IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

Salah Salem SARSOUR, Petitioner, v. Brison SWEARINGEN, Sheriff of Clay County, Indiana; Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; Markwayne MULLIN, Secretary of the United States Department of Homeland Security; Marco RUBIO, Secretary of State; Todd BLANCHE, Acting Attorney General, Respondents.	**Case No. 2:26-cv-00224-JPH-MKK**

MEMORADUM OF LAW IN SUPPORT OF PETITIONER'S
MOTION FOR RELEASE PENDING ADJUDICATION OF THE HABEAS PETITION

Petitioner Salah Sarsour respectfully moves for immediate release pursuant to this Court's inherent authority, detailed in the accompanying memorandum and exhibits. Mr. Sarsour has been a lawful permanent resident of the United States for the last 33 years. The government has imprisoned Mr. Sarsour for engaging in protected speech and associations. His continued detention is unconstitutional, inflicts irreparable harm, and chills free speech; prompt release is necessary to ensure meaningful habeas review and to uphold core constitutional rights.

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INTRODUCTION

On the morning of March 30, 2026, armed federal agents in civilian clothing surrounded Petitioner Salah Sarsour while he was on his way to work in Milwaukee, Wisconsin. He was abducted, detained, and whisked away to another state away from his wife, six kids, nine grandchildren, elderly mother, and his community. Mr. Sarsour has been a lawful permanent resident of the United States for 33 years. During that time, Mr. Sarsour has become the president of the largest mosque in Wisconsin, an owner of multiple businesses, and a pillar of his community. The government detained Mr. Sarsour on the basis of his lawful speech and associations, pursuant to the government's unlawful policy of targeting and detaining individuals who engage in speech and advocacy in support of Palestinian rights (the "Policy"). Indeed, at least one federal district court has already concluded that there is "clear and convincing evidence" that the U.S. government has a policy of "intentionally" targeting non-citizens for arrest and detention in a "viewpoint-discriminatory way to chill protected speech" in "violat[ion] of the First Amendment." *Am. Ass'n of Univ. Professors v. Rubio,* 802 F. Supp. 3d 120, 175 (D. Mass. 2025) ("*AAUP*"). As a result of being targeted pursuant to this Policy, Mr. Sarsour has already been imprisoned for over three weeks for his speech and membership in American Muslims for Palestine, a non-profit organization. Absent this Court's intervention, he faces many months in detention.

This Court has the power, pursuant to its inherent authority, to release Mr. Sarsour on bail pending the adjudication of his habeas petition.[1] *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985); *Mapp v. Reno*, 241 F.3d 221, 224-25 (2d Cir. 2001); *Vidal-Martinez v. Acuff*, No. 21-cv-224-NJR, 2021 U.S. Dist. LEXIS 85875, at *9 (S.D. Ill. May 5, 2021). The authority to release

[1] Petitioner's request for release pending the adjudication of the habeas petition is especially pressing because Respondents have raised complex jurisdictional questions in their Opposition to Mr. Sarsour's Petition (Dkt. No. 29). These jurisdictional questions are currently the subject of numerous cases on appeal and may lead to substantial delay in the adjudication of the underlying habeas petition, further warranting release on bail.

a habeas petitioner during the pendency of the petition ensures that the writ of habeas corpus remains an effective remedy under extraordinary circumstances. *Mapp*, 241 F.3d at 230. And extraordinary circumstances have defined every aspect of Mr. Sarsour's case—from his arrest as a result of his protected speech and associations to his detention and lack of access to life-saving medical care.

Mr. Sarsour is neither a flight risk nor a danger to the community; on the contrary, he is "a vital thread in the social and spiritual fabric of [it]." (Droubi Decl., Exhibit A-066.) During his 33 years of continuous lawful residence, Mr. Sarsour has developed deep community ties and maintained an unblemished record. More than 240 individuals have attested to his character, benevolence, and community standing. (Droubi Decl. Exs. 1-241**)** Any attempt by the government to claim otherwise relies on decades-old "conduct"—including political arrests and statements coerced under torture—facts which have been known to the U.S. government for decades. Currently stateless as a Palestinian, Mr. Sarsour has not left the United States in 28 years. He has nowhere else to go. The government offers no explanation for Mr. Sarsour's sudden detention 33 years after his arrival other than his speech and associations.

In the alternative, this Court has the authority to release Mr. Sarsour pursuant to a preliminary injunction under Fed. R. Civ. P. 65, enjoining Respondents from detaining him further. *See Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 U.S. Dist. LEXIS 201543, at *11 (S.D. Ind. Oct. 11, 2025) (Hanlon, J.). Mr. Sarsour has more than met the standard for such relief.

Mr. Sarsour is a towering figure in his community, and his sudden arrest and detention sends a chilling message to his community in Milwaukee and to the rest of the country: stay silent or risk governmental retaliation. Sanctioning Mr. Sarsour's continued detention would bolster this unconstitutional attack on free speech and association. To prevent further harm, this Court should

grant Mr. Sarsour's release during the pendency of his habeas petition.

BRIEF PROCEDURAL HISTORY

On March 30, 2026, Petitioner was arrested in Milwaukee, Wisconsin. He was moved to the Broadview ICE Detention Center in Broadview, Illinois and then to Clay County Jail in Brazil, Indiana, hours away from his home and family. The Petitioner filed the instant petition in the Southern District of Indiana on March 31, 2026. (Dkt. No. 1.) On April 1, the Court issued an order to show cause requiring the Respondents to answer the allegations and "show cause why the relief sought by the petitioner should not be granted." (Dkt. No. 5.) Petitioner filed an amended Petition on April 14. (Dkt. No. 21.) The Respondents filed a Return in opposition on April 20, largely arguing that the Court does not have jurisdiction. (Dkt. No. 29.) Petitioner requested until May 5 to reply to the Respondents' response. (Dkt. No. 30.) Given the complex nature of such jurisdictional arguments, which have been in litigation in multiple circuits for over a year, on April 21, 2026, Petitioner informed the Court of its intention to file the present motion. (Dkt. No. 30.) The Court granted the Parties' requests. (Dkt. No. 31.) This motion follows.

FACTS

I. SALAH SARSOUR AND HIS COMMUNITY IN WISCONSIN

Mr. Sarsour was born and raised in Al-Bireh, in the Israeli-occupied West Bank. (Sarsour Decl. ¶ 5). Mr. Sarsour grew up under military occupation, without many of the liberties and freedoms that he hoped to find in the United States. (*Id*. ¶ 8-9.) At the age of 15, Mr. Sarsour was abducted from his home in the middle of the night by Israeli soldiers. He was subsequently detained, tortured, and "convicted" by an Israeli military court for allegedly, *inter alia*, "throwing stones" at IDF soldiers in 1988 (*Id*. ¶ 21.) Despite his innocence, Mr. Sarsour spent two years incarcerated for these alleged offenses, during which he endured horrific physical torture and psychological abuse (*Id*. ¶ 26.) His experience occurred against the backdrop of the First Intifada, a period during which

Israeli military forces arrested over 120,000 Palestinians.[2] The United States government has been aware of this arrest and "conviction" since at least 1993, when Mr. Sarsour was granted a waiver to be admitted as a conditional resident. A second false arrest occurred at the age of 22, while returning to the United States from a visit to his family in the West Bank. Mr. Sarsour was separated from his pregnant wife and one-year-old child in the Ben Gurion airport, detained, prevented from speaking with an attorney, placed in solitary confinement, and subjected to brutal torture for nearly 80 days until he was forced to sign a "confession" in Hebrew, a language that he did not understand. (*Id*. ¶¶ 48-49.) Mr. Sarsour is and has always been adamant under penalty of perjury that the arrests by Israeli authorities and allegations against him in Israeli military court were wholly false, politically motivated, and without any basis. (*Id*. ¶¶ 51-52.) The United States government has been aware of his second detention and torture since at least 1995: approximately one or two months after returning from the West Bank, Mr. Sarsour recalls that he was visited by agents from the Federal Bureau of Investigation ("FBI") who asked him about his detention. (*Id*. ¶ 59.) He shared all the information that he had, including that he was tortured for months. (*Id*. ¶ 60.) After following up with Mr. Sarsour about the matter, the FBI did not contact him about it. (*Id*. ¶ 61.) In 2002, a United States immigration officer concluded that he was imprisoned for a "purely political offence." Mr. Sarsour also spoke publicly about his harrowing experience being tortured and pressured into a false confession in a 2014 documentary entitled "The Tortured: Stories of Survival."[3] (*Id*. ¶ 62.) The government also evaluated these arrests, "convictions," and torture during various interviews and applications in the naturalization process between 2000 and 2019.

Mr. Sarsour has been a lawful permanent resident of the United States since 1993. During

[2] Institute for Middle East Understanding, "Explainer: The First Intifada," (Dec. 16, 2012) https://imeu.org/resources/important-events/explainer-the-first-intifada/240.

[3] *The Tortured: Stories of Survival* (Zahrah Pictures 2014), *available at* Vimeo On Demand, https://vimeo.com/ondemand/thetortured.

that time, Mr. Sarsour has established himself as a "man of exceptional character, sincerity, and integrity" who is "not only a positive figure but a stabilizing force in the community," as described by one declarant who has known Mr. Sarsour for over 20 years. (Droubi Decl., Exhibit A-005.) To residents of Milwaukee, Mr. Sarsour "is not merely a resident, but a vital thread in the social and spiritual fabric of this city." (Droubi Decl., Exhibit A-066.)

Many of the 241 declarants attest to Mr. Sarsour's exceptional selflessness and "willingness to support others without expecting anything in return." (Droubi Decl., Exhibit A-008.) In fact, Mr. Sarsour was so well-known for his generosity in his community that from a young age he was "nickname[d] Abu Kareem[,] which means generous in Arabic," as attested to by numerous declarants (Droubi Decl., Exhibit A-090, Exhibit A-113; Exhibit A-147.) One declarant describes how Mr. Sarsour helped her family move to Wisconsin after she had become homeless following Hurricane Katrina, then helped her pay for rent, furnished her new apartment, and arranged a job for her husband. (Droubi Decl., Exhibit A-056.) In another instance, a doctor describes how Mr. Sarsour covered the medical expenses for the mother of one of his employees who was uninsured and being evaluated for suspected lung cancer. (Droubi Decl., Exhibit A-064.) Another describes how Mr. Sarsour donated furniture to a single mother in the community in need. (Droubi Decl., Exhibit A-126.)

Mr. Sarsour has used his position as the President of the Islamic Society of Milwaukee ("ISM") to benefit the lives of those in his community. During the COVID-19 pandemic, Mr. Sarsour "helped organize a weekly food and hygiene drive" outside the Islamic Community Center which "served both Muslims and non-Muslims throughout the Milwaukee community." (Droubi Decl., Exhibit A-018.) During Ramadan, Mr. Sarsour "not only donated food for community members breakfast, but personally served breakfast to those fasting, day after day." (Droubi Decl., Exhibit A-081.) Mr. Sarsour arranged disability sensitivity trainings for the board of the ISM to "ensure that all

board members [were] conscious of every individual with a disability." (Droubi Decl., Exhibit A-087.) And "in a world that sometimes undermines or forgets to acknowledge the contributions and leadership of women in civic spaces," Mr. Sarsour uplifted the contributions of young women championing civic issues. (Droubi Decl., Exhibit A-086.) In that role, the Interfaith Peace Working Group of Wisconsin recently awarded him the Beloved Community Solidarity Award for 2026.[4]

Mr. Sarsour has touched a wide range of people during his decades in the United States. "As a Christian man working at an Islamic school," one declarant stated, "I'm privileged to have Salah as a leader." (Droubi Decl., Exhibit A-058.) An educator of 35 years who taught Mr. Sarsour's son attested to Mr. Sarsour's role as a "bedrock member of this community," a "man of accomplishment," and a "model of what an American should be" who would "never do anything to bring dishonor to [his community] or [his community's] school." (Droubi Decl., Exhibit A-057.) A journalist describes how, after reaching out to diverse faith leaders in Milwaukee to attend an event at the Marquette University Center for Peacemaking, "Mr. Sarsour attended when [she] later learned he had been engaged out of town that day and made a special effort to get there." (Droubi Decl., Exhibit A-196.) Many declarants reminisced about the summer camps that Mr. Sarsour organized for Islamic youth. (Droubi Decl., Exhibit A-203, Exhibit A-124, Exhibit A-176, Exhibit A-193.)

Numerous declarants have described Mr. Sarsour as a "father figure" to those in his community. (Droubi Decl., Exhibit A-073, Exhibit A-074, Exhibit A-085, Exhibit A-166, Exhibit A-157, Exhibit A-175, Exhibit A-226, Exhibit A-024, Exhibit A-052, Exhibit A-082, Exhibit A-096.) His community members describe him as a "peacemaker" and a "person people turn to for mediation, wisdom, and compassion." (Droubi Decl., Exhibit A-045.) Those close to Mr. Sarsour attest to his peaceful nature: "[i]n my thirty-two years of knowing Salah Sarsour, I have never once witnessed

[4] Nonviolence in Action: An Interfaith Conversation on Building the Beloved Community, https://www.interfaithpeacewg.org/upcoming-events (last visited Apr. 24, 2026) ("Presentation of 'Beloved Community Solidarity Award' to Salah Sarsour").

him act in a manner that was harmful, dishonest, or contrary to the values of our community. He is a man of peace, integrity, and profound compassion." (Droubi Decl., Exhibit A-066.)

II. ICE DETAINED MR. SARSOUR IN RETALIATION FOR HIS SPEECH ADVOCATING FOR PALESTINIAN HUMAN RIGHTS

Due to his experiences growing up under Israeli occupation, Mr. Sarsour has been outspoken in his support of Palestinian human rights, and has held an active role in American Muslims for Palestine ("AMP"), a 501(c)(3) non-profit whose mission is to "educate the American public and media about issues related to Palestine and its rich cultural and historical heritage."[5] Mr. Sarsour "spoke about the people of Palestine [at public events] with real sincerity, care, and sorrow." (Droubi Decl., Exhibit A-187.) Mr. Sarsour's lawful advocacy and associations within the United States in support of Palestinian rights have landed him on a prominent anti-Palestinian doxxing site, Canary Mission, which targets individuals who engage in pro-Palestine advocacy. Like others, including Mahmoud Khalil, Rumeysa Öztürk, and Mohsen Mahdawi, his speech has now made him a target of the current government, leading Secretary of State Marco Rubio to issue an internal memorandum on June 18, 2025, determining that Mr. Sarsour was deportable under the same INA[6] provision invoked to justify the detention of Mr. Khalil and Mr. Mahdawi, Section 237(a)(4)(C). *See* Am. Petition, Exhibit 2. The phrase "compelling U.S. foreign policy interest" in 237(a)(4)(C) comes from a related provision, 8 U.S.C. § 1182(a)(3)(C)(iii), which requires the Secretary of State to make such a "determination" when Mr. Sarsour's "beliefs, statements, or associations" would otherwise be "lawful within the United States." 8 U.S.C. § 1182(a)(3)(C)(iii), cited in 8 U.S.C. § 1227(a)(4)(C)(ii). This was a similar basis to the government's targeting of others for activism or speech in support of Palestinian human rights. *See, e.g.*, *AAUP*, 802 F. Supp. at 194 (finding that the government's Policy

[5] *Statement of Principles*, Am. Muslims for Palestine, https://www.ampalestine.org/about-amp/statement-principles (last visited Apr. 10, 2026).
[6] Immigration and Nationality Act of 1952, 8 U.S.C. § 1101 et seq. ("INA").

was "to target a few for speaking out and then use the full rigor of the Immigration and Nationality Act (in ways it had never been used before) to have them publicly deported with the goal of tamping down pro-Palestinian student protests and terrorizing similarly situated non-citizen (and other) pro-Palestinians into silence because their views were unwelcome.").

In fact, in the weeks leading up to Mr. Sarsour's arrest, the government further clarified its intent to chill free speech and association rights—this time, specifically in relation to individuals associated with groups such as American Muslims for Palestine. On February 10, 2026—forty-nine days before Petitioner's arrest—Assistant Attorney General for Civil Rights Harmeet Dhillon publicly announced that the Department of Justice would "investigate," "prosecute," and "dismantle" organizations like American Muslims for Palestine "at their very root."[7] And just four days before the arrest of Mr. Sarsour, prominent anti-Palestinian doxxing site Canary Mission appeared to have updated the profile of Mr. Sarsour.[8]

On March 30, 2026, while on his way to work, and after 33 years of living in the United States without issue, Mr. Sarsour was abducted, arrested, and detained by at least 11 armed federal agents, many of whom had guns pointed at him. The government's stated basis for the arrest and detention relies upon decades-old allegations which the government has known about and evaluated or investigated multiple times since Mr. Sarsour immigrated. The government's decision to now arrest and detain Mr. Sarsour, at the same time that the government has announced its intent to target and dismantle lawful advocacy groups such as AMP, is not a coincidence. Rather, it is the continuation of the government's Policy to use the Immigration and Nationality Act to violate the First Amendment freedoms of Mr. Sarsour and other non-citizens who speak out in support of Palestinian rights.

[7] Marc Rod, *DOJ aims to 'dismantle' groups behind synagogue protests*, *Harmeet Dhillon Says*, Jewish Insider (Feb. 10, 2026) https://jewishinsider.com/2026/02/department-of-justice-synagogue-protests-harmeet-dhillon/.
[8] "Salah Sarsour," Canary Mission, https://perma.cc/MZ65-4S7V ("Last Modified: 03/26/2026")

III. MR. SARSOUR'S ARREST AND DETENTION ARE PART OF A NOW WELL-ESTABLISHED AND RECOGNIZED POLICY INTENDED TO SILENCE AND CHILL THE SPEECH OF THOSE WHO ADVOCATE FOR PALESTINIAN HUMAN RIGHTS

One month before the election of President Donald J. Trump, the Heritage Foundation published a plan to suppress the speech of supporters of Palestinian rights, entitled "Project Esther."[9] This plan listed American Muslims for Palestine as a target organization and explicitly contemplated the cooperation of "a willing administration occup[ying] the White House" which would assist in arresting, detaining, and deporting individuals associated with these groups or supportive of Palestinian rights.[10] Project Esther broadly refers to the entire pro-Palestinian movement in the United States as "pro-Hamas,"[11] collapsing any distinction between being a supporter of Palestinian human rights generally and being a supporter of Hamas. Several leaders of Project Esther had substantial connections to the incoming Trump administration.[12]

Following the election of the "willing administration" in November of 2024, the government began planning to suppress the speech of individuals and groups that supported human rights for Palestinians. During his campaign for re-election, President Trump repeatedly vowed to target noncitizens engaged in activism in support of Palestinian rights, echoing the demands of Project Esther.[13] Shortly after assuming office on January 20, 2025, President Trump signed two executive orders fulfilling his campaign promises to target Palestinians or individuals supportive of Palestinian

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[9] *Project Esther: A National Strategy to Combat Antisemitism*, Heritage Found. (Oct. 7, 2024), https://www.heritage.org/progressivism/report/project-esther-national-strategy-combat-antisemitism.

[10] *Id.*

[11] "The virulently anti-Israel, anti-Zionist, and anti-American groups comprising the so-called pro-Palestinian movement inside the United States are exclusively pro-Palestine and—more so—pro-Hamas. They are part of a highly organized, global Hamas Support Network (HSN) and therefore effectively a terrorist support network." *Project Esther: A National Strategy to Combat Antisemitism*, *supra* note 8, at 3.

[12] Katie J.M. Baker, Inside the Heritage Foundation's Plan to Crush the U.S. Palestinian Movement, N.Y. Times (May 18, 2025), https://www.nytimes.com/2025/05/18/us/project-esther-heritage-foundation-palestine.html [https://archive.is/bRBw5].

[13] Andrea Shalal, *Trump Administration to Cancel Student Visas of Pro-Palestinian Protesters*, Reuters (Jan. 29, 2025, updated Jan. 30, 2025), https://www.reuters.com/world/us/trump-administration-cancel-student-visas-pro-palestinian-protesters-2025-01-29/.

rights. *AAUP*, 802 F. Supp. 3d at 135-137.

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." *Id*. at 135. The order does not define "hostile attitudes," leaving the term open to encompass core protected speech like political dissent or criticism of foreign governments' policies. Executive Order 14188 and its accompanying fact sheet state the government's intent to target post-October 7, 2023 campus antisemitism, particularly on "leftist, anti-American colleges and universities." *Id*. at 136. 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." *Id.* at 137.

Around March of 2025, senior federal officials from the Trump Administration met up to 20 times to discuss the implementation of the Policy to target, arrest, and deport individuals who publicly supported Palestinian rights. *Id.* at 138.

In early March of 2025, the government began implementing this policy to chill the constitutionally protected speech of supporters of Palestinian rights by targeting students for visa revocation, removal, arrest, and detention. *Id.* at 173. In the ensuing days and weeks, government agents arrested or attempted to arrest a number of noncitizen students or activists who were outspoken about Palestinian human rights. Mahmoud Khalil was detained on March 8, 2025, while returning home from an iftar (the breaking of fast meal during Ramadan) with his pregnant wife, due to his role as an outspoken mediator during the Columbia University encampments. *Id*. at 145. Dr. Badar Khan Suri, a scholar who studies peace and conflict resolution, was detained on March 17, 2025 for his speech in support of Palestinian rights and because of his Palestinian-American wife.

Rumeysa Öztürk was surrounded and detained by a mob of plain-clothed officers on March 25, 2025, in what several observers mistook for a kidnapping, on her way to an iftar dinner, for writing an Op-Ed that was critical of her university's support of the Israeli government. *Id*. at 160. The government quickly shuttled all three to ICE detention facilities in either Texas or Louisiana, thousands of miles away from their support systems and lawyers. *Id*. at 157, 162 n.30.

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 kinds of anti-Jewish, anti-semitic activities," and "if you end up having a green card . . . we're going to kick you out." *Id*. at 148.

Weeks later, Mohsen Mahdawi, a Palestinian student who had similarly advocated in support of Palestinian rights, was arrested by federal officials at his citizenship test on April 14, 2025, a mandatory step before becoming a U.S. citizen. *Id*. at 168. The government also sought unsuccessfully to detain Yunseo Chung and Momodou Taal, two other students who had been outspoken in support of Palestinian rights. A court temporarily prohibited Ms. Chung's detention, and Mr. Taal decided to depart the United States after being denied the same protection. *Id*. at 145. The government has attempted to justify many of these arrests and detentions with various statements and memoranda, filled with specious accusations regarding threats of violence or associations with terrorist organizations.

Following a nine-day trial, Judge William G. Young of the District of Massachusetts found that Secretaries Kristie Noem and Marco Rubio and their agents "acted in concert . . . to target non-citizen pro-Palestinians for deportation primarily on account of their First Amendment protected political speech," and that they did so "in order to strike fear into similarly situated non-citizen pro-Palestinian individuals." *Id.* at 194. The Court explicitly found by clear and convincing evidence that the government "implemented Executive Orders in 14161 and 14188 a viewpoint-discriminatory way

to chill protected speech." *Id.* at 175.

Numerous other courts confronting the detentions of individuals pursuant to the same Policy which led to the arrest and detention of Mr. Sarsour concluded that the circumstances presented a substantial likelihood of constitutional violations and ordered release on bail. *Mahdawi v. Trump*, 781 F. Supp. 3d 214 (D. Vt. 2025); *Ozturk v. Trump*, 783 F. Supp. 3d 801, 811 (D. Vt. 2025); *Suri v. Trump*, No. 1:25-CV-480 (PTG/WBP), 2025 U.S. Dist. LEXIS 94297, 2025 WL 1392143, at *1 (E.D. Va. May 14, 2025) (Giles, J.); *Khalil v. Joyce*, 25-cv-01963, Dkt. No. 316 (D. N.J. June 20, 2025).

Faced with losses at multiple district courts, the government's strategy evolved. Unable to detain Mahmoud Khalil and Mohsen Mahdawi under Section 237(a)(4)(C), the same section invoked by Secretary Rubio against Mr. Sarsour in the previously undisclosed June 2025 memorandum, the government started to "find" other reasons to deport Mr. Khalil[14] and Mr. Mahdawi[15]. In Mr. Sarsour's case, the government has dug up long discredited allegations that the government itself evaluated and ignored for decades.

Mr. Sarsour has been targeted pursuant to this same unconstitutional Policy, intended to chill protected political speech and association in support of Palestinian rights. As a result, Mr. Sarsour has been whisked away from his wife, his six children, nine grandchildren, and his broader community, and detained in Clay County Jail in Brazil, Indiana, where he is no longer able to freely advocate for the issues that are important to him.

ARGUMENT

I. MR. SARSOUR MEETS THE STANDARD FOR RELEASE ON BAIL

[14] After invoking the foreign policy ground of Section 237(a)(4)(C) to detain Mr. Khalil, the government later alleged that Mr. Khalil was also deportable on the basis of Section 237(a)(1)(A) grounds for material misrepresentations. *Khalil v. Joyce*, 25-cv-01963, Dkt. No. 90-1 (D. N.J. March 20, 2025).

[15] The government alleged that Mr. Mahdawi was a "danger to the community" because of a ten-year old unsubstantiated charge based on alleged statements Mr. Mahdawi made to a gun shop owner which was investigated by the FBI. *Mahdawi v. Trump*, 781 F. Supp. 3d 214, 233 (D. Vt. 2025). The district court, citing time elapsed since the allegations and the FBI's inaction during that period, found the allegations unpersuasive.

PENDING RESOLUTION OF HIS HABEAS PETITION.

Mr. Sarsour raises substantial claims for habeas relief and presents extraordinary circumstances to this Court warranting his release on bail. Federal courts have inherent authority to release immigration habeas petitioners on bail. *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985); *Mapp v. Reno*, 241 F.3d 221, 224-25 (2d Cir. 2001); *Vidal-Martinez v. Acuff*, No. 21-cv-224-NJR, 2021 U.S. Dist. LEXIS 85875, at *9 (S.D. Ill. May 5, 2021); *Lucas v. Hadden*, 790 F. 2d 365 (3d Cir. 1986); *Calley v. Callaway*, 496 F.2d 701 (5th Cir. 1974). Courts across the country have exercised this authority to grant release on bail pending adjudication of the underlying habeas petition when confronted with the arrest and detention of non-citizens as a result of speech and associations in support of Palestinian rights. *See, e.g.*, *Mahdawi v. Trump*, 781 F. Supp. 3d 214 (D. Vt. 2025); *Ozturk v. Trump*, 783 F. Supp. 3d 801, 811 (D. Vt. 2025); *Suri v. Trump*, No. 1:25-CV-480 (PTG/WBP), 2025 U.S. Dist. LEXIS 94297, 2025 WL 1392143, at *1 (E.D. Va. May 14, 2025) (Giles, J.).

Courts frequently rely on the standards set out in *Mapp v. Reno* in adjudicating applications for release on bail. Under this standard, the court asks (1) whether the habeas petition raises "substantial claims" and (2) whether "extraordinary circumstances" exist "that make the grant of bail necessary to make the habeas remedy effective." *Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001); *Petrunak v. United States*, No. 1:17-cv-04396-WTL-MJD, 2017 U.S. Dist. LEXIS 225620, at *2 (S.D. Ind. Dec. 21, 2017) (citing *Mapp*, 241 F.3d at 226).

Mr. Sarsour meets this standard because his petition raises substantial claims for habeas relief and likewise presents extraordinary circumstances warranting his release on bail. Mr. Sarsour alleges that he was targeted on the basis of his First Amendment-protected speech and associations in support of Palestinian rights—speech and associations that the government stated it intended to target and dismantle just weeks before his arrest. Mr. Sarsour also alleges that he is diabetic and is being denied

medical care he urgently needs to survive. Mr. Sarsour's arrest and detention are an extraordinary abuse of his constitutional rights and part of an extraordinary policy attacking First Amendment freedoms.

A. Mr. Sarsour Presents Substantial Claims

1. First Amendment

Mr. Sarsour's First Amendment claims are substantial, and his allegation that the government has a Policy of targeting non-citizens on the basis of First Amendment-protected speech in support of Palestinian rights has already been confirmed by at least one federal district court. The court in *AAUP* concluded, after a nine-day trial, that government officials, including Respondent Secretary of State Marco Rubio "acted in concert to misuse the[ir] sweeping powers . . . to target non-citizen pro-Palestinians for deportation primarily on the account of their First Amendment protected political speech." *AAUP,* 802 F. Supp. 3d 120 at 194. The *AAUP* Court found that "[t]hey did so in order to strike fear into similarly situated non-citizen lawful pro-Palestinian speech" to intentionally "deny" these individuals "the freedom of speech that is their right." *Id.*

Mr. Sarsour's claims are of profound importance because speech on "public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Connick v. Myers*, 461 U.S. 138, 145 (1983) (internal quotation marks omitted). Numerous courts across the country have found that habeas petitioners targeted under the same unconstitutional Policy as Mr. Sarsour presented substantial First Amendment claims warranting release on bail. *See Mahdawi v. Trump*, 781 F. Supp. 3d 214, 231 (D. Vt. 2025) (petitioner targeted and detained under Section 237(a)(4)(C) for speech in support of Palestinian rights presented substantial claims of a First Amendment violation); *Ozturk v. Trump,* 783 F. Supp. 3d 801, 810 (D. Vt. 2025) (petitioner holding nonimmigrant visa targeted and detained for writing

an op-ed in support of Palestinian rights raised substantial claims of a First Amendment violation).

To state a First Amendment retaliation claim, Mr. Sarsour must allege that "(1) he engaged in activity protected by the First Amendment; (2) he suffered a deprivation that would likely deter First Amendment activity in the future; and (3) the First Amendment activity was at least a motivating factor in the defendants' decision to take the retaliatory action." *Perez v. Fenoglio*, 792 F.3d 768, 783 (7th Cir. 2015) (quoting *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009)). Mr. Sarsour has done this.

Noncitizen speakers are unequivocally protected by the First Amendment. *See Bridges v. Wixon*, 326 U.S. 135, 148 (1945) ("Freedom of speech and press is accorded aliens residing in this country."); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 n.5 (1953) (noting that the First Amendment does not distinguish "between citizens and resident [noncitizens]"). First Amendment protections therefore readily apply to Mr. Sarsour's speech, advocacy, and associations in support of Palestinian human rights. Indeed, "political speech [is] at the core of what the First Amendment is designed to protect." *Virginia v. Black*, 538 U.S. 343, 365 (2003).

Few actions succeed in deterring free expression more than arrest and detention, and Mr. Sarsour has suffered as a result of these deprivations. Mr. Sarsour can no longer continue his work as a community leader, can no longer freely speak on matters of public concern, and can no longer continue his work as a valued member of AMP, a registered 501(c)(3) with the goal of educating the American public about Palestine. (Sarsour Decl. ¶ 103.)

Finally, Mr. Sarsour's protected speech was "at least a motivating factor," if not the only factor, in Respondents' decision to arrest and detain him. The timing of Mr. Sarsour's arrest is highly suspect: Mr. Sarsour lived in the United States as a lawful permanent resident for 33 years without issue, yet he was abducted and detained by ICE agents just forty-nine days after the

government publicly announced its intention to "investigate" and "dismantle" organizations like AMP "at their very root."[16] Respondents' basis for arresting Mr. Sarsour is nakedly pretextual: the government has resurrected allegations that it has been aware of for decades and reviewed and evaluated multiple times in the ensuing years, without ever initiating removal proceedings.

Indeed, Respondent Rubio first determined that Mr. Sarsour was "deportable" under INA Section 237(a)(4)(C) on June 18, 2025, for speech explicitly "lawful within the United States," just months after Mr. Mahdawi and Mr. Khalil had been detained by the government on the very same basis, pursuant to the very same Policy. By April 30, 2025, Mr. Mahdawi had been released on bail, *Mahdawi v. Trump*, 781 F. Supp. 3d 214 (D. Vt. 2025), and Mr. Khalil would be released shortly thereafter. *Khalil v. Trump*, No. 25-cv-01963, Dkt. No. 316 (D.N.J. June 20, 2025). An inference can fairly be drawn then that the Respondents spent the following months concocting additional pretextual grounds on which to arrest and detain Mr. Sarsour—grounds which they hoped would allow their detention of Mr. Sarsour to evade meaningful judicial review. This Court can ensure that it does not.

2. *Due Process*

Mr. Sarsour's due process claims are equally substantial. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also AAUP*, 802 F. Supp. 3d 120, 130-31 (D. Mass. 2025) ("This case—perhaps the most important ever to fall within the jurisdiction of this district court—squarely presents the issue of whether non-citizens lawfully present here in the United States actually have the same free speech rights as the rest of us. The Court answers this Constitutional question unequivocally

[16] Marc Rod, DOJ aims to 'dismantle' groups behind synagogue protests, Harmeet Dhillon Says, Jewish Insider (Feb. 10, 2026) https://jewishinsider.com/2026/02/department-of-justice-synagogue-protests-harmeet-dhillon/.

'yes, they do.'").

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. Immigration detention is civil, not criminal, and therefore only justified to "ensur[e] the appearance of [noncitizens] at future immigration proceedings and prevent[] danger to the community." *Id.* (cleaned up); *see also Mahdawi*, 781 F. Supp. 3d at 231-32. The government has not demonstrated that Mr. Sarsour is a flight risk or a danger to the community. Instead, the government has resurrected 30-year old allegations that it has been aware of for the entire time Mr. Sarsour has been in the country. Among these allegations are a "conviction" for "throwing rocks" obtained in an Israeli military "court" after Mr. Sarsour endured brutal torture at age 15, and a second "conviction" in a military "court" extracted through 78 days of continuous torture and a "confession" written in Hebrew—a language he does not speak. (Sarsour Decl. ¶¶ 34, 35, 48.) The government cannot point to *any* conduct in the last 30 years which would make Mr. Sarsour conceivably a danger to his community.

Respondents' detention of Mr. Sarsour bears no "reasonable relation" to any nonpunitive government purpose. *See Zadvydas*, 533 U.S. at 690. Here, there is every indication that Mr. Sarsour's "detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons," which violates the due process clause. *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring); *see also German Santos v. Warden Pike Cnty. Corr. Facility*, 96 5 F.3d 203, 211 (3d Cir. 2020) ("[I]f an alien's civil detention . . . looks penal, that tilts the scales toward finding the detention unreasonable.").

3. *Administrative Procedure Act /* Accardi *Doctrine*

Mr. Sarsour also raises substantial claims that Respondents violated the Administrative Procedure Act and the *Accardi* doctrine. The government has adopted an unconstitutional and

unlawful policy of targeting noncitizens for arrest, transport, and detention based on First Amendment-protected speech advocating for Palestinian rights. As held by the district court in *AAUP*, this Policy is "contrary to constitutional right . . . arbitrary or capricious because it reverses prior policy without reasoned explanation or consideration of reliance interests, and is based on statutes that have never been used in this way." *AAUP*, 802 F. Supp. 3d at 175.

4. *Equal Protection*

Mr. Sarsour likewise presents substantial claims of a violation of the Equal Protection Clause of the Fourteenth Amendment. "[T]he Constitution prohibits selective enforcement of the law based on considerations such as race." *Whren v. United States,* 517 U.S. 806, 813 (1996). A selective enforcement claim requires proof that the Respondents' actions "had a discriminatory effect and were motivated by a discriminatory purpose." *Conley v. United States*, 5 F.4th 781, 789 (7th Cir. 2021).

In this case, the targeting of noncitizens based on speech was "directed so exclusively against a particular class of persons . . . with a mind so unequal and oppressive as to amount to practical denial . . . of that equal protection of the laws which is secured to petitioners." *Conley*, 5 F.4th at 788-89 (quoting *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)). Mr. Sarsour is a man of Palestinian ethnic origin and Muslim faith. (Sarsour Decl. ¶ 6.) As the President of the Islamic Society of Milwaukee and a board member of AMP, he is public about both of these identities. (*Id*. ¶ 71.) The government's Policy of suppressing the speech of those who speak in support of Palestinian rights is motivated by anti-Palestinian and anti-Muslim animus, as can be seen by the government's pattern of targeting Palestinians such as Mahmoud Khalil and Mohsen Mahdawi and Muslims such as Rumeysa Ozturk and Badr Khan Suri. Mr. Sarsour was targeted on the basis of his identity as a Muslim, Palestinian man.

B. Mr. Sarsour's Unlawful Detention Presents Extraordinary Circumstances

1. *The chilling of First Amendment-protected speech is an extraordinary circumstance*

The targeting of Mr. Sarsour's speech presents an extraordinary circumstance. Courts look at the scope of the constitutional deprivation that a petitioner has experienced and the nature of the government's behavior surrounding a petitioner's detention to support a finding of extraordinary circumstances. *See, e.g.*, *Ozturk*, 783 F. Supp. 3d at 811; *Mahdawi*, 781 F. Supp. 3d at 228.

Respondents' sudden arrest and detention of Mr. Sarsour, the president of the largest mosque in Wisconsin, is extraordinary in nature: Respondents can point to no act—even a pretextual one—committed in the last 30 years which would warrant his sudden arrest and detention today. Instead, Mr. Sarsour was whisked away from his wife, kids, grandkids, and mother on a Monday morning while on his way to work, weeks after government officials publicly vowed to crack down on a non-profit advocacy group that Mr. Sarsour is associated with.

The policy precipitating the arrest and detention of Mr. Sarsour is extraordinary, as several courts have observed. The district court in *AAUP* held that "[s]uch conduct [arresting and detaining non-citizens for pro-Palestine speech] is not only unconstitutional, but a thing *virtually unknown* to our constitutional tradition." *AAUP,* 802 F. Supp. at 184 (emphasis added); *Mahdawi*, 781 F. Supp. 3d at 233 (noting the "extraordinary" nature of "this case and others like it" in which legal residents "are being arrested and threatened with deportation for stating their views on the political issues of the day.").

Mr. Sarsour is a "well-known" and beloved figure in Milwaukee. (Droubi Decl., Exhibit A-011.) His arrest and detention does extraordinary harm to the First Amendment freedoms of the communities to which he belongs, and to the rest of the country. By arresting Mr. Sarsour after 33 years of lawful permanent residency, the government has sent a chilling message to those

who attend the mosque of which he serves as president, the Islamic school of which he sits on the board, the events hosted by the non-profit with which he works, the businesses which he owns: stay silent, or risk governmental retaliation. Mr. Sarsour's status as a prominent local and national figure heightens the extraordinary circumstances of this case.

The needlessly aggressive manner in which Mr. Sarsour was arrested further demonstrates the retaliatory and extraordinary nature of Mr. Sarsour's arrest and detention. Mr. Sarsour was abducted in the morning of March 30, 2026, while stopping to pick up mail on his way to work. (Sarsour Decl. ¶ 77.) One car almost hit Mr. Sarsour, and he had to jump to the curb to avoid being injured. (*Id*. ¶ 79.) Over ten vehicles surrounded Mr. Sarsour, with armed, plainclothes ICE agents jumping out of each one. (*Id*. ¶ 80.) The federal agents had their guns drawn at Mr. Sarsour and repeatedly demanded that he identify himself without identifying themselves as federal agents. Mr. Sarsour was terrified and believed that he was going to die. (*Id*. ¶ 81.) This was done to intimidate Mr. Sarsour and those like him, not for any legitimate purpose.

2. *Mr. Sarsour is neither a flight risk nor community danger, further bolstering the extraordinary circumstances*

Mr. Sarsour's long history of peaceable residence in the United States and his status as a leader and pillar of his community show that he poses neither a flight risk nor a danger to the community, and they likewise support a finding of extraordinary circumstances. *See, e.g., Mahdawi*, 781 F. Supp. 3d at 232; *Ozturk*, 783 F. Supp. 3d at 808. As evidenced by over 241 declarations, Mr. Sarsour is a beloved, long-time Milwaukee resident whose presence makes his community a safer and more welcoming place.

Mr. Sarsour is a "deeply devoted family man," whose wife, six kids, nine grandkids, and elderly, ailing mother are all located in Milwaukee. (Droubi Decl., Exhibit A-201; Droubi Decl., Exhibit A-090.) Mr. Sarsour is his mother's "primary caretaker[]" for her medical needs. (Droubi Decl., Exhibit A-113.) Moreover, Mr. Sarsour's mother "depends on him every single day," "not

just for care, but for companionship, dignity, and love," as attested to by Mr. Sarsour's niece (Droubi Decl., Exhibit A-178.) Indeed, Mr. Sarsour was supposed to drive his 84-year old mother to a medical appointment the day of his abduction, and urged the ICE officers arresting him to call his wife so she could make alternative arrangements. (Sarsour Decl. ¶ 86.)

Mr. Sarsour's "continued detention is a loss not only to his family and loved ones, but to the entire community that depends on his leadership, compassion, and service." (Droubi Decl., Exhibit A-176.) Declarant after declarant has attested to the "noticeable void" left by the detention of Mr. Sarsour, Droubi Decl., Exhibit A-244, which will "create a huge gap in support, . . . guidance, encouragement, and stability. (Droubi Decl., Exhibit A-223; *see also* Droubi Decl., Exhibit A-003 ("[O]ur community feels his absence"); Droubi Decl., Exhibit A-234 ("[H]is absence has left a very impactful void"); and Droubi Decl., Exhibit A-014 ("The absence . . . is very heavily felt"); Droubi Decl., Exhibit A-033 ("[H]is absence is felt as a significant loss."); Droubi Decl., Exhibit A-053 ("His absence is felt in the hearts and minds" of the community); Droubi Decl., Exhibit A-067 ("[H]is absence has created a profound void"); Droubi Decl., Exhibit A-157 ("We feel [his] loss every day").) Far from presenting a risk of danger, Mr. Sarsour has helped youth who had picked up bad habits "get on their feet and become [] positive and productive member[s] of society." (Droubi Decl., Exhibit A-223.)

Those who belong to Mr. Sarsour's Milwaukee community state that his "life's work" is rooted in Wisconsin, where he has "deep and meaningful ties." (Droubi Decl., Exhibit A-224.) The relationships Mr. Sarsour has built in the Milwaukee area are a "central part of his life, and he remains dedicated to them." (Droubi Decl., Exhibit A-084.)

In the 33 years he has lived as a lawful permanent resident, Mr. Sarsour has never once been charged or convicted of a crime in the United States. Mr. Sarsour also has not left the United States since 1998, when he traveled to Saudi Arabia for Hajj—the annual, sacred pilgrimage to

Mecca, Saudi Arabia, required of every physically and financially able Muslim at least once in their lifetime. Over the past 33 years, Mr. Sarsour has appeared for every scheduled immigration interview and hearing. His only absence was a 2002 citizenship oath ceremony, for which he received the notification only after the ceremony had taken place. (Sarsour Decl. ¶ 73.)

3. Mr. Sarsour's medical conditions broaden the extraordinary circumstances

Mr. Sarsour is Type 2 diabetic and his detention in the Clay County Jail poses a grave threat to his health. He is currently being denied regular access to his prescribed medication, and his blood glucose levels are not being checked daily. Without strict dietary controls, appropriate mediation, and routine glucose monitoring, Mr. Sarsour can develop organ, nerve, and vision damage. (Droubi Decl., Exhibit A-235.)

C. Release is Necessary to Make the Habeas Remedy Effective

Finally, Mr. Sarsour's release is necessary to make habeas effective because keeping him in detention pending adjudication on the merits "would ratify the chilling effect that the government intends to create." *Mahdawi*, 781 F. Supp. 3d at 233-34. As other courts have observed in similar cases: "to allow this retaliatory conduct to proceed would broadly chill protected speech, among not only activists subject to final orders of deportation but also those citizens and other residents who would fear retaliation against others." *Ozturk*, 779 F. Supp. 3d at 491 (quoting *Ragbir v. Homan*, 923 F.3d 53, 71 (2d Cir. 2019)). This element of the *Mapp* standard, "necessary to make the habeas remedy effective," comes from a Fifth Circuit case, *Boyer v. Orlando*, 402 F.2d 966 (5th Cir. 1968); *see Mapp*, 241 F.3d at 226. There, where a Petitioner challenged his misdemeanor conviction alleging denial of his right to counsel, which he had not been provided, the Fifth Circuit reasoned that "Boyer's sentence would long have been served before" his habeas case could be heard, and thus "no practical relief could be afforded notwithstanding the Court's recognition of his constitutional claim." *Id.* at 968. Therefore, the Court ordered the Petitioner released on bail to make his remedy truly

effective. The same is true here.

This is particularly the case where jurisdictional questions have caused substantial delay in the similar petitions currently pending on appeal. *See, e.g.*, *Khalil v. Trump*, No. 25-cv-01963 (D.N.J.) (Mr. Khalil was arrested March 8, 2025, his habeas petition was filed on March 8, 2025, and he was released on bail on June 20, 2025. A petition for rehearing en banc was filed on March 31, 2026 and is still pending as of this filing); *Mahdawi v. Trump*, No. 25-cv-389 (D. Vt.) (Mr. Mahdawi was arrested on April 14, 2025, his habeas petition was filed on April 14, 2025, he was released on April 30, 2025, and his matter remains pending in the Second Circuit as of as of the date of this filing); *Khan Suri v. Trump*, 25-cv-480 (E.D. Va.) (Dr. Khan Suri was arrested on March 17, 2025, his habeas petition was filed on March 18, 2025, and he was ordered released on May 14, 2025; the Fourth Circuit decision remains pending as of the date of this filing.).

Mr. Sarsour's ability to exercise his First Amendment rights is "severe[ly] curtail[ed]" as long as he is detained. *Id*. If he has been detained in retaliation for exercising those rights, release is essential to make habeas relief effective, not only for him but for others who wish to speak freely without fear of government retaliation. *Elrod v. Burns*, 427 U.S. 347 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

II. THIS COURT HAS AUTHORITY TO GRANT RELEASE[17]

The INA does not bar this Court from releasing Mr. Sarsour, and could not do so without violating the Suspension Clause of the U.S. Constitution. Courts across the country have granted release pending adjudication of the underlying habeas petition, finding sufficient authority to do so. These courts have all considered—and all rejected—the arguments the government now relies

[17] Petitioner intends to provide a thorough analysis of jurisdictional issues in the forthcoming briefing on the merits; accordingly, Petitioner offers only a brief overview at this time.

upon. *Ozturk v. Hyde*, 136 F.4th 382, 394-400 (2d Cir. 2025) (finding that the government was "unlikely to make a showing" that the INA stripped the court's jurisdiction over petitioner's habeas claims); *Mahdawi v. Trump*, 136 F.4th 443, 449 (2d Cir. 2025) (same); *Suri v. Trump*, No. 1:25-cv-480 (PTG/WBP), 2025 U.S. Dist. LEXIS 94297, at *2 (E.D. Va. May 14, 2025) (granting habeas petitioner's release on bail).

As this Court has held, 8 U.S.C. § 1252(a)(5) is "plainly inapplicable here." *Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 U.S. Dist. LEXIS 201543, at *9 n.2 (S.D. Ind. Oct. 11, 2025) (Hanlon, J.). That section provides that "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," 8 U.S.C. § 1252(a)(5). Mr. Sarsour has not been ordered removed, and he does not seek review of any order of removal. *See, e.g.*, *Mahdawi*, 136 F.4th at 453 ("Section 1252(a)(5) bars district court review 'of an order of removal,' but no order of removal is at issue here. 8 U.S.C. § 1252(a)(5).").

For similar reasons, 8 U.S.C. § 1252(b)(9) is also inapplicable. This provision states that "[j]udicial review of all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States . . . shall be available only in judicial review of a final order." 8 U.S.C. § 1252(b)(9). However, "[t]he question is not whether *detention* is an action taken to remove an alien but whether *the legal questions* in this case arise from such an action." *Ozturk*, 136 F.4th at 399 (quoting *Jennings v. Rodriguez* 583 U.S. 281, 295 (2018)). Any contrary interpretation is foreclosed by the text of the overarching section and the legislative history of the most recent amendment. *See* 8 U.S.C. § 1252(b) ("With respect to review of an order of removal under subsection (a)(1), the following requirements apply"); H.R.Rep. No. 109–72, at 175 (amendment "would not preclude habeas review over challenges to detention that are independent of challenges to removal orders").

As this Court has observed, the Supreme Court "explicitly rejected" an expansive view of 1252(b)(9) which would "'cram[]' review of every collateral claim into review of the final removal order." *Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 U.S. Dist. LEXIS 201543, at *8 (S.D. Ind. Oct. 11, 2025) (quoting *Jennings*, 583 U.S. at 293). Such an expansive reading would lead to "absurd" results, including that judicial review would only be authorized at a point where "many harms would be complete and irreversible." *Id*. And since "[t]he loss of First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury," *Elrod v. Burns*, 427 U.S. 347, 373 (1976), any interpretation of 1252(b)(9) that bars Mr. Sarsour's claim would lead to precisely the "absurd" results contemplated by the Court in *Jennings*.

Nor does 8 U.S.C. § 1252(g) pose a jurisdictional problem here. That section generally denies courts, outside of the petition for review process, "jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). As the Supreme Court has clarified, however, section 1252(g) is not "a sort of 'zipper' clause" but rather "applies only to three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999) ("AADC").

Mr. Sarsour does not challenge the execution of a removal order against him, since no such order exists. Mr. Sarsour also does not challenge the government's decision to commence or adjudicate the proceedings against him, which have commenced and will proceed. Instead, Mr. Sarsour narrowly challenges the constitutionality of his *detention*. Therefore, his claims are not barred by 1252(g). *See Alejandro*, 2025 U.S. Dist. LEXIS 201543, at *6-7 (The application of 1252(g) "is limited to the three enumerated circumstances, none of which are presented here.").

Finally, we note that, if any provision of the INA did purport to preclude this Court from ordering the release of a lawful permanent resident detained on account of protected speech in violation of his right to due process of law, it would be unconstitutional. Mr. Sarsour is not being subjected to removal proceedings based on any criminal conviction in which he received due process of law; instead, Mr. Sarsour, like many others, is being targeted and detained on the basis of his protected speech supporting Palestinian rights, as courts around this country have confirmed. *See, e.g., AAUP*, 802 F. Supp. 3d at 175 ("This Court rules that the Plaintiffs have shown by clear and convincing evidence that Secretaries Noem and Rubio have intentionally and in concert implemented Executive Orders in 14161 and 14188 a viewpoint-discriminatory way to chill protected speech. This conduct violated the First Amendment.").

Under these circumstances, the Suspension Clause of the United States Constitution protects Mr. Sarsour's right to habeas review of his detention, and none of the relevant INA provisions purport to be a suspension of the writ. The Suspension Clause provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. Art. I, Sec. 9, Cl. 2. Its protection extends to noncitizens without formal immigration status even when detained in Guantanamo Bay. *Boumediene v. Bush*, 553 U.S. 723 (2008). Surely, its protection extends to Mr. Sarsour, a lawful permanent resident present without issue for 33 years and currently detained in Indiana. Mr. Sarsour seeks (among other relief) simple release from custody on bail. The possibility of a petition for review at the conclusion of removal proceedings is not "an adequate substitute for habeas corpus," *Boumediene*, 553 U.S. at 771, with respect to the question of detention during these removal proceedings (whether or not it would also be inadequate in other contexts), since it would occur only in the event of a final removal order and only after that detention had already taken place. *Cf. E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 186 (3d

Cir. 2020) (engaging in similar analysis as a matter of statutory interpretation); *see also Lopez v. Doe*, 681 F. Supp. 3d 472, 488 (E.D. Va. 2023) ("[T]he appeals process following the immigration court's resolution of his motion to reopen is neither "adequate" nor "effective." . . . It is hard to call a process that potentially results in extended unlawful detention "adequate" and "effective." Indeed, it is anything but.").

Thus, the Suspension Clause would not allow Mr. Sarsour to be denied habeas review and told instead to await review by a Court of Appeals of his detention on petition for review of a final removal order. The Suspension Clause and the First Amendment would not allow Congress to require the detention of lawful residents for their protected speech and eliminate judicial review of that detention. If the INA were construed to attempt to do so—which, for the reasons discussed above, it should not be—it would be unconstitutional. Thus, on both statutory and constitutional bases, the Court has authority to order Mr. Sarsour release. That this is only a request for interim release, not a final ruling, changes nothing. No "specific statutory provisions," *Mapp*, 241 F.3d at 229, bar interim release here. The real question is who should bear the risk if the Court's first judgment on jurisdiction or the merits proves wrong. Where there is no flight risk or danger, that burden should fall on the government—not on Mr. Sarsour, a lawful permanent resident jailed for his protected speech.

III. IN THE ALTERNATIVE, THIS COURT SHOULD RELEASE MR. SARSOUR PURSUANT TO A PRELIMINARY INJUNCTION UNDER FED. R. CIV. P. 65

Alternatively, this Court can release Mr. Sarsour pursuant to a preliminary injunction under Fed. R. Civ. P. 65, enjoining Respondents from continuing to detain him. *See, e.g.*, *Alejandro*, 2025 U.S. Dist. LEXIS 201543, at *11 (Hanlon, J.); *Kordia v. Noem*, No. 3:25-cv-01072-L-BT, 2025 U.S. Dist. LEXIS 136346, at *12 (N.D. Tex. June 27, 2025).

A petitioner seeking a preliminary injunction must establish that "he is likely to succeed

on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008). "The two most important considerations are likelihood of success on the merits and irreparable harm." *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023). "The third and fourth elements merge when the government is the Respondent." *Alejandro*, 2025 U.S. Dist. LEXIS 201543, at *11 (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Mr. Sarsour has more than met the standard for a preliminary injunction here.

First, every additional day that Mr. Sarsour is detained, he suffers irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). Mr. Sarsour has demonstrated, *supra* Section I(A), that he presents substantial claims that the Respondents violated his First Amendment freedoms, thereby inflicting irreparable harm which is exacerbated each day he is detained.

Next, Mr. Sarsour has demonstrated likelihood of success on the merits, *supra* Section I(A). The strength of Mr. Sarsour's claims are bolstered by several courts across the country which have ruled in similar circumstances that (a) jurisdiction exists and (b) release is warranted. *See, e.g.*, *Mahdawi*, 781 F. Supp. 3d at 214; *Ozturk*, 783 F. Supp. 3d at 811. Mr. Sarsour's claims are further strengthened by *AAUP*, a District of Massachusetts decision which concluded after an extensive trial that the government enforced an unconstitutional Policy of detaining noncitizens based on their speech in support of Palestinian rights. *AAUP*, 802 F. Supp. 3d at 194.

Finally, an injunction would be in the public interest, and the balance of equities weighs heavily in Mr. Sarsour's favor. As discussed *supra* at 3-6 *and supra* Section I(B)(2), Mr. Sarsour is a pillar of his family and his community. Respondents' conduct would create an extraordinary

chilling effect among the many people who know, have worked with, or look up to Mr. Sarsour.

For these reasons, this Court has more than sufficient basis to order a preliminary injunction preventing Mr. Sarsour's continued detention.

CONCLUSION

For these reasons, the Court should grant this motion and order Mr. Sarsour's immediate release. Release will end the extraordinary harms of his detention, restore the status quo, and ensure that habeas relief remains meaningful by allowing full and fair consideration of the serious constitutional issues at stake.

Dated: April 24, 2026

Respectfully submitted,

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