

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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MOTION INFORMATION STATEMENT

Docket Number(s): _____ Caption [use short title] _____

Motion for: _____

Set forth below precise, complete statement of relief sought:

MOVING PARTY: _____ OPPOSING PARTY: _____

___ Plaintiff ___ Defendant
___ Appellant/Petitioner ___ Appellee/Respondent

MOVING ATTORNEY: _____ OPPOSING ATTORNEY: _____
[name of attorney, with firm, address, phone number and e-mail]

Court- Judge/ Agency appealed from: _____

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
___ Yes ___ No (explain): _____

Opposing counsel's position on motion:
___ Unopposed ___ Opposed ___ Don't Know

Does opposing counsel intend to file a response:
___ Yes ___ No ___ Don't Know

Is oral argument on motion requested? ___ Yes ___ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ___ Yes ___ No If yes, enter date: _____

Signature of Moving Attorney:

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Has this request for relief been made below? ___ Yes ___ No

Has this relief been previously sought in this court? ___ Yes ___ No

Requested return date and explanation of emergency: _____

No. 25-1113

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

**MOHSEN MAHDAWI,
Petitioner-Appellee,**

v.

**DONALD J. TRUMP, ET AL.,
Respondents-Appellants.**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT
District Court Case No. 2:25-cv-389**

**EMERGENCY MOTION PURSUANT TO CIRCUIT RULE 27.1(d) FOR
STAY PENDING APPEAL WITH RELIEF REQUEST BY MAY 6, 2025**

**YAAKOV M. ROTH
Acting Assistant Attorney General
Civil Division**

**DREW C. ENSIGN
Deputy Assistant Attorney General
Office of Immigration Litigation**

**ERNESTO H. MOLINA
Deputy Director**

**MICHAEL P. DRESCHER
Acting United States Attorney
District of Vermont**

**ALANNA T. DUONG
DHRUMAN Y. SAMPAT
Senior Litigation Counsel
Office of Immigration Litigation
Civil Division, U.S. Dept. of Justice**

Attorneys for Respondents-Appellants

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**EMERGENCY MOTION PURSUANT TO CIRCUIT RULE 27.1(d) FOR
STAY PENDING APPEAL WITH RELIEF REQUEST BY MAY 6, 2025**

INTRODUCTION

Secretary of State Rubio has personally determined that Mohsen Mahdawi’s “presence and activities in the United States would have serious adverse foreign policy consequences and would compromise a compelling U.S. foreign policy interest.” *Mahdawi v. Trump*, -- F. Supp. 3d --, No. 2:25-CV-389, 2025 WL 1243135, *3 (D. Vt. Apr. 30, 2025). The Executive Branch thus detained Mahdawi and started proceedings to remove him from this country. But yesterday, a federal district court in Vermont interceded, and ordered that Mahdawi be immediately released.

Emergency relief is warranted. The district court's order was in excess of its jurisdiction at every turn. And it is part of a now troubling pattern of district courts superintending immigration proceedings in the teeth of congressional command.

Indeed, one of those other cases is pending before this Court right now. *See Ozturk v. Hyde, et al.*, No. 25-1019 (2d Cir.). Because this case presents similar exigencies, and rests on many of the same fundamental legal errors, this Court should treat it in the same way: It should issue an administrative stay of the district court's release order; and set this case for argument on May 6, 2025, where a panel is already set to consider these issues.

BACKGROUND

I. Mohsen Mahdawi.

Mahdawi, a Palestinian, is a lawful permanent resident of the United States. *See* Ex. A, ECF#1, Petition for Writ of Habeas Corpus, ¶¶ 8, 18, 19. He also has a troubling and longstanding history with antisemitism (among other things). *See Mahdawi*, No. 2:25-CV-389, Doc. 42-3, at 1-2 (in January 2019, Mahdawi was stopped at the border and found to be carrying drugs, including LSD, methamphetamine, and illegal mushrooms, as well as more than \$4,000 in U.S. currency); *id.*, Doc. 42-2, at 6 (November 2015, Mahdawi was in the process of divorcing his wife, who asked the police department to take custody of a shotgun in their home following a “non-physical argument” with him). In 2015, for instance,

Mahdawi visited a gun store, where he bragged about “kill[ing] Jews while he was in Palestine.” *Id.* at 2. Around that time, he also told someone he “like[d] to kill Jews.” *Id.* at 4. And it seems those sentiments continued into his time at Columbia. There, he was a central figure in campus protests that gripped the country.

On April 14, 2025, Mahdawi was taken into custody by the Department of Homeland Security (“DHS”), after Secretary of State Rubio had determined that his presence and activities in the country was seriously adverse to American foreign policy. Ex. A ¶¶ 3, 50; Ex. B, Determination of Deportability. DHS seeks to remove Mahdawi pursuant to 8 U.S.C. § 1227(a)(4)(C)(i), which renders removable “[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[.]” Ex. A ¶¶ 5, 57.

II. Proceedings Below.

On April 14, 2025, Mahdawi filed a habeas petition in the District of Vermont based on his alleged “retaliatory arrest and attempted removal.” Ex. A ¶ 1. He alleged that he was “an outspoken critic of Israel’s military campaign in Gaza and an activist and organizer in student protests on Columbia’s campus until March of 2024,” and that his arrest and detention are an attempt to “retaliate and punish noncitizens for their speech and expressive conduct related to Palestine and Israel.” He asserted claims under the First Amendment, the Due Process Clause, the

Administrative Procedures Act (“APA”), and the non-delegation doctrine, and sought release on bail. *Id.* ¶¶ 58-90.

On April 30, 2025, the district court released Mahdawi from custody. *See Mahdawi*, 2025 WL 1243135, at *14. The district court concluded that the jurisdictional bars under 8 U.S.C. §§ 1252(g), 1226(e), 1252(a)(5), and 1252(b)(9) did not bar its review of Mahdawi’s habeas claims. *Mahdawi*, 2025 WL 1243135, at *4-8. As for the merits, the court concluded the conditions for relief under *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001), were satisfied.

Seven days prior to the release order, the district court *sua sponte* extended its grant of a temporary restraining order (“TRO”) for 90 days and issued a dewritten order on April 24. *Mahdawi*, No. 2:25-CV-389, Doc. 34. The court originally ordered that Mahdawi “not be removed from the United States or moved out of the territory of the District of Vermont pending further order of this Court.” *Id.*, Doc. 6. The court extended that order for the earlier of 90 days and the end of litigation. *Id.*, Doc. 34.

The government immediately moved for a stay of the district court’s order pending appeal before this Court, which the district court denied. *Id.* at *13-14. The government filed a notice of appeal that day. This motion follows.

ARGUMENT

I. This Court Should Stay the District Court’s Order.

Courts consider four factors in assessing a motion for stay pending appeal: (1) the government’s likelihood of prevailing on the merits of the appeal, (2) whether the government will suffer irreparable harm absent a stay, (3) the harm that other parties will suffer if a stay is granted, and (4) the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); see *New York v. United States Department of Homeland Security*, 974 F.3d 210, 214 (2d Cir. 2020). When the government is a party, its interests and the public interest “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

This Court should immediately issue a stay. The district court’s order here is immediately reviewable. *Grune v. Coughlin*, 913 F.2d 41, 44 (2d Cir. 1990). So too is the district court’s extended TRO, which now clearly functions as an injunction, in both duration and substance. *Dep’t of Educ. v. California*, 145 S. Ct. 966, 968 (2025) (holding a district court order is appealable when it carries the “hallmarks of a preliminary injunction”).

And those decisions are fundamentally flawed, because the district court did not have jurisdiction to issue either. See *Ozturk*, No. 25-1019, Doc. 19, Emergency Motion Pursuant to Circuit Rule 27.1(d) For Stay Pending Appeal, at 16-19. More, the equities favor a stay: The government is suffering irreparable harm every moment it cannot administer its sovereign authority under the immigration laws, in

this instance, related directly to foreign policy; and the public interest will suffer so long as someone who the Executive has determined should be detained is allowed to roam free.

A. The District Court Lacked Jurisdiction to Issue its Release Order.

Under this Court’s decision in *Mapp*, a federal district court may grant bail pending review of an alien’s habeas petition under certain circumstances. 241 F.3d at 223. But the court may only grant bail in *aid* of its review of a habeas petition, if the court has jurisdiction to review that habeas petition in the first place. *See id.* at 231 (courts may grant release “to those who are properly before it”), 228 (authority to grant bail may be conditioned or limited by Congress).

That dooms the order below. Mahdawi’s habeas petition, at bottom, is a challenge to his removal: It targets his supposedly “retaliatory and targeted detention and attempted removal.” *Mahdawi*, 2025 WL 1243135, at *1. But district courts lack jurisdiction to hear that sort of case. Namely, Mahdawi’s claims are barred by 8 U.S.C. § 1252(g), which deprives courts of jurisdiction to review claims arising from the decision or action to “commence proceedings.” Additionally, § 1252(a)(5) and (b)(9) deprive courts of jurisdiction to review actions taken or proceedings brought to remove aliens from the United States, and channel such challenges to the courts of appeals.

Section 1252(g): By its plain terms, 8 U.S.C. § 1252(g) eliminates district court jurisdiction over challenges to commencing removal proceedings. Mahdawi seeks to challenge the government’s decisions to charge him with removability and detain him, which arise “from the decision [and] action” to “commence proceedings.” 8 U.S.C. § 1252(g). Regardless of the framing of his claims, the court below did not have jurisdiction over such a challenge.

Section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review “any cause or claim by or on behalf of an alien arising from the decision or action by [the Secretary of Homeland Security] to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter.”¹ *Id.* (emphasis added). Section 1252(g) eliminates jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title.”² Though this section “does not sweep

¹ The Attorney General once exercised all of that authority, but much of that authority has been transferred to the Secretary of Homeland Security. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005). Many of the INA’s references to the Attorney General are now understood to refer to the Secretary. *Id.*

² Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title” after

broadly,” *Tazu v. Att’y Gen. United States*, 975 F.3d 292, 296 (3d Cir. 2020), its “narrow sweep is firm,” *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021).

Section 1252(g) is “directed against a particular evil: attempts to impose judicial constraints upon [certain categories of] prosecutorial discretion.” *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 n.9 (1999) (“AADC”). Indeed, Section 1252(g) was designed to protect the Executive’s discretion and avoid the “deconstruction, fragmentation, and hence prolongation of removal proceedings.” *Id.* at 487. It protects the government’s authority to make “discretionary determinations” over whether and when to commence removal proceedings against an alien, “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.” *Id.* at 485.

Section 1252(g) prohibits district courts from hearing challenges to decisions and actions about *whether* and *when* to commence removal proceedings. *See, e.g., Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) (“We construe § 1252(g) . . . to include not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding.”); *see also, e.g., Sissoko v. Rocha*, 509 F.3d 947, 950-51 (9th Cir. 2007) (holding that § 1252(g) barred

“notwithstanding any other provision of law.” REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

reviewing a Fourth Amendment false arrest claim that “directly challenge[d] [the] decision to commence expedited removal proceedings.”); *Obado v. Superior Ct. of New Jersey Middlesex Cnty.*, No. 21-cv-10420 (FLW), 2022 WL 283133, at *3 (D.N.J. Jan. 31, 2022) (declining to terminate the NTA and/or halt proceedings because it was a challenge to “decision to commence and adjudicate removal proceedings”).

The scope of § 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security chooses to commence removal proceedings. *See, e.g., Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision to take him into custody and to detain him during removal proceedings”); *Saadulloev v. Garland*, No. 3:23-cv-106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (“The Government’s decision to arrest [petitioner], clearly is a decision to ‘commence proceedings’ that squarely falls within the jurisdictional bar of § 1252(g).”). The act of arresting—and in turn, detaining—an alien to serve a charging document and initiate removal proceedings is an “action . . . to commence proceedings” that this Court lacks jurisdiction to review. *See, e.g., id.; Tazu*, 975 F.3d at 298-99 (“Tazu also challenges the Government’s re-detaining him for prompt removal. . . . While this claim does not challenge the Attorney General’s *decision* to execute his removal order, it does

attack the *action* taken to execute that order. So under § 1252(g) and (b)(9), the District Court lacked jurisdiction to review it.”).

As § 1252(g) prohibits judicial review of “any cause or claim” that arises from the commencement of removal proceedings, this provision applies to constitutional as well as statutory claims. *See, e.g., Tazu*, 975 F.3d at 296-98 (holding that any constitutional claims must be brought in a petition for review, not a separate district court action); *Elgharib v. Napolitano*, 600 F.3d 597, 602-04 (6th Cir. 2010) (noting that “a natural reading of ‘any other provision of law (statutory or nonstatutory)’ includes the U.S. Constitution” and finding additional support for the court’s interpretation from the remainder of the statute). Indeed, “[w]hile the statute creates an exception for ‘constitutional claim or questions of law,’ jurisdiction to review such claims is vested exclusively in the courts of appeals and can be exercised only after the alien has exhausted administrative remedies.” *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (internal citations omitted); *see also id.* (“Accordingly, the district court lacked jurisdiction to review Ajlani’s constitutional challenges to his removal proceedings, and it would be premature for this court to do so now.”); 8 U.S.C. § 1252(a)(2)(D).

Moreover, the Supreme Court held that a prior version of § 1252(g) barred claims strikingly similar to those brought here. *See AADC*, 525 U.S. at 487-92. In *AADC*, the respondents had alleged that the “INS was selectively enforcing the

immigration laws against them in violation of their First and Fifth Amendment rights.” *Id.* at 473-74. The Supreme Court noted “an admission by the Government that the alleged First Amendment activity was the basis for selecting the individuals for adverse action.” *Id.* at 488 n.10. The respondents argued that a lack of immediate review would have a “chilling effect” on their First Amendment rights. *Id.* at 488. Nonetheless, the Supreme Court held that the “challenge to the Attorney General’s decision to ‘commence proceedings’ against them falls squarely within § 1252(g).” *Id.* at 487; *see also Cooper Butt ex rel Q.T.R. v. Barr*, 954 F.3d 901, 908-09 (6th Cir. 2020) (holding the district court did not have jurisdiction to review a claim alien “was removed ‘based upon ethnic, religious and racial bias’ in violation of the Equal Protection Clause of the Fifth Amendment”).

In short, Mahdawi alleges that the government arrested, detained, and commenced removal proceedings against him in retaliation for his exercise of the First Amendment—and he seeks habeas relief on that basis. But that sort of suit is firmly within § 1252(g)’s reach. *See, e.g., AADC*, 525 U.S. at 487-92 (holding that Section 1252(g) deprived district court of jurisdiction over claim that certain aliens were targeted for deportation in violation of the First Amendment.); *Zundel v. Gonzales*, 230 F. App’x 468, 475 (6th Cir. 2007) (explaining that First Amendment challenge related to immigration enforcement action “is properly characterized as a challenge to a discretionary decision to ‘commence proceedings’

. . . [and] is insulated from judicial review”); *Humphries v. Various Fed. U.S. INS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999) (ruling that § 1252(g) prohibited review of an alien’s First Amendment claim based on decision to put him into exclusion proceedings).

Sections 1252(a)(5), (b)(9). Removal proceedings generally provide the exclusive means for determining whether an alien is both removable from the United States and eligible for any relief or protection from removal. *See* 8 U.S.C. § 1229a. In 8 U.S.C. § 1252, Congress channeled into the statutorily prescribed removal process all legal and factual questions—including constitutional issues—that may arise from the removal of an alien, with judicial review of those decisions vested exclusively in the courts of appeals. *See AADC*, 525 at 483. District courts play no role in that process. Consequently, the court below lacked jurisdiction over Mahdawi’s claims, which are all again, at bottom, challenges to removal proceedings. Mahdawi must first raise all his challenges through the administrative removal proceedings, and then, if necessary, in the appropriate court of appeals.

To start, 8 U.S.C. § 1252(b)(9) eliminates this Court’s jurisdiction over Mahdawi’s claims by channeling all challenges to immigration proceedings (and removal orders) to the courts of appeals:

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 any . . . provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of *all* [claims arising from deportation proceedings]” to a court of appeals in the first instance. *AADC*, 525 U.S. at 483. As this Court has explained, § 1252(b)(9) requires claims like Mahdawi’s to be consolidated in one proceeding before the Court of Appeals:

Congress enacted 8 U.S.C. § 1252(b)(9)] for the important purpose of consolidating all claims that may be brought in removal proceedings into one final petition for review of a final order in the court of appeals. . . . Before 8 U.S.C. § 1252(b)(9)], only actions attacking the deportation order itself were brought in a petition for review while other challenges could be brought pursuant to a federal court’s federal question subject matter jurisdiction under 28 U.S.C. § 1331. Now, by establishing “exclusive appellate court” jurisdiction over claims “arising from any action taken or proceeding brought to remove an alien,” all challenges are channeled into one petition.

Calcano-Martinez v. INS, 232 F.3d 328, 340 (2d Cir. 2000). By law, “the sole and exclusive means for judicial review of an order of removal” is a “petition for review filed with an appropriate court of appeals,” that is, “the court of appeals for the judicial circuit in which the immigration judge completed the proceedings.”

8 U.S.C. § 1252(a)(5), (b)(2).

Moreover, Congress intended that a petition for review is the exclusive means for judicial review of immigration proceedings:

Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035 (stating that § 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” 8 U.S.C. § 1252(a)(2)(D); *see also Ajlani*, 545 F.3d at 235 (“jurisdiction to review such claims is vested exclusively in the courts of appeals”). The petition-for-review process

before the court of appeals thus ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their ‘day in court.’” *J.E.F.M.*, 837 F.3d at 1031-32; *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all constitutional claims or questions of law.”).

In evaluating the reach of subsections (a)(5) and (b)(9), “whether the district court has jurisdiction will turn on the substance of the relief that a plaintiff is seeking.” *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, which includes any challenge that is inextricably intertwined with the final order of removal that precedes issuance of any removal order, *id.*, as well as decisions to detain for purposes of removal or for proceedings, *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018).

Here, Mahdawi’s claims fit comfortably within these provisions, as the Supreme Court made express in *Jennings*. Justice Alito explained that whatever the precise scope of § 1252(b)(9), it plainly covered suits challenging the “decision to detain [an alien] in the first place or to seek removal [of him].” 583 U.S. at 294-95. And *that* is Mahdawi’s challenge here to a tee.³

³ *See also, e.g., Saadulloev*, 2024 WL 1076106, at *3 (recognizing that there

District Court. The decision below rested on the notion that Mahdawi’s habeas petition was not challenging his removal, but instead his allegedly unlawful detention. That too is the main argument that Ozturk presses before this Court. But here as there, it does not work. *See Ozturk*, No. 25-1019, Doc. 19, at 16-19.

When an alien challenges his detention on the ground that he should not be removed in the first place, it is in substance a challenge to his removal. And when an alien challenges being detained in the process of being removed, that suit is one that “arising from the decision ... to commence [removal] proceedings.” 8 U.S.C. § 1252(g). The district court did not engage with this point, nor could it.

is no judicial review of the threshold detention decision); *Ali v. Barr*, 464 F. Supp. 3d 549, 557-58 (S.D.N.Y. 2020) (lack of jurisdiction over issues arising from removal proceedings); *Nikolic v. Decker*, No. 19 Civ. 6047 (LTS), 2019 WL 5887500, at *3 (S.D.N.Y. Nov. 12, 2019) (same); *P.L. v. ICE*, No. 19 Civ. 1336 (ALC), 2019 WL 2568648, at *2 (S.D.N.Y. June 21, 2019) (collecting cases) (“Where immigrants in removal proceedings directly or indirectly challenge removal orders or proceedings, the Second Circuit and district courts within the circuit have held district courts do not have jurisdiction.”); *Selvarajah v. U.S. Dep’t of Homeland Security*, No. 10 Civ. 4580 (JGK), 2010 WL 4861347, at *4 (S.D.N.Y. Nov. 30, 2010) (“challenges to actions that are part of [an ongoing] removal proceeding have been treated in the same manner as challenges to removal orders, for jurisdictional purposes”); *see also Taal v. Trump*, No. 3:25-cv-335 (ECC), 2025 WL 926207, at *2 (N.D.N.Y. Mar. 27, 2025) (“Plaintiffs have not established that the Court has subject matter jurisdiction over Taal’s claim for a temporary restraining order enjoining his removal proceedings.”); *Sophia v. Decker*, No. 19 Civ. 9599 (LGS), 2020 WL 764279, at *2 (S.D.N.Y. Feb. 14, 2020) (applying § 1252(b)(9) to strip district court of jurisdiction over challenge to whether the petitioner was legally in removal proceedings).

Likewise, when an alien does not challenge a distinct defect in his detention, but instead raises defects in his detention that are entirely derivative of his ultimate objection to his removal, that sort of claim must be folded into the zipper clause, lest an alien obtain initial review of the very substantive claims that are supposed to wait for the court of appeals. Indeed, that is why in *Jennings*, the Court, again, said that § 1252(b)(9) reached the “decision to detain [an] alien in the first place or to seek removal [of him].” 583 U.S. at 294. And it is why this Court has explained that § 1252(b)(9) only falls away when the action is “unrelated to any removal action or proceeding” is it within a district court’s jurisdiction. *Ruiz*, 552 F.3d at 274 n.3. “[T]he substance of the relief that a plaintiff is seeking” will dictate. *Delgado*, 643 F.3d at 55. If the substance of a suit is an *indirect* challenge to a removal order, it is barred by the INA all the same. *Id.*

B. The District Court Lacked Jurisdiction to Issue the Extended TRO.

As explained above, the district court also ordered that if Mahdawi is detained, he cannot be moved from Vermont. But no ICE facility in Vermont has virtual EOIR capabilities. For Mahdawi to appear remotely for his removal proceedings in Louisiana, ICE must create an ad-hoc location, which creates an operation burden and poses security concerns for the officers involved. *Ozturk*, No. 25-1019, Doc. 55 at 22. And the court extended that order for the earlier of 90 days and the end of litigation. *Mahdawi*, No. 2:25-CV-389, Doc. 34. That order was independently

unlawful, because the immigration laws strip jurisdiction over the decision of where an alien undergoing removal proceedings is held.

Courts in this Circuit have repeatedly held that they lack the authority to dictate to the Executive Branch where it must detain an alien during removal proceedings.⁴ That rule follows from a straightforward application of the INA: Section 1226(a) gives DHS broad discretion over whether to detain an alien during removal proceedings; Section 1231(g) gives the Secretary the authority to “arrange for appropriate places of detention for aliens detained pending removal or a decision on removal”; and Section 1252(a)(2)(B)(ii) strips jurisdiction for federal district courts to review that sort of discretionary determination. *See, e.g., Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999).

The federal courts thus lack the authority to dictate *where* an alien is detained. That determination of the “appropriate” location is assigned specifically to the DHS Secretary. And to boot, the federal courts are specifically disabled from reviewing those discretionary decisions. *See also* 8 U.S.C. § 1226(e) (“The Attorney General’s

⁴ *See, e.g., Zheng v. Decker*, No. 14-cv-4663 (MHD), 2014 WL 7190993, at *15-16 (S.D.N.Y. Dec. 12, 2014); *Salazar v. Dubois*, No. 17-cv-2186 (RLE), 2017 WL4045304, at *1 (S.D.N.Y. Sept. 11, 2017); *Mathurin v. Barr*, No. 6:19-CV-06885-FPG, 2020 WL 9257062, at *11 (W.D.N.Y. Apr. 15, 2020); *P.M. v. Joyce*, No. 22-CV-6321 (VEC), 2023 WL 2401458, at *5 (S.D.N.Y. Mar. 8, 2023); *Vasquez-Ramos v. Barr*, No. 20-CV-6206-FPG, 2020 WL 13554810, at *6 (W.D.N.Y. June 26, 2020); *Adejola v. Barr*, 408 F. Supp. 3d 284, 287 (W.D.N.Y. 2019); *Gomez v. Whitaker*, No. 6:18-CV-06900-MAT, 2019 WL 4941865, at *6 (W.D.N.Y. Oct. 8, 2019).

discretionary judgment regarding the application of [§ 1226] shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.”).

As explained before, the district courts cannot compel transfer from one facility to another, nor dictate what state an alien is detained within. *See Ozturk*, No. 25-1019, Docs. 19, at 9-10, 55 at 3-6. That is the prerogative of the Executive; and by the repeated letter of Congress, not the province of the Judiciary.

C. The Equities Favor a Stay.

The government will experience irreparable harm if this Court does not intervene. It “suffers a form of irreparable injury” “[a]ny time [it] is enjoined by a court from effectuating statutes enacted by representatives of its people.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (citation omitted). That is particularly true here because rules governing immigration “implement[] an inherent executive power.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) (recognizing that “it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien”). Besides the fundamental affront to sovereignty that comes with the order below, it does not appear the district court appreciated any of the practical costs. Under that order, the Executive must detain

Mahdawi in Vermont, but no ICE facility in Vermont has virtual capabilities for him to appear remotely for his removal proceedings. ICE must thus create an ad-hoc location for Mahdawi to continue to appear for his removal proceedings in Louisiana remotely. Creating an ad-hoc location creates an operational burden on ICE and presents security concerns for the officers involved. *Ozturk*, No. 25-1019, Doc. 55 at 21, ¶¶ 13-16.

Moreover, it is well settled that the public interest in the enforcement of the United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Nken*, 556 U.S. at 435. There is “always a public interest in prompt execution of removal orders.” *Nken*, 556 U.S. at 436. That principle extends to the prompt resolution of determining removability because “[t]he continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and ‘permit[s] and prolong[s] a continuing violation of United States law.’” *Id.* (quoting *AADC*, 525 U.S. at 490). In granting the relief Mahdawi seeks, the district court impaired the government's ability to carry out its official duties, which is contrary to the public interest.

By seeking an order preventing DHS from detaining him, Mahdawi frustrates the public interest in enforcing the immigration laws and in determining his removability. DHS has a valid statutory basis for detention, *see* 8 U.S.C. § 1226(a), and “detention during [removal] proceedings is a constitutionally valid aspect of the

process,” *Demore*, 538 U.S. at 511; accord *Trump v. Hawaii*, 585 U.S. 667, 670, 706 (2018) (holding that review of the President’s entry policy “is limited to whether the Executive gives a ‘facially legitimate and bona fide’ reason for its action” which can be satisfied by “a legitimate grounding in national security concerns[.]”)).

II. Alternatively, Mandamus Is Warranted.

Mandamus is warranted here, just as it is in *Ozturk*. See *Ozturk*, No. 25-1019, Doc. 19 at 20-21. First, the government has no other adequate means to attain the requested relief. See *Cheney v. U.S. Dist. Ct. for D. C.*, 542 U.S. 367, 380 (2004). Crucially, the district court ordered DHS to release Mahdawi immediately. Second, considering the jurisdictional bars in 8 U.S.C. § 1252(a)(5), (b)(9), and (g), the government has satisfied its burden of showing that its right to issuance of the writ is clear and indisputable. See *Chenery*, 542 U.S. at 380. Finally, issuance of the writ is appropriate under these circumstances because the district court’s order amounts to a judicial usurpation of the Executive’s exclusive statutory powers and preeminent constitutional powers over immigration. See *La Buy v. Howes Leather Co.*, 352 U.S. 249, 259-60 (1957); see also, e.g., *In re Roman Cath. Diocese of Albany, New York, Inc.*, 745 F.3d 30, 37 (2d Cir. 2014) (granting mandamus where jurisdictional ruling of court below “patently” wrong).

* * *

CONCLUSION

The Court should grant the government's emergency motion and stay the district court's orders pending appeal by May 6, 2025.

Respectfully submitted,

YAAKOV M. ROTH
Acting Assistant Attorney General
Civil Division

DREW C. ENSIGN
Deputy Assistant Attorney General
Office of Immigration Litigation

ERNESTO H. MOLINA
Deputy Director

/s/Michael P. Drescher
MICHAEL P. DRESCHER
Acting United States Attorney
District of Vermont

ALANNA T. DUONG
DHRUMAN Y. SAMPAT
Senior Litigation Counsel
Office of Immigration Litigation
Civil Division, U.S. Dept. of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
Tel: (202) 305-7040 (Duong)
(202) 532-4281 (Sampat)
alanna.duong@usdoj.gov
dhruman.y.sampat@usdoj.gov

May 1, 2025

Attorneys for Respondents-Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27(d)(2)(A), I certify that the foregoing was prepared using 14-point Times New Roman type, is proportionally spaced and contains 5,195 words, exclusive of the tables of contents and citations, and certificates of counsel.

/s/Michael P. Drescher
MICHAEL P. DRESCHER
Acting United States Attorney
District of Vermont

May 1, 2025

Attorney for Respondents-Appellants

CERTIFICATE OF SERVICE

I certify that on May 1, 2025, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate ACMS system. I further certify that all participants in the case are registered ACMS users and that service will be accomplished through that system.

/s/Michael P. Drescher
MICHAEL P. DRESCHER
Acting United States Attorney
District of Vermont

Exhibit A

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

MOHSEN MAHDAWI,

Petitioner,

-against-

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; PATRICIA HYDE, IN HER OFFICIAL CAPACITY AS ACTING BOSTON FIELD OFFICE DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; VERMONT SUB-OFFICE DIRECTOR OF IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; TODD M. 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; MARCO RUBIO, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND PAMELA BONDI, IN HER OFFICIAL CAPACITY AS U.S. ATTORNEY GENERAL,

Respondents.

**PETITION FOR
WRIT OF HABEAS
CORPUS**

INTRODUCTION

1. Petitioner Mohsen Mahdawi is a lawful permanent resident of the United States on the pathway to naturalization. He has held a green card for the past ten years. This case concerns the government's retaliatory and targeted detention and attempted removal of Mr. Mahdawi for his constitutionally protected speech.

2. Mr. Mahdawi was born and raised in a refugee camp in the West Bank, where he lived until he moved to the United States in 2014. Mr. Mahdawi recently attended Columbia University, and he intends to return for a master's degree in fall of 2025. As a student at Columbia,

Mr. Mahdawi was an outspoken critic of Israel's military campaign in Gaza and an activist and organizer in student protests on Columbia's campus until March of 2024, after which he took a step back and has not been involved in organizing.

3. On April 14, 2025, Mr. Mahdawi was arrested and detained by agents from the Department of Homeland Security ("DHS"), despite the fact that he is a lawful permanent resident.

4. Mr. Mahdawi's unlawful arrest and detention comes after Respondents adopted a policy ("the Policy") on or before March 8, 2025, to retaliate and punish noncitizens for their speech and expressive conduct related to Palestine and Israel. Under the Policy, Respondent Marco Rubio, the Secretary of State, has unilateral power to issue determinations ("Rubio Determinations") that the presence or activities in the United States of individuals who protested or were outspoken critics of Israel would have potentially serious foreign policy consequences and would compromise a compelling United States foreign policy interest. Based on these determinations, the Department of Homeland Security would seek to detain and deport these individuals.

5. It appears that Respondents seek to base Mr. Mahdawi's removal on the Rubio Determination and Section 237(a)(4)(C)(i) of the Immigration and Nationality Act, a rarely-used provision that Respondents recently used to detain another lawful permanent resident, Mahmoud Khalil, for similar speech.

6. Prior to and following Mr. Mahdawi's detention, the government has made clear that it intends to retaliate and punish individuals such as Mr. Mahdawi who advocated for ceasefire and ending the bloodshed in Gaza. Respondents' actions plainly violate the First Amendment, which protects Mr. Mahdawi's right to speak on matters of public concern and prevents the government from chilling constitutionally-protected speech.

7. In addition to violating Mr. Mahdawi's First Amendment rights, the Rubio Determination and Mr. Mahdawi's unlawful detention also violates Mr. Mahdawi's statutory rights and due process rights.

PARTIES

8. Petitioner Mohsen Mahdawi is a Palestinian who was born and raised in a refugee camp in the West Bank. He is a lawful permanent resident of the United States and has been for the last ten years. He is a recent student of Columbia University, with an expected graduation date of May 2025. He has been admitted to a Master's program at Columbia University's School of International and Public Affairs ("SIPA"), to begin in the fall of 2025.

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 the Department of Homeland Security. At all relevant hereto, Respondent Trump's address is the White House, 1600 Pennsylvania Ave. NW, Washington, D.C. 20500.

10. Respondent Patricia Hyde is named in her official capacity as the Acting Field Office Director of the Boston Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a custodian of Petitioner. At all times relevant hereto, Respondent Hyde's address is Boston ICE Enforcement and Removal Operations Field Office, 1000 District Avenue, Burlington, MA 01803.

11. Respondent the Director of the Vermont Sub-Office of ICE Enforcement and Removal Operations, whose name is currently unknown to the undersigned, is named in his or her official capacity as the Director of the Vermont Sub-Office of the Boston Field Office for

Immigration and Customs Enforcement (“ICE”) within the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a custodian of Petitioner. At all relevant times, the Director’s address is 64 Gricebrook Road, St. Albans, VT 05478.

12. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of Vermont, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. At all times relevant hereto, Respondent Lyons’s 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 immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of Vermont; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. At all times relevant hereto, 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 Pamela Bondi is named in her official capacity as the Attorney General of the United States. She routinely transacts business in the District of Vermont in this capacity; 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. At all times relevant hereto,

Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001.

JURISDICTION & VENUE

15. 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 Judgement).

16. 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, 22023. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.

17. Venue is proper in the District of Vermont under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. At the time this proceeding was initiated, Mr. Mahdawi was detained at 463 Mountain View Drive, Colchester, VT 05446. The petitioner has been and is presently being detained at the direction of Respondent Hyde and/or the Vermont sub-office Director, and a substantial part of the events giving rise to this petition occurred within this district.

FACTS

Background on Mr. Mahdawi

18. Mr. Mahdawi is Palestinian. He is also a lawful permanent resident of the United States, and has been for the last ten years.

19. Mr. Mahdawi was born in a refugee camp in the West Bank. In 2015, he became a lawful permanent resident of the United States.

20. In 2018, Mr. Mahdawi enrolled in Lehigh University in Pennsylvania, where he studied computer science for two years before transferring into Columbia University in 2021 to study philosophy. Mr. Mahdawi completed his program at Columbia in 2024 and has an expected

graduation date of May 2025. Mr. Mahdawi plans to begin a Master's of International Affairs in fall of 2025 at the Columbia School of International and Public Affairs.

Mr. Mahdawi's Speech on Matters of Public Concern

21. After growing up in a refugee camp, Mr. Mahdawi felt compelled to advocate for Palestinian human rights upon moving to the United States.

22. Mr. Mahdawi is also a committed Buddhist and believes in non-violence and empathy as a central tenet of his religion. In fall of 2021, he became the president of the Columbia University Buddhist Association and led it for two years.

23. In fall of 2023, Mr. Mahdawi co-founded the Palestinian Student Union ("Dar") at Columbia University which "serves to engage with and celebrate Palestinian culture, history, and identity." Mr. Mahdawi co-founded this organization with Mahmoud Khalil, a Palestinian lawful permanent resident who was also recently detained by ICE for his expressive conduct related to Palestine.

24. Before October of 2023, Mr. Mahdawi had advocated for a peaceful resolution between Israelis and Palestinians in different forms such as public speeches, community engagement, and storytelling initiatives. Following October of 2023, Mr. Mahdawi attended protests opposing military escalations in the region and advocating for Palestinian human rights and a peaceful political solution. Mr. Mahdawi gave speeches at several of these protests. In his speeches, Mr. Mahdawi advocated for Palestinian human rights, a permanent ceasefire, and a peaceful resolution that affirmed the human dignity of all.

25. During one protest, Mr. Mahdawi vocally denounced an unaffiliated passerby who made an antisemitic comment, chanting "shame on him". Mr. Mahdawi stated that "we are against

antisemitism because antisemitism is a form of injustice, and injustice anywhere is a threat to justice everywhere.” The confrontation was documented by the Columbia Spectator.¹

26. Mr. Mahdawi appeared in numerous televised interviews and print news articles regarding the military campaign in Gaza and related protests. In December of 2023, Mr. Mahdawi appeared on 60 Minutes where he shared that, as a child, he watched an Israeli soldier shoot and kill his best friend in the West Bank.

27. Throughout his time as a student and a leader of Dar and the Columbia University Buddhist Association, Mr. Mahdawi was always willing to engage in dialogue with people whose views and beliefs differed from his own. Mr. Mahdawi believed, and continues to believe, that more speech is the solution to disagreement, rather than less, and that empathy and understanding through communication are a way to resolve conflicts peacefully.

28. By the end of 2023, student speech and protests relating to the military campaign in Gaza had pushed Columbia into the national spotlight. And Mr. Mahdawi became a prime target for groups and individuals who wanted to suppress this flurry of activism.

29. Mr. Mahdawi’s speech regarding Israel’s military campaign in Gaza, human rights, international law, obligations arising from international law, and related matters is speech protected by the First Amendment. Indeed, this political speech lies at the core of the First Amendment.

30. Mr. Mahdawi’s family still resides in a refugee camp in the West Bank. Israeli authorities have repeatedly harassed, detained, and tortured Mr. Mahdawi’s family because of his advocacy for Palestinians in the United States.

¹<https://www.columbiaspectator.com/news/2023/11/10/hundreds-of-pro-palestinian-students-walk-out-as-part-of-national-call-to-action-gather-for-peaceful-protest-art-installation>

31. Mr. Mahdawi is fearful that, if he loses his lawful permanent resident status and he is removed to the West Bank, he will experience the same harassment, detention, and torture that his family has experienced, and would be in even more danger in light of the campaigns that have targeted and spread lies about him.

The Federal Government’s Suppression of Constitutionally Protected Speech: The Palestine Exception

32. In a closed-door meeting with donors during his re-election campaign, President Trump explicitly stated his intent to deport students who protested the military campaign in Gaza. Speaking in reference to Palestine-related protests, President Trump told donors: “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 have to behave.”²

33. As a candidate, President Trump additionally pledged to “terminate the visas of all 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.”³

34. In fall of 2023, then-Senator Marco Rubio repeated these sentiments, stating on social media that “people marching at universities” were “supporters of Hamas” and that the U.S. should “cancel the visa of every foreign national out there supporting Hamas and get them out of America.”⁴

35. In January of 2025, after assuming office, President Trump signed two executive orders intended to fulfill his campaign promises of deporting protestors, Executive Order 14161, “Protecting the United States from Foreign Terrorists and other National Security and Public

² <https://www.washingtonpost.com/politics/2024/05/27/trump-israel-gaza-policy-donors/>.

³ <https://www.reuters.com/world/us/trump-administration-cancel-student-visas-all-hamas-sympathizers-white-house-2025-01-29/> .

⁴ <https://x.com/marcorubio/status/1713652113098539120>.

Safety Threats,” signed on January 20, 2025, and Executive Order 14188, titled “Additional Measures to Combat Anti-Semitism,” signed on January 29, 2025.

36. Executive Order 14161 states that its purpose is to “protect [United States] citizens” from aliens who “espouse hateful ideology” and “bear hostile attitudes towards [United States] citizens, culture, government, institutions, or founding principles.” The order does not define “hostile attitudes,” leaving the term open to encompass any form of political dissent or criticism of government policies.

37. Executive Order 14188 and its accompanying fact sheet states the government’s intent to target post-October 7, 2023 campus antisemitism, particularly on “leftist, anti-American colleges and universities.” The order’s definition of antisemitism encompasses constitutionally protected criticism of the Israeli government and its policies. The fact sheet frames the order as a promise to “deport Hamas sympathizers and revoke student visas,” in order to send a message to all “resident aliens who participated in pro-jihadist protests” that the federal government “will find you...and deport you.”

38. Following the passage of these executive orders, prominent groups opposing Palestinian rights began publicly sharing the names of outspoken individuals whom they believed were non-citizens and wanted the government to deport. These groups explicitly singled out these individuals for their Palestine advocacy. Upon information and belief, these groups submitted these names to ICE’s tip line.

39. Betar USA—a group revived in 2024 which describes itself as “loud, proud, aggressive, and unapologetically Zionist”⁵—has publicly stated that it had “already submitted

⁵ <https://betarus.org/>

names of hundreds of terror supporters to the Trump administration.”⁶ On its website, Betar advocates for “military preparedness” in supporting Israel and “demands that its members understand force and weapons.”⁷

40. Betar USA’s first target was lawful permanent resident Mahmoud Khalil. On January 29, 2025, the organization posted on social media that ICE is “aware of his home address and whereabouts” and confirmed that they “have provided his information to multiple contacts.”⁸

41. The following day, on January 30, 2025, Betar posted on X that “visa holder Mohsen Mahdawi is on our deport list.”⁹

42. On March 8, Mahmoud Khalil was returning from a Ramadan dinner when he was detained by DHS agents. Although the agents initially stated that they were revoking Mr. Khalil’s “visa,” upon learning that Mr. Khalil was a green-card holder, they stated that they would be revoking that too.¹⁰

43. Following Mr. Khalil’s arrest, President Trump issued a statement on Truth Social touting Mr. Khalil’s arrest as a blueprint for future government actions. President Trump warned that Mr. Khalil’s arrest was “the first of many to come,” and stated that his administration would not tolerate “students at Columbia and other universities across the country who have engaged in

⁶ 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/>.

⁷ <https://betarus.org/about/oath/>.

⁸ https://x.com/Betar_USA/status/1884796686020550930

⁹ https://x.com/Betar_USA/status/1885077865684754439

¹⁰ Amended Petition for Writ of Habeas Corpus, Case 1:25-cv-01935, Dkt. 38 at 2-3 (March 13, 2025).

pro-terrorist, anti-Semitic, anti-American activity.”¹¹ The President promised to “find, apprehend, and deport these terrorist sympathizers from our country.”¹²

44. On social media site X, Secretary of State Marco Rubio wrote that the Trump administration “will be revoking the visas and/or green cards of Hamas supporters in America so they can be deported.”¹³

45. Following these statements, the Department of Homeland Security confirmed that Mr. Khalil’s arrest by ICE was carried out “in support of President Trump’s executive order’s prohibiting anti-semitism, and in coordination with the Department of State.”¹⁴

46. The federal government based its detention of Mr. Khalil on the Secretary of State’s claim that he posed a “threat to the foreign policy and national security interests of the United States.”¹⁵ In his Notice to Appear (“NTA”), the government cited Section 237(a)(3)(C)(i) of the Immigration and Nationality Act, stating that “the Secretary of State has reasonable ground to believe that [Mr. Khalil’s] presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States.”¹⁶

47. In a statement to the Free Press on March 10, a White House Official stated that the federal government would use its basis for targeting Mr. Khalil as a “blueprint” for investigations against other students.¹⁷

¹¹ <https://truthsocial.com/@realDonaldTrump/posts/114139222625284782>

¹² <https://truthsocial.com/@realDonaldTrump/posts/114139222625284782>

¹³ <https://truthsocial.com/@realDonaldTrump/posts/114139222625284782>

¹⁴ <https://x.com/DHSGov/status/1898908955675357314>

¹⁵ <https://www.thefp.com/p/the-ice-detention-of-a-columbia-student>

¹⁶ Amended Petition for Writ of Habeas Corpus, Case 1:25-cv-01935, Dkt. 38 at 2-3 (March 13, 2025).

¹⁷ <https://www.thefp.com/p/the-ice-detention-of-a-columbia-student>

48. In a press conference 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 kind of anti-Jewish, anti-semitic activities, and “if you end up having a green card . . . we’re going to kick you out.”¹⁸

49. Following the arrest of Mr. Khalil, Betar revived its public calls for the deportation of Mr. Mahdawi. On March 14, 2025, Betar posted on social media platform X that “Mohsen Mahdawi is next and also on the deport list.”¹⁹ A week later, on March 20, 2025, Betar again posted, “Mohsen Mahdawi is next and also on the deport list.”²⁰

Mohsen’s Detention by DHS as Implementation of the Policy to Arrest Protestors

50. On April 14, 2025, Mr. Mahdawi was attending a naturalization interview at 463 Mountain View Drive, Colchester, VT 05446 when he was arrested and detained by DHS officers.

51. Public statements up by government officials, including statements by the President and Secretary of State, establish that Respondents have detained Mr. Mahdawi to punish and silence him because of his constitutionally protected speech, beliefs, statements, or associations.

52. Under the Immigration and Nationality Act, the Secretary of State is prohibited from excluding or conditioning entry to noncitizens based on “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. Section 212(a)(3)(C)(iii) of the INA, 8 U.S.C. § 1182(a)(3)(C)(iii).

¹⁸ <http://state.gov/secretary-of-state-marco-rubio-remarks-to-press/>

¹⁹ https://x.com/Betar_USA/status/1900611049637724488

²⁰ https://x.com/Betar_USA/status/1900611049637724488

53. Upon information and belief, Secretary Rubio has not provided any such certifications 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).

54. Notwithstanding such a determination, legislative history demonstrates that Congress intended to prevent the Executive from excluding noncitizens based on their constitutionally protected speech and beliefs. The Moynihan Amendment, passed in 1987, 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” and to affirm “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)).

55. Congress also asserted that such exclusions should not be based solely on “the possible content of an alien’s speech in this country,” that the Secretary should issue such determinations “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 legislative history provided, as an example, the entry of the Shah of Iran into the United States, which could imminently have resulted in harm to U.S. persons or property abroad. *Id.* at 6793.

56. Such determinations have been rarely issued since the enactment of the provision. Where the Secretary of State has invoked the foreign policy ground, it has concerned a high-ranking government official or individual facing high-profile prosecutions in his country of origin.

57. At least until these recent arrests, on information and belief, section 237(a)(4)(C) of the INA has never been invoked based purely on lawful beliefs, statements, or associations, that have taken place within the United States. This may be because it is a grammatically awkward at

best to apply the provisions of INA § 212(a)(3)(C), 8 U.S.C. § 1182(a)(3)(C), incorporated by reference into INA § 237(a)(4)(C), 8 U.S.C. § 1227(a)(4)(C), to beliefs, statements, or associations which are or were lawful in the United States, and to say of such activities, in what appears to be counterfactual language, that they “would be lawful within the United States,” 8 U.S.C. § 1182(a)(3)(C)(iii). Moreover, given the choice between an interpretation of the statute that would remove such lawful beliefs, statements, and activities that take place within the United States from the protection of the exemption at 8 U.S.C. § 1182(a)(3)(C)(iii), and an interpretation that would prevent such lawful beliefs, statements, or activities that take place within the United States from being used a basis for a finding of inadmissibility or deportability under 8 U.S.C. § 1182(a)(3)(C) and 8 U.S.C. § 1227(a)(4)(C), the doctrine of constitutional doubt counsels in favor of the latter interpretation.

CLAIMS FOR RELIEF

FIRST CLAIM

Violation of the First Amendment to the United States Constitution

58. Petitioner realleges and incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

59. The First Amendment to the United States Constitution provides 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.

60. The First Amendment protects speech by noncitizens resident in the United States.

61. The First Amendment also protects past, present, and future speech.

62. The government’s Policy of detaining noncitizens on the basis of their protected speech, and the targeting, arrest, and detention of Mr. Mahdawi, violate the First Amendment.

63. The government targeted Mr. Mahdawi on the basis of his past protected speech.

64. The government's targeting and detention of Mr. Mahdawi prevents him from continuing to exercise his constitutional right to speech.

65. The government's targeting and detention of Mr. Mahdawi chills both his speech and the speech of other individuals who would like to express similar views.

66. The government's targeting and detention of Mr. Mahdawi may prevent his future speech in the United States in the event that he is indeed removed from the country.

67. The government's targeting and detention of Mr. Mahdawi deprives audiences of his present and future speech on matters of public concern.

68. These consequences are not incidental to some legitimate government objective. As the government has made clear, these consequences (chilling and preventing speech sympathetic to Palestine) is the ultimate objective of the government's actions.

SECOND CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

69. Petitioner realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

70. The Due Process Clause of the United States Constitution applies to "all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001).

71. Immigration detention must further the twin goals of ensuring a noncitizen's appearance during removal proceedings and preventing danger to the community.

72. In light of these goals, Mr. Mahdawi's detention is wholly unjustified. Indeed, it bears no reasonable relation to any legitimate government purpose.

73. Mr. Mahdawi is not a flight risk. He plans to begin a master's program at Columbia in the coming fall. He has lived in the United States for the past eleven years, and his life, community, and work all are in the United States.

74. Mr. Mahdawi is not a danger to the community. He has no criminal record, and there is no other legitimate reason to regard him as a danger to the community.

75. Because Mr. Mahdawi's detention bears no reasonable relation to a legitimate government purpose, it is punitive.

76. The sole basis for Mr. Mahdawi's detention is to punish him for his speech and to chill similar speech.

77. Additionally, the Policy and Rubio Determination against Mr. Mahdawi are unconstitutionally vague.

THIRD CLAIM

Violation of the Administrative Procedure Act and the *Accardi* Doctrine

78. Petitioner realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

79. The government has adopted a Policy of targeting noncitizens for removal on the basis of First Amendment protected speech which advocates for Palestinian rights.

80. This policy is arbitrary, 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).

81. Additionally, the Secretary of State's determination 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

Violation of the Non-Delegation Doctrine

82. Petitioner realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

83. Congress has not provided the Executive Branch with intelligible principles from which the Executive Branch can implement 8 U.S.C. § 1227(a)(3)(C)(4)(i)-(ii) or 8 U.S.C. § 1182(a)(3)(C)(i) and (iii), except and to the extent that those statutes are interpreted to categorically exclude from consideration beliefs, statements, and associations that occur within the United States and that are lawful within the United States.

84. Congress has delegated discretionary authority that is, at least if the statute is interpreted as the government apparently proposes to interpret it, standardless and unreviewable.

85. Congress has failed to provide standards or procedures to allow for judicial review of an agency's discretionary deprivation of a noncitizen's liberty.

FIFTH CLAIM

Release on Bail Pending Adjudication

86. Petitioner realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

87. This Court has the “inherent authority” to grant bail to habeas petitioners like Mr. Mahdawi. *See Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001).

88. When considering such a petition, 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).

89. As long as Mr. Mahdawi is in detention, he will be unable to speak freely, ratifying the ultimate constitutional violation that the government sought to achieve with his detention.

90. As long as Mr. Mahdawi is in detention, he will be punished for his disfavored speech, ratifying another constitutional violation that the government sought to achieve with his detention

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, as well as the Administrative Procedure Act and the non-delegation doctrine;
- 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 14, 2025

Barre, Vermont

/s/ Andrew Delaney

Andrew Delaney
andrew@mdrvt.com
MDR Law Group
100 North Main Street
Barre, Vermont 05641
P: 802-479-0568

Luna Droubi*
Beldock Levine & Hoffman, LLP
99 Park Avenue, PH/26th Floor
New York, New York 10016
P: (212) 277-5820

F: (212) 277-5880

Cyrus D. Mehta*

David A. Isaacson**

Cyrus D. Mehta & Partners PLLC

One Battery Park Plaza, 9th Floor

New York, New York 10004

P: 212-425-0555

F: 212-425-3282

Attorneys for Petitioner

*Motion for admission pro hac vice
forthcoming

**Motion for admission pro hac vice
forthcoming, and general admission
under LR 83.1(a) scheduled for April 21,
2025

JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MOHSEN MAHDAWI

(b) County of Residence of First Listed Plaintiff Windsor
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
MDR, 100 N. Main, Barre, VT 802-479-0568
Beldock Levine & Hoffman, LLP, NY, NY

DEFENDANTS

Donald J. Trump, Patricia Hyde, Todd M. Lyons, Kristi Noem, Marco Rubio, Pamela Bondi

County of Residence of First Listed Defendant Dist. of Columbia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☒ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Administrative Procedure Act, 5 U.S.C. § 701 et seq

Brief description of cause:
PETITION FOR WRIT OF HABEAS CORPUS

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

4/14/2025

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Exhibit B

THE SECRETARY OF STATE
WASHINGTON

SENSITIVE BUT UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE

MEMORANDUM FOR THE SECRETARY OF HOMELAND SECURITY

FROM: Marco Rubio *MaR* 3/15/2025

SUBJECT: (SBU) Determination of Deportability 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 14, 2025, I have determined that Mohsen MAHDAWI (DOB: [REDACTED] 1990; POB: Israel), a U.S. Lawful Permanent Resident (LPR), is a deportable alien under INA section 237(a)(4)(C). I understand that ICE now intends to initiate removal charges against him, 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 this alien 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 information provided by DHS/ICE/HSI that Mahdawi, through his leadership

SENSITIVE BUT UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE

SENSITIVE BUT UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE

-2-

and involvement in disruptive protests at Columbia University, has engaged in anti-Semitic conduct through leading pro-Palestinian protests and calling for Israel's destruction. Mahdawi has been identified at those protests as having engaged in threatening rhetoric and intimidation of pro-Israeli bystanders. The activities and presence of Mahdawi in the United States undermines 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. Under E.O. 14188, Additional Measures to Combat Anti-Semitism, it is the policy of the United States to combat antisemitism, using all available and appropriate legal tools to hold to account the perpetrators of unlawful anti-Semitic harassment and violence. 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. Moreover, protests of the type led by Mahdawi potentially undermine the peace process underway in the Middle East by reinforcing anti-Semitic sentiment in the regional and thereby threatening the U.S. foreign policy goal of peacefully resolving the Gaza conflict.

(SBU) The Department of State also requests the opportunity to consult with the Department of Homeland Security on any public statements regarding this determination.

(SBU) I hereby expressly authorize use of this notification by the Department of Homeland Security in immigration court.

Attachments

Tab 1 – DHS Letter on Mohsen Mahdawi

Tab 2 – HSI Subject Profile of Mohsen Mahdawi

Tab 3 – 8 USC 1227(a)(4)(C)

SENSITIVE BUT UNCLASSIFIED//LAW ENFORCEMENT SENSITIVE