

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

|                                  |   |                  |
|----------------------------------|---|------------------|
| MOHSEN MAHDAWI,                  | ) | CIVIL ACTION NO. |
| Petitioner,                      | ) | 2:25-cv-389      |
|                                  | ) |                  |
| v.                               | ) |                  |
|                                  | ) |                  |
| DONALD J. TRUMP, <i>et al.</i> , | ) |                  |
| Respondents.                     | ) |                  |

MOTION FOR RELEASE UNDER *MAPP V. RENO*  
Wednesday, April 30, 2025  
Burlington, Vermont

BEFORE:

THE HONORABLE GEOFFREY W. CRAWFORD,  
District Judge

APPEARANCES:

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for the Petitioner

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1 Wednesday, April 30, 2025

2 (The following was held in open court at 9:01 AM.)

3 COURTROOM DEPUTY: Your Honor, the matter before the  
4 Court is civil case number 25-CV-389, Mohsen Mahdawi v.  
5 Donald J. Trump, *et al.* Present on behalf -- or present with  
6 the petitioner are Attorneys David Isaacson, Luna Droubi,  
7 Matthew Melewski, Andrew Delaney, and Shezza Dallal. Present  
8 for the respondents is acting United States Attorney Michael  
9 Drescher.

10 We are here for a motion for release under *Mapp v. Reno*.

11 THE COURT: All right. Good morning. Good to see  
12 everybody.

13 MR. DRESCHER: Good morning.

14 MS. DROUBI: Good morning.

15 THE COURT: I appreciate all the briefing very much.  
16 It's been very helpful. And I'll dive right into things in a  
17 moment, turn things over to Mr. Mahdawi's side as the moving  
18 party, give the government a turn after that.

19 One or two housekeeping things. One is that I've received  
20 a number of *ex parte* communications that I don't see -- but  
21 they're just citizens that write. As Mr. Drescher knows, I'm  
22 usually quite faithful about making sure to turn these over to  
23 both sides, and it's become a bit cumbersome. I'm inclined not  
24 to do that, but I wanted to make sure that was acceptable to  
25 both of you. Happy to -- some of them are telephone calls and

1 some are e-mails. I think I got a text. I'm not -- anyway.

2 Mr. Drescher, is it a problem?

3 MR. DRESCHER: The short answer is no. I think it's  
4 well within the Court's discretion to figure out how to manage  
5 outreach to chambers from the public, and we trust the Court's  
6 discretion in that regard.

7 THE COURT: Appreciate it.

8 MS. DROUBI: Similarly, Your Honor, we trust the  
9 judge's discretion.

10 THE COURT: All right. Thank you. That will simplify  
11 life a little bit.

12 I'm not quite sure at what point to take up the question  
13 of Agent Emmons. I asked that he come here, but I don't call  
14 witnesses. Parties do. So why don't we take up his testimony  
15 when one side or the other asks to speak with him. Okay? But  
16 I recognize that there's a question to deal with.

17 MR. DRESCHER: Your Honor, if I may, it might make  
18 sense to take that issue up now just to sort of, you know --  
19 for everybody to be on the same set of expectations going  
20 forward with regard to retired Agent Emmons' potential  
21 testimony. If I --

22 THE COURT: I don't feel strongly about it.

23 Ms. Droubi?

24 MS. DROUBI: It's our position that we think we should  
25 be able to present our motion, and at the point if we believe

1 and the Court believes it's necessary to bring Agent Emmons'  
2 testimony into this, then -- then we should address it at that  
3 time. That would be our position, Your Honor.

4 THE COURT: Let's do it with context. In other words,  
5 when it actually kind of arises, then we'll take it up.

6 MR. DRESCHER: Very well.

7 THE COURT: Okay. All right. I'll turn things over  
8 to the petitioner.

9 MS. DROUBI: And we turn to our colleague, Matthew  
10 Melewski, Your Honor.

11 MR. MALEWSKI: May I approach, Your Honor?

12 THE COURT: Yes, please. Thank you. Where did you  
13 come in from?

14 MR. MALEWSKI: New York City, but I'm on the other  
15 side of the lake in Westport.

16 Your Honor, we're here today because Mr. Mahdawi is being  
17 unlawfully detained for his advocacy in support of human rights  
18 and our motion to cure this unconstitutional violation by  
19 releasing him.

20 It's no revelation to say that the U.S. government has  
21 sometimes struggled with the First Amendment. Right off the  
22 bat, The Alien and Sedition Acts of 1798; 1918, Immigration and  
23 Sedition Acts lead to the Palmer Raids, the expulsion of  
24 Russian Jews. '40s and '50s, you have the Red Scare. In each  
25 of these cases, relatively shortly thereafter the legal and

1 political systems recognize the damage and overreach by these  
2 actions and swing back in the other direction to correct them,  
3 to repeal, abrogation, and regret.

4       Unfortunately, it seems that we're doing the same thing  
5 today as the administration has begun rounding up and detaining  
6 lawful residents of this country for speech that's  
7 unequivocally protected by the First Amendment to the  
8 Constitution.

9       Mr. Mahdawi has been imprisoned solely for speech that is  
10 lawful, lawful protected speech, detained in direct violation  
11 of his First Amendment rights. At the very moment Mr. Mahdawi  
12 thought that he was going to realize his years-long effort to  
13 become a citizen of this country, literally at the moment that  
14 he had taken his final interview and was about -- you know, at  
15 the point of being approved, armed men, their faces masked,  
16 handcuffed him, forced him into a car, and began to drive him  
17 away. Were it not for the quick intervention of this court,  
18 Mr. Mahdawi would be over a thousand miles away from his home,  
19 from his lawyers, from his community.

20       The impact of this unlawful action on Mr. Mahdawi and on  
21 the millions and millions of lawful residents, students, and  
22 visa holders in this country is hard to overstate. Their  
23 speech is chilled. But chilled isn't -- doesn't quite cover  
24 it. They're afraid. They're afraid to exercise their core  
25 constitutional rights, to write an op-ed, to criticize the

1 government, to attend an immigration appointment for fear that  
2 the masked men might one day come for them too. And I realize  
3 how profound and dangerous that sounds, but the government  
4 doesn't deny it. In fact, the government concedes it.

5       The government announced in advance that they were going  
6 to do this, and they've had an opportunity to respond to  
7 Mr. Mahdawi's claims before this hearing. In response to  
8 Mr. Mahdawi's claim that he is being imprisoned and retaliated  
9 against solely for his protected speech, the government says  
10 nothing. There is no claim here that Mr. Mahdawi is being  
11 imprisoned because of unlawful actions or some other  
12 constitutionally sound basis. The only claim at issue here is  
13 that Mr. Mahdawi is being imprisoned, detained, because of his  
14 lawful speech. The government just claims they're allowed to  
15 do it. We're asking this court to release Mr. Mahdawi pending  
16 his habeas corpus petition, after which the government can  
17 determine the constitutional violation at issue with the  
18 government's actions.

19       The most cited case in this circuit for release pending a  
20 habeas petition is *Mapp v. Reno*, and in *Mapp* the court said  
21 before granting release a court needs to evaluate two things:  
22 Whether or not there are "substantial claims" in that case and  
23 whether or not there are "extraordinary circumstances." We  
24 meet both here.

25       There can be no doubt that Mr. Mahdawi's claims in this

1 case are substantial claims. Mr. Mahdawi claims that he is  
2 being detained solely for the content of his speech, which is  
3 afforded the highest protection under the First Amendment to  
4 the Constitution. That is a clear deprivation of his  
5 constitutional rights. It is not denied by the government.  
6 That must be a substantial claim. Indeed, the scale of this,  
7 the scale of this deprivation, is almost unheard of.

8       As Your Honor might divine from our pleadings, courts have  
9 talked about extraordinary circumstances in a couple of  
10 different ways: One, courts have said that it's a heightened  
11 standard when the petitioner at issue was convicted and  
12 sentenced and their liberty interest is relatively low. This  
13 case presents almost the opposite scenario. In this case the  
14 Constitution guarantees Mr. Mahdawi's liberty.

15       The other way courts have looked at extraordinary  
16 circumstances is in what *Mapp* calls "unusual cases." And this  
17 case is so unusual that aside from the parallel proceedings in  
18 very similar circumstances, over a hundred immigration law  
19 professors submitted a brief explaining that they can find no  
20 example of the government ever using this particular provision  
21 to detain someone for lawful speech.

22       The third way the courts have talked about extraordinary  
23 circumstances is circumstances such that release is necessary  
24 to give effect to the relief sought in the habeas, to make the  
25 remedy effective, and here the relief sought through habeas is

1 to prevent the government, to stop the government, from  
2 detaining Mr. Mahdawi and violating his First Amendment rights  
3 by detaining him.

4 The only way to give that relief is through release, and  
5 release through this petition, because Mr. Mahdawi cannot bring  
6 a constitutional challenge to his detention before the  
7 immigration judge and the Board of Immigration Appeals.

8 If he's forced to remain in custody during the course of  
9 the removal proceeding, that would deprive Mr. Mahdawi of the  
10 relief that is sought in his habeas petition. The damage will  
11 have already been done.

12 In a pending habeas case in this district for Ms. Ozturk,  
13 the government has already appealed, which heightens the need  
14 to release Mr. Mahdawi, so that he is not forced to suffer the  
15 consequences, the constitutional injury, during the indefinite  
16 length of time that it will take to resolve those appeals -- or  
17 appeals in this case.

18 Mr. Mahdawi is a beloved member of his community. He has  
19 a home in Vermont. He's an Ivy League student. He still hopes  
20 to graduate next month. If he's not released, he won't be able  
21 to graduate and he won't be able to matriculate to the graduate  
22 program to which he's already been admitted.

23 If the government wants to prevent Mr. Mahdawi from being  
24 released by claiming that he is a danger to the community that  
25 adores him or is a flight risk, they need to do so with clear



1 and convincing evidence as a matter of due process. Here the  
2 government has not provided enough information to survive the  
3 lowest hurdle, the smallest bar. The only thing the government  
4 has introduced is some cartoonishly racist hearsay from ten  
5 years ago that amounted to nothing and some other times that  
6 somebody wrote down that he was not charged with a crime. The  
7 government has still not provided any recognizable reason why  
8 Mr. Mahdawi needs to remain in custody.

9       Last week Your Honor mused, "They wouldn't have taken such  
10 drastic measures to send a cavalcade of SUVs and a posse of  
11 agents unless they had something in mind, and I don't know what  
12 that was." The government has now had an opportunity to say  
13 what that was, and the answer, apparently, is that the  
14 government believes it is allowed to incarcerate Mr. Mahdawi  
15 and intimidate anyone similarly situated for the content of  
16 speech that the government doesn't like. Mark Twain once said  
17 that "history doesn't repeat itself, but it often rhymes." The  
18 question here is just when the pendulum begins to swing back in  
19 the other direction, when we reaffirm the primacy of the First  
20 Amendment and begin to repair the trust that the Constitution  
21 means what it says.

22       I propose we start here today by releasing Mohsen Mahdawi.

23       Thank you, Your Honor.

24       THE COURT: Quick question. Frequently in the bail  
25 context, we get into details of dangerousness or risk of

1 flight. Did you propose to -- to leave the broad principles  
2 and deal with these questions, or are you content with what  
3 you've said?

4 MR. MALEWSKI: We're certainly happy to discuss  
5 conditions of his release. We think that reasonable conditions  
6 is something that this court is entitled to engage in, and  
7 we're prepared to discuss that today.

8 THE COURT: And when would you like to talk -- in  
9 other words, what would you like to do next? Would you like to  
10 turn things over to the government, or did you have witnesses,  
11 or where shall we go from your perspective?

12 MR. MALEWSKI: I think if Your Honor wants to hear  
13 from the government on our motion, that's fine. We're happy to  
14 talk about conditions that we believe would be reasonable in  
15 the circumstance for release.

16 THE COURT: All right. Why don't I give the  
17 government a turn and then give you an opportunity.

18 MR. MALEWSKI: Thank you, Your Honor.

19 THE COURT: All right.

20 MR. DRESCHER: Good morning.

21 THE COURT: Good morning.

22 MR. DRESCHER: At the outset, as we discussed last  
23 week, there are some threshold jurisdictional questions that  
24 the Court has to confront before deciding whether it has any  
25 authority to consider a motion under *Mapp v. Reno*. I

1 appreciate the Court has set this -- noticed this as a hearing  
2 under *Mapp v. Reno*. Your Honor has our briefings with regard  
3 to those threshold jurisdictional questions. I don't want for  
4 a moment to be seen as giving up on those.

5       We don't think the Court should be exercising habeas  
6 jurisdiction for the reasons we've explained in our prehearing  
7 submission, which has been converted to a motion to dismiss,  
8 and I'd be happy to answer any questions the Court may have on  
9 that before I get into sort of the -- some of the details of  
10 the Court's consideration under *Mapp*. I just want to put a pin  
11 in our threshold position that I don't think the Court can  
12 consider release until it's asserting habeas jurisdiction,  
13 which is a complicated question.

14       The -- Judge Sessions concluded that -- in the Ozturk case  
15 that this court has jurisdiction there. At the moment there's  
16 an administrative stay that was handed down by the Second  
17 Circuit. Not -- you know, not weighing in on the relative  
18 merits, but it's been stayed for the Circuit to have a chance  
19 to consider the government's appeal to the Circuit of Judge  
20 Sessions' order there. They're very serious, weighty  
21 questions.

22       I appreciate that petitioner's counsel shared with the  
23 Court last night a recent decision in the Khalil matter that  
24 grapples with the same issue, again, finding jurisdiction. I  
25 just want to flag for the Court that we're not giving up on any

1 of those arguments. They've been submitted in writing. I'm  
2 happy to take up any questions the Court may have on those now,  
3 and if the Court has no questions, then I can get into some of  
4 our thoughts as to the merits of the *Mapp* motion.

5 THE COURT: Fair enough. I saw it somewhat similarly  
6 in the sense that I've been at work over -- over the weekend  
7 with your materials as well and have sought to address the  
8 jurisdictional issues, but in a preliminary way. In other  
9 words, I wouldn't want -- if there were no colorable claim of  
10 jurisdiction, that would be foolish to dive into questions of  
11 release, but I think, as you say, the ultimate resolution, at  
12 least in this court, has got to wait for the briefing schedule  
13 to wrap up, which is a couple of weeks away.

14 So you've raised it in your papers. I've prepared a  
15 draft, which -- to be revised after whatever happens at this  
16 hearing. I've dealt with it, but not in a kind of final way,  
17 just to assure myself that there's a path forward for  
18 jurisdiction.

19 MR. DRESCHER: Understood. I just want to be clear  
20 that --

21 THE COURT: Thank you.

22 MR. DRESCHER: -- our position is, without a finding  
23 of jurisdiction --

24 THE COURT: Right.

25 MR. DRESCHER: -- relief under *Mapp* should not be

1 available.

2 THE COURT: Fair enough.

3 MR. DRESCHER: I guess at this point I want to sort of  
4 talk about how to treat retired FBI Agent Marc Emmons, who is  
5 here in court today.

6 THE COURT: Sure.

7 MR. DRESCHER: We received the Court's order yesterday  
8 afternoon. We have -- obviously we completely wish to abide by  
9 the Court's order. I understood the Court -- Court's order to  
10 reflect the Court's desire to hear from Agent Emmons. I would  
11 like to try to persuade the Court that that's not necessary for  
12 a couple of reasons. At the outset, what -- at the outset,  
13 Agent Emmons has reviewed -- and he's in court today.

14 THE COURT: Yes. Sure.

15 MR. DRESCHER: So he's in the courtroom. I just want  
16 to make sure everybody's aware of that. He's reviewed  
17 Mr. Mahdawi's declaration that was filed yesterday and he's  
18 reviewed what Mr. Mahdawi said about their interview, and there  
19 is not a substantial disagreement with Mr. Mahdawi's recitation  
20 of -- of his interactions with him, Agent Emmons' interaction  
21 with him. He takes a little bit of issue with -- I think  
22 Mr. Mahdawi uses the word -- describes Agent Emmons as telling  
23 him he had been "cleared." Agent Emmons might take a little  
24 bit of issue with the use of that word but does not dispute  
25 that in some manner he explained to Mr. Mahdawi that the file

1 was being closed and that it was not an unreasonable inference  
2 for Mr. Mahdawi to conclude that he had been cleared in some  
3 sense.

4 But I want to emphasize to the Court that what Mr. -- or  
5 what Agent Emmons was doing back in 2015-2016 was he was  
6 engaging in a national security investigation. It would be, I  
7 think, inappropriate for Mr. -- for Agent Emmons to be called  
8 to testify today about the innards of that investigation. It  
9 includes -- you know, investigations like that include  
10 sensitive sources of information that the government has a  
11 privilege not to disclose. Information that's generated during  
12 the course of those investigations might reveal sources of  
13 information.

14 Assuming the Court's interest in hearing from Agent Emmons  
15 was triggered by Mr. Mahdawi's declaration and given the  
16 absence of a disagreement with regard to -- material  
17 disagreement with regard to Mr. Mahdawi's description of that  
18 interview, I don't think it's necessary for Agent Emmons to  
19 testify.

20 I do want to --

21 THE COURT: Maybe I could ask you it this way.

22 MR. DRESCHER: Yeah.

23 THE COURT: I asked -- the police report that the  
24 government submitted was shocking.

25 MR. DRESCHER: Yeah.

1           THE COURT: And -- and, if true, deeply concerning. I  
2 was shocked, but then when I thought about it, it seemed to me  
3 that something else must have happened other than simply filing  
4 this shocking statement away, and, of course, it did.  
5 Mr. Mahdawi's attorneys brought forward that the FBI had, as  
6 they should, looked into it, and I think what you're telling me  
7 is that I can fairly conclude that they found the statements  
8 from the gunsmith and from his retired friend to be unfounded.  
9 Is that fair?

10           MR. DRESCHER: No. No. And I don't want to leave the  
11 Court with that misimpression. The fact that the investigation  
12 was closed should lead to no inference, contrary to arguments  
13 in counsel's submission yesterday, that there was not  
14 derogatory information found about Mr. Mahdawi. In fact, the  
15 investigation turned up information that was corroborative of  
16 the statements recounted in the Windsor police report. If --

17           THE COURT: I'm sorry. I want to make sure I  
18 understand what you're saying. Which I think what you're  
19 saying is that Mr. Mahdawi in fact visited the store?

20           MR. DRESCHER: No. That -- the shocking parts of the  
21 police report, the statements attributed to Mr. Mahdawi is what  
22 I perceive the Court is referring to --

23           THE COURT: Yeah.

24           MR. DRESCHER: -- the investigation turned up  
25 information that was consistent with Mr. Mahdawi making those

1 statements. Now, the source of that information is not subject  
2 to disclosure. If the Court wants to get into that  
3 information, in open court today I think is not the right forum  
4 to do that. I would need to consult with the National Security  
5 Division to figure out how to go about doing that. We could  
6 perhaps figure out a way to deliver some information to  
7 chambers on an *ex parte* basis. But a national security  
8 investigation touches on a lot of sensitive variables that do  
9 not get revealed in open court.

10       The argument that counsel made leading to the inference  
11 Your Honor just articulated is -- it's inaccurate. There was  
12 additional derogatory information about Mr. Mahdawi. It's not  
13 derogatory to go into a gun store. It's not derogatory to  
14 speak with other members of the community. And so I don't want  
15 to leave the Court with the wrong impression. Now, I  
16 appreciate this is -- it was a national security investigation,  
17 they are inherently nonpublic, and we're in court ten years  
18 later today in a very public setting, and so I need to be  
19 careful with regard to how I talk about what the state of  
20 knowledge was in 2015-2016.

21       The fact that the file was closed does not mean there was  
22 no additional derogatory information noted. It means, for  
23 example, there might not be proof of a crime that could be  
24 prosecuted beyond a reasonable doubt; or if there was evidence  
25 of wrongdoing, that it wasn't in the form of admissible



1 information; or in assessing the relative priorities of the FBI  
2 and its resources, the decision was made to move on.

3 We did not intend to get into the fact that there was a  
4 national security investigation.

5 THE COURT: But you started it.

6 MR. DRESCHER: No, I don't think we did. We submitted  
7 the police report from Windsor, Vermont --

8 THE COURT: Right.

9 MR. DRESCHER: -- that contained information. It was  
10 not a federal report. It contained information that we think  
11 is relevant to the Court's assessment of Mr. Mahdawi's -- of  
12 whether Mr. Mahdawi presents a risk to the community, just like  
13 we do in -- when we're before the Court in criminal cases. The  
14 Court needs to consider in a criminal case a defendant, here  
15 the petitioner's history and characteristics in assessing  
16 whether he's suitable for release on conditions, and that  
17 history and characteristics include the information that was  
18 contained in the police report.

19 We presented that to the Court without referencing the  
20 fact that there was a national security investigation that was  
21 going on. In their response yesterday, Mr. Mahdawi and counsel  
22 recounted that he had in fact been interviewed by the FBI, and  
23 then they went on to further argue that the fact that the FBI  
24 conveyed to Mr. Mahdawi that they were closing their file  
25 should be taken as evidence that there was not more

1 information -- or that we discredited the information that was  
2 in the police report. And I think that's an important  
3 distinction to make.

4 Now, to honor the Court's order, you know, Mr. -- or Agent  
5 Emmons is here, but I don't think it's appropriate to call him  
6 as a witness. If the Court wants to do a deeper dive into the  
7 state of knowledge back in 2015-2016, I would ask an  
8 opportunity to brief that and to explore whether that  
9 information can be presented to chambers on an *ex parte* basis  
10 if the Court wants to do a deep dive into the state of  
11 knowledge back then. So --

12 THE COURT: All I want to know is very simple, is  
13 whether these two gunsmith people made this story up or whether  
14 it is true. That's all I want to know. And it sounds to me as  
15 if the FBI concluded that they were not concerned enough about  
16 these statements to proceed in some other way. As you say,  
17 they closed their file. If that's all it is, that's fine. I  
18 have no intention of diving into their investigation. These  
19 are shocking assertions. Looks as if on the face of things  
20 they weren't substantiated and there's some kind of fantasy or  
21 malicious conduct by the informants, but I needed some kind of  
22 clarification from you on that.

23 MR. DRESCHER: Yes. So I appreciate counsel's  
24 characterization of them as -- I believe his term was  
25 "cartoonish hearsay." They are statements made by two members

1 of the Windsor community. The FBI investigated whether -- they  
2 conducted an investigation for national security purposes.  
3 They interviewed Mr. Mahdawi. They explained to Mr. Mahdawi  
4 that they were closing their file. All of that is right. I do  
5 not want to -- the Court to perceive, because it would be  
6 inaccurate, that that investigation did not develop information  
7 that was -- I don't want to -- I'll take out the negatives.  
8 The investigation turned up information that corroborated those  
9 statements.

10 THE COURT: But that information's not part of the  
11 record here and won't be, correct?

12 MR. DRESCHER: Unless the Court wants to do a deeper  
13 dive into the state of information in 2015-2016. I wanted to  
14 address the argument made from counsel that the Court should  
15 infer there was nothing else, and just as an empirical matter,  
16 that's not right. I appreciate the awkwardness of proffering  
17 this to the Court in this capacity, but that is our response to  
18 them taking issue -- petitioner taking issue with our use of  
19 the police report in our filing. We completely put -- I  
20 concede -- obviously we supplied the Court with that police  
21 report. We did not intend to get into the innards of a  
22 national security investigation until the response came in  
23 yesterday.

24 THE COURT: All right. Why don't I ask for the  
25 petitioner's response.

1 MS. DROUBI: Your Honor, respondents opened the door  
2 to this issue, as you note, by raising a ten-year-old  
3 unsubstantiated, anonymous, redacted, unsigned, hearsay written  
4 document in their filing. In response, we submitted a  
5 declaration that Mr. Mahdawi provided under penalty of perjury,  
6 which the government has just represented to this court was for  
7 the most part accurate. The matter was closed. The  
8 investigation was closed. It never rose to the level of  
9 anything further, meaning that they took Mr. Mahdawi's  
10 declaration to heart.

11 Calling the issue a national security matter has no basis  
12 in reality and is a transparent attempt by the government to  
13 deflect, to delay, and to avoid the truth that the document the  
14 government attempts to have this court rely upon has no merit.  
15 We also believe that Mr. Emmons can be put on the stand, and if  
16 it treads closely to any national security issue, he can so  
17 state. We believe that we can comfortably stay within the  
18 confines of the respondents' submission, which would be the  
19 only appropriate path forward if the government continues to  
20 ask this court to rely on this document.

21 Further delay on this through briefing would only further  
22 delay the unconstitutional detention of our client.  
23 Mr. Mahdawi should not suffer for the failures of the  
24 government in this submission and should not be subjected to  
25 continued incarceration due to his lawful speech. That's our

1 position, Your Honor.

2 THE COURT: All right. So do you intend to call Agent  
3 Emmons, or are you content with joining the government in  
4 agreeing that the matter was closed after Mr. Mahdawi was  
5 interviewed?

6 MS. DROUBI: Well, I guess since the government has  
7 represented to the Court that the matter was closed --

8 THE COURT: Right.

9 MS. DROUBI: -- if the government -- if the Court is  
10 content with that representation as well, together with our  
11 client's declaration that under penalty of perjury he never  
12 made such statements, that such statements were not made, that  
13 he felt that he was being targeted, stereotyped as a  
14 Palestinian man who identified that he was a Palestinian man to  
15 this individual, who we have not had the opportunity to cross  
16 and to challenge, we think it's sufficient that the government  
17 concedes that the matter and the investigation was closed, it  
18 was never escalated any further than whatever questioning there  
19 was, it was quickly put to bed, and the matter was resolved.

20 So we're content with that representation, and -- as long  
21 as the Court is content as well that our client has declared  
22 under penalty of perjury that none of these statements were  
23 ever made and that the matter was resolved and closed.

24 THE COURT: All right. I think the three of us are  
25 all in agreement that the record and the facts are that the --

1 a citizen plus his friend came forward with shocking  
2 allegations of purchase of firearms and the FBI looked into the  
3 matter, spoke with Mr. Mahdawi, and closed its file. Both  
4 sides agree. I think that is sufficient for me to discount the  
5 police report, which is the only thing in front of the Court,  
6 as not strong evidence of dangerousness. So I'm content to  
7 leave it there.

8 MR. DRESCHER: I appreciate Your Honor's assessment of  
9 the police report. To the extent you are observing that we  
10 agree with Your Honor's assessment of the police report, we  
11 don't, but I appreciate Your Honor has reached its conclusion  
12 about what weight to give the report.

13 THE COURT: Okay. All right. So I'll thank retired  
14 Agent Emmons for attending. He's welcome to stay, but there's  
15 no requirement. He won't be called by either side.

16 MR. DRESCHER: The -- I'll circle back to history and  
17 characteristics, but I want to take up the question of whether  
18 a substantial issue has been presented such that the Court  
19 should lean in and consider granting relief under *Mapp*.

20 As we explained in our filings, Mr. Mahdawi is in removal  
21 proceedings because the Secretary of State -- exercising the  
22 authority that Congress has given the Executive Branch, not  
23 just the current administration but any administration in  
24 power, the Secretary of State made specific findings that  
25 Mr. Mahdawi's presence in the United States was contrary to the

1 foreign policy of the United States, and he further found, as  
2 required by Congress, that Mr. Mahdawi's continued presence  
3 would be -- would compromise important foreign policy  
4 interests. I don't think there's any factual dispute that the  
5 exhibit to our filing from earlier this week establishes that  
6 the Secretary of State has made those determinations.

7 THE COURT: Right.

8 MR. DRESCHER: Those determinations are entitled to a  
9 presumption of regularity, and that presumption can only be  
10 overcome by extraordinary circumstance-- -- by an extraordinary  
11 showing. The showing, as I understand it, is simply  
12 reiterating the basis for the Secretary's determination, and  
13 the basis, as the Secretary's memorandum makes clear, includes  
14 Mr. Mahdawi's participation in protests at Columbia University.

15 Congress has given the Executive Branch in the context of  
16 administering the immigration laws the role of assessing where  
17 the foreign policy interests of the United States -- when those  
18 interests bump into otherwise protected First Amendment  
19 activity, it is, by Congress' policy choice, the Executive  
20 Branch's assessment as to what should give. To implement the  
21 foreign policy of this administration, the Secretary of State  
22 made the necessary determinations, made the necessary findings,  
23 and as a result, any decision by Your Honor or by any court to  
24 release Mr. Mahdawi in these circumstances would require the  
25 Court to get involved in and assess the foreign policy

1 determinations of the Secretary of State. The Supreme --

2 THE COURT: Can I interrupt?

3 MR. DRESCHER: Sure.

4 THE COURT: That's the connection I don't make. I  
5 recognize that the removal proceeding is kind of the third rail  
6 here and that I have nothing to do with it, that Congress has  
7 made that clear in the four jurisdiction-stripping provisions.  
8 But the issue for me is whether that removes any habeas-based  
9 scrutiny of the government's actions, and the Supreme Court  
10 decisions authored by Justice Scalia and Justice Alito, hardly  
11 shrinking violets when it comes to the enforcement of the  
12 immigration laws, applied very thoughtful, careful textual  
13 analysis to these provisions, and they don't say what I think  
14 at the heart you say, which is once the government announces  
15 that this is removal under the foreign policy provision, no  
16 other judge can ever look at it.

17 So I'm focused not on the removal proceeding. That's not  
18 for me. I'm focused on the arrest and detention, and that  
19 seems to fall outside of these jurisdiction provisions.

20 MR. DRESCHER: So the government disagrees.

21 THE COURT: Right.

22 MR. DRESCHER: That Title 8, Section 1226(a), gives  
23 the government statutory authority to take into custody  
24 somebody who is subject to removal proceedings. It is legal  
25 under the statute to detain somebody who is subject to removal.



1 It's my understanding that people in that circumstance have the  
2 opportunity to ask an immigration judge for release, and  
3 sometimes the immigration judge will grant a bond and sometimes  
4 the immigration judge does not, but Congress has set up that  
5 system that authorizes the executive to detain somebody who's  
6 subject to removal.

7 And I appreciate what Your Honor just articulated. It  
8 circles back to our jurisdictional arguments.

9 THE COURT: Right.

10 MR. DRESCHER: Assuming Your Honor has navigated  
11 around those jurisdictional arguments and is going to lean in  
12 and assert habeas jurisdiction, as the Court has suggested, the  
13 question of *Mapp* relief is different. I think the Court has to  
14 assess the underlying reason why somebody such as Mr. Mahdawi  
15 is in a removal proceeding and the associated detention that  
16 has arisen from the commencement of those removal proceedings,  
17 and in this case that is a specific finding of the Secretary of  
18 State that Mr. Mahdawi's presence is contrary to the foreign  
19 policy of the United States.

20 Justice Scalia in *AADC* observed that, in his words, you  
21 know, courts are "utterly unable to assess" the adequacy of the  
22 government's foreign policy in its application to the  
23 immigration proceedings. In *AADC*, the decisions to seek  
24 removal of the noncitizens in that case, the government  
25 conceded, was based upon First Amendment protected activity of

1 those aliens, and the court recognized, Justice Scalia  
2 recognized, that in implementing and executing the foreign  
3 policy of the United States, the Executive Branch will favor  
4 some countries and disfavor others; it will antagonize some  
5 countries by disfavoring their nationals. There's -- it's a --  
6 to put it mildly, a complicated political business that is  
7 vested in the political branches.

8 THE COURT: But let me push back a little.

9 MR. DRESCHER: Yeah.

10 THE COURT: That was his merits discussion. Where did  
11 he come down on whether his court, also subject to the  
12 stripping provisions, had jurisdiction even to consider the  
13 questions?

14 MR. DRESCHER: Construing a predecessor of the current  
15 1252, which has since been amended to specifically carve out  
16 habeas jurisdiction.

17 THE COURT: To reach it, yes.

18 MR. DRESCHER: To reach it.

19 THE COURT: Yes. I can give you a clue. He found  
20 that the Supreme Court had jurisdiction to consider the  
21 question.

22 MR. DRESCHER: Well, it had jurisdiction to  
23 consider -- it had jurisdiction to consider a constitutional  
24 challenge based upon selective enforcement, which was what the  
25 argument was in front of the Court.

1 THE COURT: Right.

2 MR. DRESCHER: The court -- the majority opinion said  
3 there was not -- it would not recognize the underlying merits  
4 of that argument. In a predecessor, more jurisdictionally  
5 generous version of the statute, the court navigated its way  
6 around that. The statute has since been revised. I think for  
7 our purposes today, the most relevant part of AADC in that  
8 decision is the court's recognition of the -- of the role of  
9 courts relative to the political branches in their  
10 implementation of foreign policy.

11 Similarly, in the *Harisiades* case that we cite in our  
12 papers, the Supreme Court -- the threshold question in that  
13 case was whether it was constitutional for the Executive Branch  
14 to deport people who had been here years and years who were  
15 characterized by -- as legally resident aliens because they had  
16 at one time been a member of the Communist party.

17 THE COURT: This is the 1952 McCarthy era case?

18 MR. DRESCHER: The 1952 case.

19 THE COURT: Perhaps not our proudest period.

20 MR. DRESCHER: The -- this is -- I take Your Honor's  
21 point.

22 THE COURT: I know you do.

23 MR. DRESCHER: I completely take Your Honor's point,  
24 but Your Honor's point, I think, highlights the fact that we  
25 are in policy world, and as the court recognized I believe in

1 that very case, the Court might disagree with the policies that  
2 are being implemented by the Executive Branch. The  
3 overwhelming majority of the people in this room might disagree  
4 with the policies being pursued by the Executive Branch. But  
5 that does not justify the Court getting involved in -- in  
6 injecting itself in decisions that are so related to the  
7 implementation of the foreign policy of the United States.

8 I think that's really the nub of this case: What role  
9 does the Court have, if any, to discount the Secretary of  
10 State's determination that the petitioner, Mr. Mahdawi's  
11 presence in the country is contrary to foreign policy? A  
12 decision to release Mr. Mahdawi at this time would -- or at any  
13 time in this case would necessarily require the Court to assess  
14 the relative merits of those policy decisions.

15 THE COURT: I'm working as hard as I can to follow.  
16 All we're talking about is bail, so why does that temporary  
17 release so that you and I and the petitioner's counsel can sort  
18 out what are difficult issues, why is that a violation of the  
19 political doctrine? All they're asking is that Mr. Mahdawi go  
20 home for the weeks or months it takes for us to get to the  
21 bottom of what I recognize are difficult questions.

22 MR. DRESCHER: And I appreciate Your Honor's question.  
23 The Secretary's determination that a person's presence in the  
24 United States is contrary to foreign policy justifies, under  
25 the statutes passed by Congress, the executive's decision to

1 detain that person once he's in removal proceedings. That's  
2 where we are now. If Your Honor is assessing the -- because  
3 that detention is facially lawful and because the Secretary's  
4 determination is entitled to a presumption of regularity, a  
5 decision to undo the discretionary decision to detain somebody  
6 in Mr. Mahdawi's circumstances necessarily requires a  
7 discounting of the Secretary's determination that his presence  
8 in the country is contrary to foreign policy.

9 THE COURT: Okay. Fair enough.

10 MR. DRESCHER: I think we've gone over the question of  
11 the police report on the subject of dangerousness.

12 With regard to the incident at the border, I think the  
13 record before the Court indicates that Mr. Mahdawi was  
14 discovered to have controlled substances in his possession when  
15 he crossed the border back in 2018 or 2019.

16 THE COURT: '19, I think.

17 MR. DRESCHER: As we explained in our filings, there's  
18 no suggestion that Mr. Mahdawi has been convicted of any  
19 offense. The fact of that arrest and the fact that there were  
20 charges and the fact that the charges were dismissed were  
21 presented to the Court, and Mr. Mahdawi's filing number -- in  
22 Document 19-4, I think it's significant for the Court to  
23 consider whether somebody who is here as a noncitizen, who is  
24 potentially subject to removal for violating certain controlled  
25 substance offenses, to be leaning that closely in to conduct

1 that could be a violation of a controlled substance offense is  
2 a fair consideration for the Court in assessing Mr. Mahdawi's  
3 suitability for release.

4 Finally, as we tried to spell out, Mr. Mahdawi clearly has  
5 access to resources that would enable him to abscond if he were  
6 of a mind to do that. He has engaged in international travel  
7 on multiple occasions, I understand as recently as last year,  
8 and that is another factor the Court should consider in  
9 assessing whether Mr. Mahdawi is suitable for release.

10 The crux of our argument on *Mapp* relief, Your Honor, is  
11 despite the profound impact it has on Mr. Mahdawi, his  
12 detention right now is not illegal, and the argument that is  
13 presented by the petition asks this court to get involved in  
14 the implementation of the foreign policy of the United States,  
15 and I think the Supreme Court has made clear that courts should  
16 be extraordinarily reluctant to do that. And given that legal  
17 landscape, *Mapp* relief is not appropriate.

18 Before I sit down, if Your Honor is inclined to issue an  
19 order releasing Mr. Mahdawi under *Mapp*, I would like to move  
20 for a stay of that order of seven days as indicated in our  
21 filing so that the government could pursue review of that order  
22 at the Circuit.

23 THE COURT: And I made a note of the four factors  
24 supporting -- that would support a stay. I think we have  
25 probably exhausted the conversation on the likelihood that

1 you'll prevail on the merits, though I welcome anything else  
2 you have to say, but I recognize you've spoken at that at  
3 length.

4       The next is the likelihood that the moving party will be  
5 irreparably harmed absent a stay. Where do you come down on  
6 that one?

7       MR. DRESCHER: For all the reasons I just articulated  
8 in terms of the merger of the question of release with regard  
9 to the Secretary of State's determination --

10       THE COURT: That would go to whether you win the  
11 first, but the harm to Mr. Mahdawi, obviously recognized,  
12 right?

13       MR. DRESCHER: Yeah. There are competing  
14 considerations there, but I want to emphasize the government's  
15 legitimate interest in implementing the foreign policy in this  
16 context in the manner prescribed by Congress and that his  
17 release would -- would be inconsistent with that.

18       THE COURT: And the third is the prospect that others  
19 will be harmed if the Court grants a stay. Applicable here or  
20 not?

21       MR. DRESCHER: It's my recollection that in these  
22 contexts, those two factors merge together. You know, to the  
23 extent others are harmed, I think we can invoke the Secretary  
24 of State's determination that what's in the foreign policy  
25 interest of the United States affects the welfare of the -- of

1 the government's relations with foreign powers and its domestic  
2 affairs as well.

3 THE COURT: And the fourth - I just want to make sure  
4 that I tick them off and hear from you - the public interest in  
5 granting the stay would be the same as the government's  
6 interest; is that -- I don't mean to put words in your mouth.  
7 I'll just give you the floor.

8 MR. DRESCHER: Yes. It would be the same. And all of  
9 this also circles back to our jurisdictional arguments, that,  
10 you know, institutionally we don't think the Court should be  
11 doing this, that if the Court is involving itself where we  
12 believe the INA specifies it should not, you know, that creates  
13 an added layer of concern that should -- that should weigh in  
14 the Court's consideration of that motion.

15 Just to -- so I think I've said my piece with regard to  
16 the contingent motion for a stay if the Court is inclined to  
17 issue -- order him released.

18 THE COURT: Yeah. Fair enough. Thank you.

19 MR. DRESCHER: Thank you.

20 THE COURT: Mr. Drescher, thank you.

21 Why don't I give you the last word.

22 MR. MALEWSKI: Thank you, Your Honor.

23 I think Your Honor has it right. We're not asking this  
24 court to delve into the foreign policy decisions of the United  
25 States or the reasons and the arguments that the government's



1 going to make in the removal proceeding. This is just about a  
2 habeas claim, making an argument that Mr. Mahdawi is being held  
3 in direct violation of his constitutional rights.

4 I think as to a stay --

5 THE COURT: I tried to be hard on Mr. Drescher, but I  
6 try to be sort of equal opportunity about this and be a little  
7 bit hard on you. I feel like we're trying to separate an egg  
8 here. How does the -- why isn't the arrest of Mr. Mahdawi by  
9 the agents and the service on him of a notice to appear, why  
10 isn't that part of his removal case?

11 MR. MALEWSKI: Well, I think, Your Honor, you separate  
12 an egg carefully, and here we are arguing that no government  
13 official has the discretion to detain Mr. Mahdawi solely  
14 because of his speech, and that is exactly the sort of  
15 constitutional claim that the Supreme Court has recognized we  
16 can bring apart from the removal proceeding, and that granting  
17 relief on that claim, contrary to the government's statements,  
18 doesn't impact the removal proceeding at all. The removal  
19 proceeding continues apace.

20 THE COURT: You have a hearing soon, right?

21 MR. MALEWSKI: Yes, Your Honor. I believe there is a  
22 remote hearing scheduled for maybe tomorrow --

23 THE COURT: Right.

24 MR. MALEWSKI: -- at the moment. Historically that's  
25 how it happens. Detention is the exception, not the common

1 process. So I think the government is not impinged or impaired  
2 or -- their ability to proceed with the removal proceeding is  
3 not altered in any way by this court granting relief that we've  
4 asked for.

5 THE COURT: And from your perspective, what would be  
6 the appropriate package? Just release on personal recognizance  
7 or a set of conditions or -- if Mr. Mahdawi's released, I have  
8 considerable confidence in officials within Vermont that they  
9 will recognize my order.

10 MR. MALEWSKI: Um-hum.

11 THE COURT: I've always had a very candid and positive  
12 relationship. I worry about New York City because it's a  
13 bigger place and they seem a long way away. How would you see  
14 packaging success from your perspective?

15 MR. MALEWSKI: Mr. Mahdawi lives in Vermont.

16 THE COURT: Right.

17 MR. MALEWSKI: As you know, attends university in New  
18 York City. I believe that his university would be able to  
19 accommodate remote attendance. Our preference would be that  
20 this court grants release that at a bare minimum allows  
21 Mr. Mahdawi to be present in his home in Vermont as well as  
22 attend classes and life -- university life in New York City at  
23 Columbia University without restriction and without threat that  
24 the government will detain him.

25 THE COURT: All right. And presumably visit his

1 attorneys as well.

2 MR. MALEWSKI: Yes. Yes, Your Honor.

3 THE COURT: So he would remain, from your perspective,  
4 subject to the original administrative detention, but it would  
5 be lifted with respect to incarceration and replaced, in a  
6 process analogous to a criminal case, with those conditions of  
7 residence in Vermont, attendance in New York for educational  
8 and legal purposes? Just -- I want to make sure I understand  
9 kind of the setting.

10 MR. MALEWSKI: I think that's right, Your Honor. I  
11 think the immigration proceeding continues to have custody of  
12 Mr. Mahdawi in order to continue with the proceeding --

13 THE COURT: Right.

14 MR. MALEWSKI: -- in that sense, but he would no  
15 longer be detained in a facility and be allowed to travel  
16 freely to pursue his life.

17 THE COURT: All right. Fair enough. Thank you.

18 MR. MALEWSKI: Thank you, Your Honor.

19 THE COURT: Does that complete the presentation from  
20 everybody? I don't want to leave anyone out.

21 MS. DROUBI: Just one addition, Your Honor. To the  
22 extent it would be helpful to the Court, we have provided a  
23 declaration from the Burlington Community Justice Center, who's  
24 prepared to provide additional information if that would be  
25 amenable or helpful to the Court about their support in any

1 release.

2 THE COURT: Okay. Thank you.

3 I'll announce my decision orally. I've prepared a more  
4 detailed explanation, and in light of the points made today, I  
5 need an hour or two to revise it, and I'll release it by 3:00  
6 or so this afternoon.

7 I'm satisfied that -- first, that as a preliminary matter,  
8 that the Court has a basis for exercising habeas jurisdiction  
9 over the arrest and detention of Mr. Mahdawi. I have great  
10 respect for the -- I've said this before, and I mean it from my  
11 heart, for the immigration court and the immigration process,  
12 and I have no intention of interfering with those proceedings  
13 that I think start -- they really have their first hearing  
14 tomorrow, and I recognize that the immigration judge will face  
15 some of these questions as well.

16 But to return to my main theme, I am satisfied that -- at  
17 least for purposes of a bail hearing under *Mapp v. Reno* that  
18 the Court has a basis for proceeding, for issuing an order  
19 regarding release or detention that governs -- that applies  
20 during the pendency of the -- of the resolution of the habeas  
21 claim. That's already happening. We have a briefing schedule  
22 to more completely address the jurisdiction-stripping issues.  
23 Those briefs haven't come in. I'll set a hearing at the  
24 earliest opportunity and rule promptly on that. But I think  
25 I -- Mr. Mahdawi is -- and his attorneys are correct in

1 bringing the issue of his detention forward to the District of  
2 Vermont in the habeas setting, and we will talk much more about  
3 this in the weeks ahead.

4       That really brings me to the *Mapp* discussion. I followed  
5 as best I can Judge Calabresi, who has laid out a broad process  
6 for addressing these issues. I think Mr. Mahdawi has made  
7 substantial claims that his detention is the result of  
8 retaliation for protected speech that he engaged in as a  
9 college student on the Columbia campus. The various  
10 administration figures have been candid in expressing their  
11 intent to shut down debate of the type that he was engaged in.  
12 I make no ruling about the merits of the claims, only that  
13 these are substantial issues fairly raised and that need  
14 careful consideration by the government and the Court.

15       Extraordinary circumstances I think are present in a  
16 couple of ways, and I have in mind the need for the Court to  
17 find that it's necessary to maintain Mr. Mahdawi's presence  
18 here in Vermont in order to resolve the petition.

19       I would find extraordinary circumstances first in the --  
20 in the claims themselves. This is not the first time that the  
21 nation has seen a chilling action by the government intended to  
22 shut down debate, but it's not common. We saw -- I've  
23 addressed this a little in the draft. We certainly saw it in  
24 the Red Scare: the Palmer Raids of 1919-1920; during -- also  
25 during the McCarthy period. Both times the immigration laws

1 were used to remove people for their speech. These are not  
2 chapters that we look back with much pride on. I think the  
3 wheel has come round again and the circumstances are fairly  
4 described as extraordinary.

5 I would also find extraordinary circumstances in the  
6 detention of a person who has received remarkable support from  
7 over 90 community members and academics and colleagues and  
8 professors across the United States, many of them Jewish, many  
9 of them not obvious allies of his views but people who have in  
10 a remarkable, consistent pattern described him as a peaceful  
11 and positive person who seeks consensus during these really  
12 difficult times and in this really difficult discussion about  
13 the direction of policy in the -- in the Middle East.

14 I largely discount the suggestion that he presents a risk  
15 of harm to others based on the 2015 information that appears in  
16 the police report. I'm satisfied that the information, which  
17 was, as I said before, shocking when I first read it -- it  
18 concerned an interest in automatic weapons and a sniper rifle.  
19 It is exactly the type of information that the FBI exists to --  
20 is charged with investigating. They did so and met with  
21 Mr. Mahdawi and took no further action. The inference that I  
22 draw is that they found he had -- was not a risk to any of us,  
23 that they were satisfied with his explanation. It was ten  
24 years ago. Difficult to tell exactly what were the motives of  
25 the gunsmith and his friend. But on the whole, for purposes of

1 bail, I would draw from closing the file and no further -- no  
2 further action that these reports were in large part  
3 fabricated. So I don't find a basis for fearing risk of harm.

4 With respect to risk of flight, which I always consider in  
5 making a decision about release or detention, Mr. Mahdawi has  
6 been a resident of the United States for a decade. He is a  
7 resident specifically of our state or he has a permanent home  
8 and what I would judge to be a part-time camp, which he built  
9 himself. He has strong ties in his community that are -- that  
10 are described in many of the letters from the Upper Valley  
11 area, where he has been a longtime resident. Neighbors and  
12 congregants at the Unitarian Church, his state senator, all of  
13 these people have attested to his strong ties to the community.  
14 I think risk of flight -- and he appeared voluntarily in  
15 response to the USCIS summons even though he knew there was a  
16 strong possibility that he would be -- could be arrested when  
17 he showed up for his final citizenship interview. He didn't  
18 flee then. I think the risk of flight is minimal.

19 So I think no risk of harm, no risk of flight, a man  
20 raising substantial claims that may or may not succeed in this  
21 court but certainly raise very important issues, those were  
22 the -- and the great fear for all of us of a chilling or  
23 degradation of the First Amendment rights which are very much  
24 at the heart of our -- of our democracy, all of those I think  
25 support his release subject to the following conditions:

1           That he continue to reside in Vermont.

2           That he is permitted to attend college and see his lawyers  
3 as necessary in New York City. Of course, he can pass through  
4 the states that are needed for that -- for those visits.

5           As I see the setting of his legal status, certainly his  
6 administrative hold remains in effect. He remains subject to  
7 this court's jurisdiction but also the administrative process.  
8 He's not fully released, but I think these conditions are  
9 sufficient to ensure his attendance both in this court and  
10 in -- through the remote process that starts tomorrow with the  
11 immigration courts.

12          I had given thought to the -- to the question of staying  
13 the order, and I have in mind the factors that Mr. Drescher was  
14 kind enough to discuss with me.

15          Likelihood that the party seeking the stay will prevail on  
16 the merits, I don't think there is a strong likelihood of this.  
17 I say this because I am determined to recognize and stay clear  
18 of the removal proceeding. I respect the jurisdictional limits  
19 there. But what remains of the case is I think a strong claim  
20 of arrest and detention by the agents in order to stifle the  
21 speech of Mr. Mahdawi and those who agree with him, so that I  
22 think it is likely that he may well prevail on the merits.  
23 It's up to the decision-maker. It's awkward to sort of  
24 forecast this, and it's subject to change, but I think his case  
25 is strong so long as his judge takes pains not to interfere



1 with the removal proceedings in Louisiana.

2       Turning to the second, the likelihood that the moving  
3 party would be irreparably harmed absent a stay, I think that  
4 the two weeks of detention so far demonstrate the great harm  
5 that this process inflicts on a person who has been charged  
6 with no crime and who has received -- demonstrated his *bona*  
7 *fides* in good faith in so many ways. I think even another day  
8 of detention is not to be tolerated.

9       The prospect that others will be harmed if the Court  
10 grants the stay doesn't, I think, apply directly. I think that  
11 that really relates to stays in conventional civil cases. I do  
12 have in mind certainly that the government represents that it  
13 will be harmed in its conduct of foreign policy, but I don't  
14 think the harm of sending Mr. Mahdawi back to his home this  
15 morning is -- really presents any great risk to the national  
16 interest.

17       The public interest in granting the stay, again, I think  
18 doesn't apply directly except in the sense that I've already  
19 talked about: that the First Amendment values raised in  
20 Mr. Mahdawi's petition are close to the heart of what we are  
21 about as a nation.

22       So I won't grant a stay. I have thought about kind of  
23 postponing the effectiveness of Mr. Mahdawi's release, and I  
24 see no reason to do that. He is a person who has -- presents  
25 no risk of flight. If there is an appeal and if I'm incorrect

1 in this judgment, he will be at his home or at his college and  
2 will surrender in the normal course, but I don't think that's  
3 very likely. I think these are issues that can fairly be  
4 resolved while Mr. Mahdawi follows the conditions that the  
5 Court has set of continued residence at his home and at his  
6 camp in the White River Junction area and meaningful engagement  
7 and attendance in his -- wrapping up his college career and  
8 preparing as best he can for the graduate school.

9       So, Mr. Mahdawi, I will order you released. I'll follow  
10 this up with a written order, but the release is effective at  
11 this time.

12       Do the officers have any paperwork that they need to  
13 complete?

14               IMMIGRATION OFFICER: No.

15       THE COURT: Does he have his phone and his wallet and  
16 that kind of thing?

17               IMMIGRATION OFFICER: We can return them to him right  
18 now, Your Honor.

19       THE COURT: Good. If you could do that, I'll release  
20 him now from the courtroom and we will schedule the next  
21 hearing.

22               COUNSEL: Thank you, Your Honor.

23       THE COURT: I'll see you out. Go ahead and I'll make  
24 sure all goes well.

25       (Court was in recess at 10:20 AM.)

## C E R T I F I C A T I O N

I certify that the foregoing is a correct transcript from  
the record of proceedings in the above-entitled matter.

May 2, 2025

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Johanna Massé, RMR, CRR