out" (SAC ¶80).
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12. News outlets have engaged in similar negative portrayals, with one FOX news segment describing Mr. Khalil as a head of an organization that harasses, attempts to intimidate, and doxes Jewish and non-Jewish staff & students - describing Mr. Khalil specifically as a "wolf that is trying to dress up as a sheep"[2], and other news segments portraying Mr. Khalil as a pro-Hamas sympathizer and a violent actor.[3]

13. Accordingly, Mr. Khalil's activism and his cries for justice and safety of his people, as well as his invocation of international human rights laws to support his position that the gravest human rights violations are occurring in Gaza and throughout Palestine have been erased, in favor of a flattened, caricatured assertion that such views have no merit on their own terms, but are rather anti-Semitic and aligned with terrorism.

14. This erasure of Mr. Khalil's actual arguments – rooted as they appear to be in claims of justice and law – in favor of these well-worn tropes themselves reflect Islamophobia and anti-Palestinian bias insofar as they lean on a presumption that Arab-initiated calls for justice can only come from a place of hatred or sympathy for violence and terrorism.

15. Mr. Khalil, thus, has been broadly publicly pilloried and silenced – indeed arrested, detained and possibly deported – through these well-worn anti-Palestinian and

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[1]The White House [@WhiteHouse]. (2025, March 9). X. https://x.com/WhiteHouse/status/1899155922842161597.

[2] Fox and Friends (April, 2025). *Columbia professor rips activist Mahmoud Khalil for 'lying to American public'* [Video]. Fox News. https://www.foxnews.com/video/6371173098112.

[3] Azerrad, E. (2025, March 13). *Deporting Hamas Supporters Like Mahmoud Khalil Is Perfectly Legal.* City Journal. https://www.city-journal.org/article/columbia-student-mahmoud-khalil-hamas-deport-legal; I24 News (April, 2025). *U.S. immigration judge rules pro-Hamas Columbia activist Mahmoud Khalil can be deported* [Video]. https://www.i24news.tv/en/news/international/americas/artc-u-s-immigration-judge-rules-pro-hamas-columbia-activist-mahmoud-khalil-can-be-deported.

Islamophobic tropes.

CLINICAL LITERATURE DOCUMENTING HARMS OF ANTI-ARAB/ANTI-PALESTINIAN BIAS AND ISLAMOPHOBIA

16. My review of the clinical literature on the effects of Islamophobia and anti-Arab/Palestinian bias and targeting suggests a consistent correlation with targeting of these populations and serious social and psychological harm. That literature would suggest that Mr. Khalil – arguably the biggest and most severely criticized Palestinian individual targeted in this country, is feeling the predictive negative consequences from his targeting.

Methodology

17. A systematic search was conducted using databases such as PsyINFO, PubMed, and Google Scholar to identify relevant literature on the topics of anti-Arab prejudice, anti-Palestinian racism, and Islamophobia. Keywords included "Arab American," "discrimination," "anti-Palestinian racism," "Islamophobia," "trauma," "mental health", and "psychological distress". Only peer-reviewed articles, published books, and official reports were included.

18. A cursory search examining the impact of public misrepresentation and humiliation was also conducted, with focus on relevant empirical literature on the mental health consequences of these experiences.

Summary of Findings

19. The negative image of Arabs has been manipulated in various political contexts, historically speaking, and is being used and amplified today in the rhetoric surrounding figures like Mr. Mahmoud Khalil. In his activism for Palestine on the campus of Columbia University, rather than being recognized as a peace maker and diplomat, Mr. Khalil has been repeatedly branded in the media and by the highest-level officials of the U.S. government as antisemitic and in support of terrorists, reinforcing the patterns identified in the literature. This harmful stereotyping has built upon by authoritarian ideologies – a social science term detailed **post** – that are awakened in times around incidents perceived as terrorist attacks, and during the 2016 U.S. Presidential Election where Donald Trump's rhetoric echoed these authoritarian sentiments,[4] particularly when considering his policies targeting Arab

[4] Choma, B. L., & Hanoch, Y. (2017). Cognitive ability and authoritarianism: Understanding support

and Muslim populations.

20. Researchers have identified right-wing authoritarianism[5] ("RWA")[6] and social dominance orientation[7] ("SDO")[8] as reasons for the rise in anti-Arab prejudice, upon which the administration's latest actions rest. Increases in prejudice towards Arabs has been observed in individuals who were more conservative and reactionary following news of Islamic terrorist attacks[9] and greater implicit and explicit anti-Arab sentiments were also observed in those with higher RWA, particularly authoritarian aggression.[10] In one investigation, the authors urge that "it is important for political leaders to avoid aggressive language when referring to Arab countries or persons. By utilizing such aggressive language, political leaders could unintentionally increase aggressive ideologies held specifically toward Arabs, including Arab Americans".[11]

21. The anti-Arab and anti-Muslim discrimination that Mr. Khalil is currently facing by both political figures and the media could reasonably impact his mental health and wellbeing, based on evidence showing a relationship between experiences of discrimination and depression and anxiety. Additionally, the misrepresentation of Mr. Khalil's character in the media could reasonably contribute to perceived public humiliation, which has been associated with emotional distress, anxiety, depression,

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for Trump and Clinton. Personality and Individual Differences, 106, 287–291. https://doi.org/10.1016/j.paid.2016.10.054.

[5] RWA includes three core concepts: submission to authority, adherence to traditional norms, and aggression toward those seen as nonconforming.

[6] Altemeyer, B. 1981. *Right-wing authoritarianism.* Winnipeg, Canada: University of Manitoba Press.

[7] SDO refers to the tendency of individuals to organize their experience of the world into ingroups and outgroups, where they believe their own ingroup is superior to outgroups.

[8] Pratto, F., Sidanius, J., Stallworth, L.M., &Malle, B. F. (1994). Social dominance orientation: A personality variable predicting social and political attitudes. *Journal of Personality and Social Psychology, 67*, 741–763.

[9] Echebarria-Echabe, Agustin and Emilia Fernandez-Guede. 2006. Effects of terrorism on attitudes and ideological orientation. *European Journal of Social Psychology,* 36(2):259–65.

[10] Awad, G. H., & Hall-Clark, B. N. (2009). Impact of religiosity and right wing authoritarianism on prejudice towards Middle Easterners. *Beliefs and Values: Understanding the Global Implications of Human Nature, 1,* 183–192; Johnson, M. K., Labouff, J. P., Rowatt, W. C., Patock-Peckham, J. A., & Carlisle, R. D. (2012). Facets of right-wing authoritarianism mediate the relationship between religious fundamentalism and attitudes toward Arabs and African Americans. *Journal for the Scientific Study of Religion, 51*, 128 –142. http://dx.doi.org/10.1111/j.1468-5906.2011.01622.x.

[11] Johnson, M. K., Labouff, J. P., Rowatt, W. C., Patock-Peckham, J. A., & Carlisle, R. D. (2012). Facets of right-wing authoritarianism mediate the relationship between religious fundamentalism and attitudes toward Arabs and African Americans. Journal for the Scientific Study of Religion, 51, 128 –142. http://dx.doi.org/10.1111/j.1468-5906.2011.01622.x

posttraumatic stress symptoms, and suicidal thoughts.[12]

22. Accusations of terrorism and alignment with terrorist groups is also common, and has a long history, in anti-Palestinian rhetoric specifically.[13] Suleiman conducted a longitudinal study of American news coverage of the Arab Israeli conflicts across several years (1956, 1967, and 1973) and observed how the negatively stereotyped Arab was weaponized to increase public support for Israel.[14] Stockton found that these negative images of Arabs only worsened after the Arab Israeli war in 1967 and continued in the early 1990's to promote American involvement in the first Persian Gulf War.[15]

23. Unique to anti-Palestinian prejudice, accusations of antisemitism when advocating for Palestinian human rights have been categorized as a form of racial gaslighting experienced by Palestinians.[16] The Arab Canadian Lawyers Association has defined anti-Palestinian racism as a form of racism that "silences, excludes, erases, stereotypes, defames, or dehumanizes Palestinians or their narratives".[17] The Institute for the Understanding of Anti-Palestinian Racism (IUAPR), in consultation with the Arab Canadian Lawyers Association released a report on November 19, 2024, that summarized findings from their national survey investigating anti-Palestinian racism in the U.S. from March through April, 2024 and its impact on both Palestinians and non-Palestinians.[18] The major findings from the report were as follows:

    A. 63.4% of participants reported experiencing "silencing, exclusion, harassment, physical threat of harm, or defamation while advocating for Gaza and/or Palestinian human rights"[19]

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[12] Li, W. W., Heward, C., Merrick, A., Astridge, B., & Leow, T. (2024). Prevalence of experiencing public humiliation and its effects on victims' mental health: A systematic review and meta-analysis. Journal of Pacific Rim Psychology, 18.

[13] Schotten, C. H. (2024). Zionism and the war (s) on terror: extinction phobias, anti-Muslim racism, and critical scholarship. *Critical Studies on Terrorism, 17*(4), 996-1018.

[14] Suleiman, Michael. (1988). *The Arabs in the mind of America.* Brattleboro, Vt.: Amana Books.

[15] Stockton, Ronald. (1994). Ethnic archetypes and the Arab image. In E. McCarus (Ed.), *The development of Arab-American identity* (pp. 119-153). Michigan: The University of Michigan Press.

[16] Abu-Laban, Y., & Bakan, A. B. (2022). Anti-Palestinian racism and racial gaslighting. *The Political Quarterly, 93*(3), 508-516.

[17] Majid D. *"Anti-Palestinian Racism: Naming, Framing, and Manifestations."* Arab Canadian Lawyers Association, April 2022.

[18] Zuberi, A., Zuberi, Z., Saud, L., Rimawi, L., Biskup, T., McMagon, E.L., Valdez, P., & Ghannam, J. (2024). *Anti-Palestinian racism survey additional findings report 2024: Student and educator data.* The Institute for the Understanding of Anti-Palestinian Racism.

[19] Ibid at 4.

B. 82.4% of participants reported "experiencing harm to mental or physical health at least once or twice due to experiencing or witnessing anti-Palestinians racism"[20]

C. When sampling schools and academic institutions, "74% of students and 75% of educators experienced silencing, exclusion, harassment, physical threat or harm, and defamation while advocating for Gaza and/or Palestinian human rights"[21]

D. 60% of students and 61% of educators "were afraid to speak out about what is happening to Palestinians in Gaza or for Palestinian human rights in general"[22]

24. The survey highlights a significant pattern of fear, silencing, and psychological and physical harm among individuals advocating for Palestinian rights, particularly within educational settings,[23] with some arguing that self-censorship is likely related to fears of being accused of antisemitism.[24] Given these consequences and other material consequences (e.g., loss of job opportunities, etc.), avoidance in engaging in discussion about Palestine may lead to feelings of alienation, particularly for those who identify as Palestinian, Arab, or Muslim American. If this is the baseline fear of any Palestinian activist, it is reasonable to assume that Mr. Khalil – a primary target of high-level officials in this administration – feels this particularly acutely.

25. With regards to the consequences of experienced anti-Arab prejudice, there has been a growing body of psychological literature that has examined how anti-Arab discrimination and Islamophobia have impacted the health and well-being of this population. In one study with a predominantly Muslim sample of youth, findings showed that greater exposure to negative media portrayals of Muslims was associated with lower psychological well-being, leading to heightened feelings of exclusion and alienation.[25] In a sample of 279 Arab Americans, experiences of discrimination were related to greater levels of depression and anxiety, after

[20] Ibid.
[21] Ibid.
[22] Ibid at 8.
[23] Telhami, S., Lynch, M., & Langlois, K. (2023, November). *Critical Issues Poll: Middle East Scholar Barometer*. https://criticalissues.umd.edu/.
[24] Fassin, D. (2024). The rhetoric of denial: Contribution to an archive of the debate about mass violence in Gaza. *Journal of Genocide Research*, 1–7.
[25] Dari, T., Saleem, M., Nassar, S., & Abou-Dahech, H. (2024). Ethnic identity, negative media portrayal, and psychological well-being in Arab-American youth: Mediation analysis. *Journal of Multicultural Counseling and Development, 52*(4), 273-284.

accounting for differences related to age, biological sex, and residency status. In this same sample, greater levels of discrimination were also associated with higher likelihood of regarding one's own physical health as fair or poor (instead of good or excellent).[26] In another study exploring the effects of discrimination following September 9/11 attacks in 1016 Arab Americans, findings showed that experiences of overt discrimination towards self or family members (e.g., verbal insults, threatening words, physical attacks related to ethnic identity) and feeling not respected in broader American society were related to greater psychological distress.[27] And finally, in yet another sample of Middle Eastern/Arab American adults, ethnic discrimination was significantly related to greater psychological distress.[28] While a burgeoning area of research, findings provide support for the notion that exposure to anti-Arab and anti-Muslim discrimination is associated with psychological distress.

26. Unique ramifications of experiencing anti-Palestinian racism specifically have seldom been investigated in empirical work. That said, the impact of public misrepresentation and humiliation on mental health has been investigated. Given public accusations against Mr. Khalil of supporting terrorism and espousing antisemitic views, I feel this area of literature is relevant to the case. With regards to public humiliation, in a recent systematic review and meta-analysis of 33 different studies (with a total sample size of over 40,000 individuals), the authors found a significant negative impact of public humiliation on mental health, with studies noting symptoms of anxiety, depression, emotional distress, posttraumatic stress symptoms, and suicidal thoughts.[29] One study in particular found that the negative effects of humiliation on participants were particularly pronounced when individuals felt that values that were more central to their self-concept were attacked and denigrated.[30]

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[26] Kader, F., Bazzi, L., Khoja, L., Hassan, F., & de Leon, C. M. (2020). Perceived discrimination and mental well-being in Arab Americans from southeast Michigan: A cross-sectional study. *Journal of racial and ethnic health disparities, 7*, 436-445.

[27] Padela, A. I., & Heisler, M. (2010). The association of perceived abuse and discrimination after September 11, 2001, with psychological distress, level of happiness, and health status among Arab Americans. *American journal of public health, 100*(2), 284-291.

[28] Ikizler, A. S., & Szymanski, D. M. (2018). Discrimination, religious and cultural factors, and Middle Eastern/Arab Americans' psychological distress. *Journal of Clinical Psychology, 74*(7), 1219-1233.

[29] Li, W. W., Heward, C., Merrick, A., Astridge, B., & Leow, T. (2024). Prevalence of experiencing public humiliation and its effects on victims' mental health: A systematic review and meta-analysis. *Journal of Pacific Rim Psychology,* 18.

[30] Mann, L., Feddes, A. R., Leiser, A., Doosje, B., & Fischer, A. H. (2017). When is humiliation more intense? The role of audience laughter and threats to the self. *Frontiers in Psychology,* 8, 495.

27. There is a distinct harm here also of a distortion of Mr. Khalil's avowed identity. While Mr. Khalil is being accused by public officials of supporting terrorism and espousing antisemitic views, he has described himself in the following way in a 2024 CNN interview: "As a Palestinian student, I believe that the liberation of the Palestinian people and the Jewish people are intertwined and go hand-by-hand and you cannot achieve one without the other".[31] As such, the current administration's misrepresentation of a presumably central component of Mr. Khalil's character could be psychologically damaging. While the majority of these studies have focused on public humiliation in "offline" spaces (e.g., a school setting), it is presumed that the impact of humiliation in the digital age is even more far reaching – as victims of public humiliation and misrepresentation can never truly escape the witnessed and humiliating experience as a result of the permanency of online content. In a published dissertation focused specifically on the lived experience impact of humiliation and misrepresentation in the media (MHM) in the digital age, research showed that MHM was associated with heightened traumatic symptoms and suicidal thoughts and with participants noting that their respective experiences with MHM were uniquely traumatic and were life-changing in many negative ways, including materially and psychologically.[32]

28. The findings presented from the literature in this report demonstrate a troubling picture of how negative stereotypes and prejudicial attitudes towards Arab Americans, Palestinians, and Muslims contribute to a climate of silencing and psychological harm. The stereotypes about Arabs, especially men, as violent, radical, and terrorist-supporting have been ongoing for decades and as such, have been ingrained in American media and political rhetoric, further fueling discriminatory attitudes. The negative image of Arabs has been manipulated in various political contexts, historically speaking, and is being used and amplified today in the rhetoric surrounding figures like Mr. Mahmoud Khalil.

29. The perpetuation of negative stereotypes, coupled with the deployment of antisemitism allegations in response to Palestinian advocacy, creates a climate where

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[31] Bailey, C. (2025, March 11). *Who is Mahmoud Khalil? Palestinian activist detained by ICE over Columbia University protests.* CNN. https://www.cnn.com/2025/03/11/us/mahmoud-khalil-columbia-ice-green-card-hnk/index.html.

[32] Marie, C. (2020). The Traumatic Impact of Media Humiliation, Misrepresentation and Victim-Shaming on Narrative Identity and Well-Being. (Publication No. 27961901). [Doctoral Dissertation, Fielding Graduate University]. ProQuest Dissertations & Theses. *See also* Marie, C. (2013-2022). *The Traumatic Impact of Media Misrepresentation & Public Shaming.* The Amplifier Magazine: Society for Media Psychology and Technology. Division 46 of the American Psychological Association. https://div46amplifier.com/2021/12/13/the-traumatic-impact-of-media-misrepresentation-public-shaming/.

individuals are often silenced, harassed, or targeted when speaking up for Palestine. Data from recent surveys and reports highlight the pervasive fear among Palestinians and their allies, particularly in educational and professional settings, to speak out on these issues, resulting in a tendency to engage in self-censorship. Such experiences of marginalization are related to heightened psychological distress, with evidence linking experiences of discrimination and racism to increased rates of anxiety, depression, and poor self-reported physical health among Arab Americans.

30. Mr. Khalil, as one of the most prominent Palestinian activists, has been subjected to the full weight of these politically driven and media disseminated stereotypes and tropes. I have not had the opportunity to conduct an assessment of Mr. Khalil, however based on the literature documenting the harms of such identity-distortions, and based on my professional experience, they have the potential to significantly harm him psychologically.

Dated: June 3, 2025

[redacted]

Signed:

/s/ [redacted]