UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

SALAH SALEM SARSOUR, Petitioner, v. BRISON SWEARINGEN, in his official capacity As Sheriff of Clay County, Indiana and Custodian Of Petitioner, TODD LYONS, in his official Capacity as Acting Director, U.S. Immigration and Customs Enforcement, MARKWAYNE MULLIN in his official Capacity as Secretary of the United States Department of Homeland Security, PAMELA BONDI in her official capacity as Attorney General, U.S. Department of Justice[1] Respondents.	)	Cause No. 2:26-cv-00224-JPH-MKK

RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR RELEASE PENDING ADJUDICATION OF HIS AMENDED HABEAS PETITION

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Acting Attorney General Todd Blanche is substituted for Pamela Bondi.

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INTRODUCTION

Federal Respondents (hereafter "the Government") submit this response in opposition to Petitioner Salah Sarsour ("Sarsour" or "Petitioner") amended habeas petition. Notably, the Government has filed its return in opposition to Sarsour's amended habeas petition briefing this Court on the merits of his underlying claims for habeas relief. Nevertheless, Petitioner now postpones his traverse and seeks the extraordinary relief of pre-decision release. Furthermore, Petitioner utilizes this opportunity to address many of the deficiencies in his amended petition—identified in the Government's return—regarding the merits of his underlying habeas claims with the benefit of additional, unwarranted briefing designed to bog down and delay a resolution of the merits of his Amended Petition. The Court should reject it.

Notwithstanding, the Government reiterates many of the issues underlying its opposition to his habeas claim here. *First*, this Court's lacks jurisdiction to grant this relief because Sarsour's attack on the lawfulness of his detention necessarily and inextricably represent both an attack on his underlying removability charges and the Government's discretionary decision to commence removal proceedings against him. *Second*, even if this Court had competent jurisdiction over his claims, Sarsour cannot demonstrate that his circumstances warrant the extraordinary relief of pre-decision release while this Court considers his fully briefed amended habeas petition. Specifically, Sarsour can neither show that his claims have a high probability of success on the merits nor that bail is necessary for his habeas remedy to be effective. *Finally*, for the same reasons, this Court should deny his alternative request for a preliminary injunction against his detention. As such, the Court should deny the instant motion and dismiss or deny Petitioner's Amended Petition.

BACKGROUND

I. Sarsour's Immigration History and Detention.

Jordanian citizen Salah Sarsour holds the status of "lawful permanent resident" of the United States. *See* Dkt. 29-1 ¶¶ 5-7. On March 30, 2026, U.S. Immigration and Customs Enforcement ("ICE") special agents from Homeland Security Investigations ("HSI") arrested Sarsour in Milwaukee, Wisconsin pursuant to a Form I-200, Warrant of Arrest of Alien, for the purpose of detaining him while his removal proceedings were pending in immigration court. *Id*. ¶ 11; Dkt. 29-2 ¶ 13. He is in removal proceedings pursuant to 8 U.S.C. § 1229a. *Id*., Exs. B, F.

Sarsour is charged as deportable under several different provisions of the Immigration and Nationality Act ("INA") stemming from a litany of allegations related to criminal and terrorist activity. According to his Form I-862, Notice to Appear ("NTA"), as amended by a Form I-261, Additional Charges of Inadmissibility / Deportability, Sarsour sustained a criminal conviction in 1989 before the Ramallah Military Court in Israel for throwing a Molotov cocktail at a home and throwing stones at Israeli army forces and was subsequently sentenced to 23 months imprisonment. *Id*., Ex. B at 4. Additionally, in October 1994, Sarsour was again before the Ramallah Military Court stemming from, *inter alia*, sheltering a member of Harakat al-Muqāwama al-Islāmiyya ("HAMAS") wanted by Israeli authorities, attempting to procure a weapon for that HAMAS terrorist, giving funds to HAMAS, and conveying information on behalf of HAMAS members, resulting in another conviction for unlawfully attempting to hold weapons and ammunition, which carried an additional term of imprisonment. *Id*. at 7, Ex. F at 20. Moreover, the Secretary of State personally determined that Sarsour's activities and presence in the United States,

> would have potentially serious adverse foreign policy consequences and would comprise a compelling U.S. foreign policy interest … to combat antisemitism around the world as well U.S. foreign policy to combat activity that supports foreign terrorist organizations. These determinations are based on evidence … including that of Sarsour's leadership role in an organization that has been found to have been involved in activities providing funds to Hamas.

See Dkt. 21-2 at 2-3. Based on Sarsour's support for HAMAS and the Secretary of State's determination, DHS charged Petitioner twice as deportable under 8 U.S.C. §§ 1227(a)(4)(B) and once under (C)(i), respectively. Dkt. 29-2, Ex. B at 8, Ex. F at 20. The Government has also charged Sarsour under 8 U.S.C. §§ 1227(a)(1)(A) and (a)(3)(D) based on misrepresentations made in connection with his Petition to Remove Conditions on Residence and Application for Naturalization, and falsely claiming to be a United States citizen by registering to vote, respectively. *Id*., Ex. B at 8. Sarsour's detention is governed by § 1226(a) under each of the five removability charges,[2] though the ability of an IJ to redetermine his custody is limited by 8 C.F.R. § 1003.19(h)(2)(i)(C) given the three removability charges under § 1227(a)(4).[3]

II. Sarsour's Habeas Petition and the Instant Motion Seeking Pre-Decision Release.

On Monday, April 13, 2026, Sarsour's counsel filed an amended habeas petition under 28 U.S.C. § 2241 (Dkt. 21), while Sarsour was physically present in Indiana. *See* Dkts. 29-1 ¶ 13, 29-2, Ex. E. On April 20, 2026, the Government filed its return in opposition briefing this Court concerning both the jurisdictional issues presented by his claims and the insufficiency of his petition to establish a meritorious challenge to the lawfulness of his immigration detention pending removal proceedings. *See* Dkt. 29. Instead of submitting a traverse in response to the Government's opposition, Sarsour has postponed a resolution of the merits of his Amended Petition in the hope of provoking a kneejerk release order prior to resolving the merits (or rather, the lack thereof) of his Amended Petition. *See* Dkts. 30, 32. The Court should deny Petitioner's motion.

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[2] Whether Sarsour's detention authority could also fall under § 1226(c) is a complex question that need not be resolved today. *Compare Matter of Ghanbari*, 29 I. & N. Dec. 376 (BIA 2025) *with Matter of Arreola*, 25 I. & N. Dec. 267, 271 (BIA 2010). For the limited purpose of this document, Respondents assume § 1226(a) governs Sarsour's detention as opposed to § 1226(c).

[3] Sarsour is still free to argue he "is not properly included within any of those paragraphs" before the IJ. 8 C.F.R. § 1003.19(h)(2)(ii).

LEGAL ARGUMENT

Sarsour's splashy arguments concerning what he construes to be a crackdown on pro-HAMAS activity is burying the lead: Sarsour is deportable for several reasons completely unrelated to his speech. Sarsour does not dispute that the Government has several different grounds on which it has sought his removal, he does not dispute every ground, and he does not dispute the Government can lawfully detain him incident to removal proceedings on the undisputed grounds. Instead, his brief betrays his belief that Pro-HAMAS or pro-Palestine advocacy is a unique get-out-of-detention free card. Sarsour does not claim the Government has no basis to find him deportable under § 1227(a)(4)(B), for his material support for Hamas and terror-related convictions, or § 1227(a)(1)(A), for inadmissibility under § 1182(a)(6)(C)(i) at entry or adjustment for concealing his convictions. Sarsour also does not claim the Government has no basis to seek his removal under § 1227(a)(3)(D), for falsely claiming to be a U.S. citizen when he fraudulently registered to vote. In fact, he ignores that deportability ground entirely. He focuses all his energy on challenging only the Secretary's determination under § 1227(a)(4)(C)(i) and ignores the rest. Even if jurisdiction existed, the Court could not do the same.

As explained below, he cannot challenge *any* of the grounds for the institution of removal proceedings and detention incident to removal proceedings in this Court. But even if he could, he would need to defeat every basis to institute removal proceedings and detain him. He cannot get there by willfully ignoring several bases for removal and detention incident to removal.

I. This Court Lacks Jurisdiction to Grant Interim Release.

It is axiomatic that "[t]he district courts of the United States … are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope

of habeas has been tightly regulated by statute from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020) (citation omitted). 28 U.S.C. § 2241 provides the district court with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or custody is in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3); *see INS v. St. Cyr*, 533 U.S. 289, 305 (2001).

In the instant motion, Petitioner requests the extraordinary relief of immediate bail or release prior to the Court's decision on his amended petition. Dkt. 32; *see also* Dkt. 33 at 13. While federal courts may have a general inherent authority to grant bail or release in certain circumstances, that authority can be conditioned by statute. *Bolante v. Keisler*, 506 F.3d 618, 620 (7th Cir. 2007). In the immigration context, inherent authority to grant release pending review is displaced by the INA. *Id*. at 620-21. Petitioner relies on *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001), which says otherwise, but which the Seventh Circuit expressly rejected *Mapp* in *Bolante*. *Bolante*, 506 F. 3d at 621 ("Because our decision [in *Bolante*] creates an intercircuit conflict [from *Mapp*], we have circulated it to the full court[.]"). This Court follows *Bolante*, not *Mapp*.

As explained below, the INA prevents this Court from granting Sarsour's request for pre-decision bail pending its decision on the amended petition for habeas relief.

A. Sections 1252(b)(9) and (g) Bar Sarsour's Claims Underlying His Request for Pre-decision Release.

Sarsour's request for pre-decision release or bail, like his amended petition more broadly, is based on challenges to the underlying grounds of deportability contained in his NTA. *See, e.g.*, Dkt. 33 at 17; *see also* Dkt. 21 ¶ 79. Moreso than in his amended petition, Petitioner attempts to avoid characterizing his challenge as such by grossly misstating and mischaracterizing the Government's reasons for arresting and detaining him. *See* Dkt. 33 at 16 ("The government has

attempted to justify many of these arrests and detentions with various statements and memoranda, filled with specious accusation regarding threats of violence or associations with terrorist organizations."), 17 ("In Mr. Sarsour's case, the government has dug up long discredited allegations that the government itself evaluated and ignored for decades."); *see also* Dkt. 21 ¶ 79-82. Sarsour can mischaracterize, smear, denounce, misconstrue or otherwise contest the Government's basis for seeking his removal all he wants in removal proceedings, but he cannot do so outside of removal proceedings. *See* Dkt. 33 at 12.

As previously briefed, *see* Dkt. 29 at 7, Petitioner may not utilize habeas proceedings to challenge the Government's reliance on his criminal history and terrorism-related activities to institute removal proceedings against him, nor the Government's decision to detain him pending the outcome of those proceedings. Congress has prescribed a single path for judicial review of administrative determinations underlying an order of removal: "a petition or review filed with the appropriate court of appeals." 8 U.S.C. § 1252(a)(5); *Cf. Tazu v. Att'y Gen.*, 975 F.3d 292, 294 (3d Cir. 2020) ("For an alien challenging his removal," the appropriate jurisdictional "path begins with a petition for review of his removal order, not a habeas petition."); *Johnson v. Whitehead*, 647 F.3d 120, 124 (4th Cir. 2011) ("Congress has specifically prohibited the use of habeas corpus petitions as a way of obtaining review of questions arising in removal proceedings."). Immigration laws further provide that, "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphasis added). Read in conjunction with section 1252(b)(9), section 1252(a)(5) expresses Congress's intent to channel

and consolidate judicial review of *every* aspect of removal proceedings into the petition-for-review process in the courts of appeals. H.R. Conf. Rep. No. 109-72, 174-75.

Similarly, section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including under habeas corpus, to review "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). This provision eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory)."[4] Though this section "does not sweep broadly," *Tazu*, 975 F.3d at 296, its "narrow sweep is firm," *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021). Except as provided by section 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *Id*. The statute was "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion," to protect "no deferred action decisions and similar discretionary decisions." *Tazu*, 975 F.3d at 297 (quotations omitted). This limitation exists for "good reason": "[a]t each stage the Executive has discretion to abandon the endeavor." *Reno v. American-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 483-84 (1999). In addition, through § 1252(g) and other provisions of the INA, Congress "aimed to prevent removal proceedings from becoming 'fragment[ed], and hence prolong[ed].'" *Tazu*, 975 F.3d at 296 (alterations in original) (quoting *AADC*, 525 U.S. at

[4] Congress initially passed § 1252(g) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 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 section 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311. After Congress enacted the Homeland Security Act of 2002, § 1252(g)'s reference to the "Attorney General" includes the Secretary of Homeland Security. 6 U.S.C. § 202(3); *see also Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863 & nn.3-4 (6th Cir. 2022) (explaining the historical development of § 1252(g)).

487); *see Rauda v Jennings*, 55 F.4th 773, 777-78 (9th Cir. 2022) ("Limiting federal jurisdiction in this way is understandable because Congress wanted to streamline immigration proceedings by limiting judicial review to final orders, litigated in the context of petitions for review.").

Read in conjunction, sections 1252(b)(9) and (g) represent the proverbial nail in the coffin of claims like Sarsour's because they pertain 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."); *Trabelsi v. Crawford*, No. 1:24-CV-1509 (RDA/LRV), 2024 WL 5497113, at *6-*7 (E.D. Va. Dec. 2, 2024). Similarly, the Seventh Circuit has also held that section 1252(g) applies to discretionary decisions to execute a removal order. *See, e.g.*, *Fedorca v. Perryman*, 197 F.3d 236 (7th Cir. 1999); *see also Tazu*, 975 F.3d at 297-99 ("The plain text of § 1252(g) covers decisions about *whether* and *when* to execute a removal order."); *Rauda*, 55 F.4th at 777-78 ("No matter how [petitioner] frames it, his challenge is to the Attorney general's exercise of his discretion to execute [his] removal order, which we have no jurisdiction to review."); *E.F.L.*, 986 F.3d at 964-65 (holding that § 1252(g) barred review of the decision to execute a removal order while an individual sought administrative relief); *Camerena v. Director, ICE*, 988 F.3d 1268, 1272, 1274 (11th Cir. 2021) (holding that § 1252(g) would bar claims asking the Attorney General to delay the execution of a removal order); *Hamama v. Homan*, 912 F.3d 869, 874 (6th Cir. 2018) ("Under the plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to judicial review."). Under the plain text of § 1252(g), the provision must apply equally to decision and actions to *commence* proceedings that ultimately may end in the execution of a final removal order. *See*

Jiminez-Angeles, 291 F.3d at 599; *see also Sissoko v. Rocha*, 509 F.3d 947, 950–51 (9th Cir. 2007) (holding that § 1252(g) barred review of a Fourth Amendment false-arrest claim that "directly challenge[d] [the] decision to commence expedited removal proceedings"); *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999) (determining that § 1252(g) prohibited review of an alien's First Amendment retaliation claim based on the Attorney General's decision to put him into exclusion proceedings).

The exact type of claim Sarsour now brings mirrors that which the Third Circuit in *Khalil* found § 1252(b)(9) barred: "challenges [to] both his removal and his detention pending removal proceedings, claiming that both are unlawful on various grounds. These claims collide with one of the INA's jurisdictional bars: 8 U.S.C. § 1252(b)(9)." *Khalil v. President*, 164 F.4th 259, 273 (3d Cir. 2026).[5] In *Khalil*, a legal permanent resident was charged as removable under an INA provision allowing for the removal of aliens whose "presence or activities in the United States … would have potentially serious adverse foreign policy consequences for the United States." *Khalil*, 164 F.4th at 266 (quoting 8 U.S.C. § 1227(a)(4)(C)). Khalil sought habeas relief by challenging his detention, removal, and a "broad array of alleged governmental misconduct under the First and Fifth Amendments" and other administrative actions. *Id*. In holding that § 1252(b)(9) bars the district court's jurisdiction, the Third Circuit concluded that Khalil's claims were not "wholly collateral to the removal process"; rather, they were "inextricably linked to it" as understood under § 1252(b)(9). *Id*. at 274.

Additionally, *Jennings v. Rodriguez* provides no obstacle to the Third Circuits findings in *Khalil* nor the Government's position that this Court does not have jurisdiction to review Sarsour's

[5] As previously noted in the Government's return, *see* Dkt. 29 at 8, Sarsour likens his circumstances to Mahmoud Khalil's throughout his amended petition. *See* Dkt. 21 ¶¶ 7, 52, 55-56, 63, 111; *see also* Dkt. 33 at 12.

claims on their merits in the instant motion. In *Jennings*, the Supreme Court found that preventing all collateral attacks on detention under section 1252(b)(9) "would lead to staggering" and "absurd" results. *See* 583 U.S. 281, 293 (2018). Nevertheless, the analysis in *Jennings* did not end there. The Supreme Court specifically noted instances in which a collateral claim appeared appropriate for judicial review—e.g., *inter alia*, claims stemming from conditions of confinement or whether detention had become unconstitutionally excessive. *See, e.g.*, *id*. at 293-94. Furthermore, *Jennings* provided that "a comprehensive interpretation" regarding the scope of section 1252(b)(9) was unnecessary because the respondents "are not asking for review of an order of removal; … not challenging *the decision to detain them in the first place or to seek removal*; and they are not even challenging any part of the process by which their removability will be determined." *See id*. at 294.

The Seventh Circuit has likewise readily concluded section 1252(g) bars review of the exercise to institute removal proceedings. *See, e.g.*, *E.F.L.*, 986 F.3d at 964; *Bhatt v. Board of Immigration Appeals*, 328 F.3d 912, 914 (7th Cir. 2003); *Chapinski v. Ziglar*, 278 F.3d 718, 720-21 (7th Cir. 2002). In addition to barring challenges to *whether* and *when* to commence proceedings, § 1252(g) bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security chooses to commence removal proceedings. *See Alvarez v. U.S. 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 thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process."); *Carreo v. Farrelly*, 270 F. Supp. 3d 851, 877 (D. Md. 2017) ("Plaintiff seeks to hold the government liable for the … decision to arrest her based on a final order of removability—this claim falls squarely within the jurisdictional bar of § 1252(g).").

Here, Sarsour's claims fall precisely into that second category triggering the jurisdiction-stripping provision of 8 U.S.C. § 1252(b)(9). *See, e.g.*, *AADC*, 525 U.S. at 482-83. Like *Khalil*, Sarsour expressly attacks "[t]he government's *decision* to arrest and detain [him]." Dkt. 21 ¶ 81; *see also* Dkt. 33 at 12 ("the government has dug up … allegations that the government itself evaluated and ignored …. Mr. Sarsour has been targeted pursuant to this same unconstitutional Policy ….''). These challenges are inextricably linked to the government's decision to place him in removal proceedings. *See* Dkt. 29-2, Ex. A at 2, Ex. B at 4-8, Ex. C at 12-14, Ex. F at 20; *see also* Dkt. 21, Ex. 2. Such claims fall squarely within the ambit of "questions of law and fact … *arising from any action taken or proceeding brought to remove an alien from the United States* …." 8 U.S.C. § 1252(b)(9). Sarsour "cannot plead around § 1252(b)(9) by calling his challenge to removal a challenge to his detention." *Khalil*, 164 F.4th at 277; *Trabelsi*, 2024 WL 5497113, at *6 ("Whether…removal proceedings were properly initiated, is a question that arises out of the removal proceedings….). As discussed, "most claims that even relate to removal" are improper if brought before the district court. *Id*. at 275; *see also AADC*, 525 U.S. at 483 (labeling section 1252(b)(9) an "unmistakable zipper clause," and defining a zipper clause as "[a] clause that says 'no judicial review in deportation cases unless this section provides judicial review.'"); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) ("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."); *Trabelsi*, 2024 WL 5497113, at *6 ("[C]hallenges to detention that do not focus on the length of detention or the conditions of detention are foreclosed by Section 1252(b)(9) because they arise out of the removal process.").

Sarsour is currently in removal proceedings, placed there because the Government determined that he is a deportable alien resulting from his criminal history, terrorism-related

activities, misrepresentations made to enter and obtain lawful permanent resident status, and false claim to U.S. citizenship—notwithstanding his unsupported assertions to the contrary. *See* Dkt. 29-2, Ex. B at 4, 7-9 (as amended by Ex. F at 20). His challenge to the Government's *decision* to commence removal proceedings—thereby triggering arrest and detention pursuant to § 1226(a)—are "inextricably linked" to his removal proceedings and any pending conclusion regarding his ultimately deportability. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Indeed, his claim that one of the Government's several stated removal charges is pretextual, *see* Dkt. 33 at 12, is a clear, unequivocal invitation to ask this Court to rush to judgment before the immigration courts do, and "addressing any of those claims would require deciding whether removing [Sarsour] would be unlawful—the very issue decided through the PFR process." *Khalil*, 164 F.4th at 276. This is impermissible under sections 1252(b)(9) and (g). *See id.*; *cf. Johnson*, 647 F.3d at 124 (citing §§ 1252(a)(5), (b)(9)), *cert. den'd*, 565 U.S. 1111 (2012); *see also Massieu v. Reno*, 91 F.3d 416, 422 (3d Cir. 1996) (recognizing that the court of appeals could review the final removal order and "'all matter on which the validity of the final order is contingent.'") (quoting *INS v. Chadha*, 462 U.S. 919, 937-39 (9183)); *id.* at 423 (reaffirming that district court review is not appropriate and review of removal is not meaningfully precluded when "the challenge by the aliens is neither procedural nor collateral to the merits"); *Khalil*, 164 F.4th at 280-81 ("Given these mechanisms, the PFR court can meaningfully review [Petitioner's] claims … even if [] immigration judges and the BIA cannot pass on constitutional questions.").

Furthermore, arresting and detaining Sarsour to commence removal proceedings is an "action … to commence proceedings" that this Court lacks jurisdiction to review. *See 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."). That Sarsour raises First and Fifth Amendment claims does not restore the jurisdiction of this Court. *See 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, the Supreme Court held that a prior version of § 1252(g) barred claims similar to those brought here. *See AADC*, 525 U.S. at 487-92.

In *AADC*, aliens alleged that the "INS was selectively enforcing 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 aliens argued to the Supreme Court 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. Further, the Court found that "[a]s a general matter—and assuredly in the context of claims such as those put forward in the present case—an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation." *Id.* at 488; *see also Cooper Butt ex rel Q.T.R. v. Barr*, 954 F.3d 901, 908–09 (6th Cir. 2020) (finding no jurisdiction over claims that the plaintiffs' father "was removed 'based upon ethnic, religious and racial bias' in violation of the Equal Protection Clause of the Fifth Amendment").

Sarsour, in the instant motion, reiterates his claim that his short detention violates the APA, the Due Process Clause, Equal Protections guarantee, and the *Accardi* doctrine. *See* Dkt. 33 at 14-

18. As previously briefed, courts have rejected the notion that a petitioner could avoid jurisdictional limitations of section 1252(g) by asserting certain claims or through clever drafting of a petition. *See E.F.L.*, 986 F.3d at 965; *Tazu*, 975 F.3d at 297-98 ("Any other rule would gut § 1252(g). Future petitioners could restyle any challenge to the three actions listed in § 1252(g) as a challenge to the Executive general lack of authority to violate due process, equal protection, the Administrative Procedure Act, or some other federal."); *Sharif v. Ashcroft*, 280 F.3d 786, 787 (7th Cir. 2002) ("§ 1252(g) does not differentiate among kinds of relief."). "Section 1252(g) precludes judicial review of 'any' challenge to 'the decision or action by [DHS] to [commence proceedings]." *E.F.L.*, 986 F.3d at 964-65. This prohibition "includes challenges to DHS's 'legal authority.'" *Id*. (noting that, "[o]therwise, § 1252(g) would be a paper tiger; any petitioner challenging the execution of a removal order could characterize his or her claim as an attack on DHS's 'legal authority' to execute the order and thereby avoid § 1252(g)'s bar."). As such, this Court lacks jurisdiction under section 1252(g) to review any claim from Sarsour that the Secretary of Homeland Security lacked a lawful basis to commence proceedings against him, or that the basis for the DHS's decision commencement of removal proceedings was unlawful. Sarsour may raise these claims first in immigration court and before a circuit court on a petition for review, but not before this Court in the first instance. *see Tazu*, 975 F.3d at 300 (requiring that the challenges to the act of executing a removal order must go through a petition for review); *Massieu*, 91 F.3d at 417 (holding that a district court did not have jurisdiction to hear a challenge to the constitutionality of 8 U.S.C. § 1251(a)(4)(C)(i), as applied to an alien in deportation proceedings).

B. Sarsour's Claims in the Instant Motion are not Immunized from the INA's Jurisdictional Bars to Review by His Reliance on this Court's Previous Decision in *Alejandro v. Olson* and Other Jurisprudence.

Notably, Sarsour cites this Court's decision in *Alejandro v. Olson* for the proposition that this Court has rejected the Government's arguments regarding the jurisdictional bars in sections 1252(b)(9) and (g). *See* Dkt. 33 at 24. In *Alejandro*, this Court determined that 8 U.S.C. §§ 1252(b)(9) and (g) were inapplicable to the challenge before it. *See* 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.). While this Court reiterated the Supreme Court's hesitance to adopt an expansive view of the INA's jurisdiction-stripping provisions, *see id*. at 7-8, the Court also summarized underlying facts that make this case wholly inapposite. There, the petitioner sought review of a determination that he was subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See id*. at 11-12. That is wholly distinct from Sarsour's underlying claim here, which challenges the reasons to detain—rather than the legal authority to do so—bound into the decision to commence removal proceedings and detain him under 8 U.S.C. § 1226(a) pending resolution of his five removability charges. Here, Sarsour does not challenge the applicability of the detention provision triggered by his removability charges. Tellingly, Sarsour's brief does not so much as cite any of the INA's detention provisions *at all*. Not once is § 1226 anywhere cited in Sarsour's papers. As previously discussed, the Government's decision to commence removal proceedings, and questions of law or fact arising therefrom, are not within the federal district court's jurisdiction. *See sura* at § I.A; *cf. E.F.L.*, 986 F.3d at 964; *Bhatt*, 328 F.3d at 914; *Chapinski*, 278 F.3d at 720-21; *see also AADC*, 525 U.S. at 487.

Moreover, Sarsour's reiterative reliance on *Vidal-Martinez v. Acuff*, No. 21-cv-224, 2021 U.S. Dist. LEXIS 85875 (S.D. Ill. May 5, 2021), fails for the same reasons. There, the district court found that the petitioner's detention under 8 U.S.C. § 1226(a) had become unreasonably prolonged and, thus, violated the Due Process Clause of the Fifth Amendment. *See id*. at *16-17. Sarsour

makes no such claim here. Again, the claims underlying the instant motion all go directly to the lawfulness of the Government's *decision* to place him in removal proceedings and arrest him.

In relevant part, 8 U.S.C. § 1226(a) says, "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." The Government detained Sarsour pending "a decision on whether the alien is to be removed from the United States" under the five charges of deportability that Sarsour is facing. In essence, Sarsour cannot attack the decision to detain him under § 1226(a) without attacking the Government's bases for charging him under § 1227(a)(1)(A), (3)(D), (4)(B), and (4)(C). But as previously discussed, a "challenge to the Attorney General's decision to 'commence proceedings' against them falls squarely within § 1252(g)." *AADC*, 525 U.S. at 487. His allusions to several in a line of similar cases are uninstructive in the instant matter. For example, unlike in *Mahdawi v. Trump*, 781 F. Supp. 3d 214 (D. Vt. 2025), Sarsour was placed in removal proceedings, *inter alia*, for inadmissibility under § 1182(a)(6)(C)(i) at entry and adjustment (§ 1227(a)(1)(A)), two charges of material support of a terrorist organization (§ 1227(a)(4)(B)), falsely claiming U.S. citizenship when he registered to fraudulently vote (§ 1227(a)(3)(D)), *in addition to* designation as an individual whose "activities and presence … in the United States would have potentially serious adverse foreign policy consequences" under § 1227(a)(4)(C). Dkt. 21, Ex. 1 at 2-3; Dkt. 29-1 ¶ 15; Dkt. 29-2, Ex. B at 4, 7-8, Ex. F at 20. The decision to detain him pending a decision on his removability is inseparable from the underlying decision to have his deportability determined. *Khalil*, 164 F.4th at 274 (rejecting claims that "raise *legal questions* challenging the government's very basis for trying to remove (and thus detaining)" the petitioner); *see also Ozturk v. Hyde*, 155 F.4th 187, 188 (2d Cir. 2025) (Manashi J.) (concurring in the denial for rehearing en banc and separately noting in concurrence that "the motions panel erred by authorizing the use of

habeas to collaterally attack ongoing removal proceeding. …[W]hile [8 U.S.C. §§ 1252(b)(9), (g)] may still allow aliens to challenge the conditions of their confinement during removal proceedings, the statutes do not permit the use of habeas to 'challeng[e] the decision to detain them in the first place or to seek removal.'" (quoting *Jennings*, 583 U.S. 281, 294 (2018)).

As noted previously, Sarsour's brief asks the Court to pretend the foreign affairs determination (§ 1227(a)(4)(C)) is the only deportability charge and to further pretend his § 1226(a) detention is based exclusively on this removability charge. This is incorrect. Sarsour has is facing at least five removal charges, two of which are under § 1227(a)(4)(B), which means the Immigration Judge does not have the authority to redetermine ICE's custody determination pursuant to the regulatory provision at 8 C.F.R. § 1003.19(h)(2)(i)(C). Moreover, even setting aside the foreign affairs determination under § 1227(a)(4)(C) and the terrorism-related deportability under § 1227(a)(4)(B), there is still ample authority to detain Sarsour under § 1226(a) to determine his removability under § 1227(a)(1)(A) (for inadmissibility under § 1182(a)(6)(C)(i) for misrepresentations and concealment of his convictions at entry and adjustment) and 1227(a)(3)(D) for fraudulently claiming to be a U.S. citizen when he registered to vote. The discretion to detain Sarsour under § 1226(a) for any of these charges is not limited by Sarsour's pro-Hamas advocacy, nor is jurisdiction to review that determination restored thereby, and Sarsour does not explain why he believes this to be the case.

In sum, Sarsour's repeated claims here, as with his amended petition, are removed from this Court's jurisdiction to review by the INA. Consequently, the Court should deny his request for extraordinary relief.

II. Sarsour Has Shown Neither a High Probability of Success Nor Extraordinary Circumstances to Warrant Kneejerk Release.

Finally, Sarsour's instant challenges once again rely on the standard articulated in *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001) to determine the appropriateness of immediate release from immigration detention. The Seventh Circuit rejected *Mapp*. *Bolante v. Keisler*, 506 F.3d 618, 620 (7th Cir. 2007). Per *Bolante*, a grant of bail or release pending habeas review is not appropriate where the Court, as here, is jurisdictionally barred from releasing or reviewing the petitioner's habeas challenge by the INA. *Id.* (bail pending review "is an exercise of a court's common law powers and thus, unlike a ruling based on the Constitution, is subject to legislative curtailment."). This explains why Sarsour seeks reactionary quick release order and opts to defer a ruling on his Amended Petition as a whole.

Section 1226(a) provides the framework for the arrest, detention, and release of noncitizens in removal proceedings. Under § 1226(a), the Government may detain aliens—like Sarsour—who are charged with deportability on just one ground, which obviously extends to those charged with several grounds of removability. In his motion and Amended Petition, Sarsour largely contests only the § 1227(a)(4)(C) determination in his Amended Petition. He argues, in essence, that he should be insulated from any statutorily-authorized detention for *any* reason on *any* ground of deportability, based purely on his pro-HAMAS/pro-Palestine belief system. *See generally*, Mot. at 2, 15.

Even if one were to uncritically accept all of Sarsour's allegations and arguments about his § 1227(a)(4)(C) deportability finding—that the Secretary's determination was based on First Amendment activity alone and that the First Amendment extends as far as Sarsour assumes it does as to aliens—and § 1226(a) detention incident to that charge, Sarsour does not argue that § 1226(a) would not authorize his detention as to, for example, his deportability for terror-related inadmissibility under § 1227(a)(4)(B) or for falsely claiming to be a U.S. citizen when he registered

to vote under § 1227(a)(3)(D). Any pro-Hamas activism would not insulate him from § 1226(a) detention. Sarsour cannot possibly demonstrate a high probability of success on the claim that there is no lawful authority for his detention when there are several grounds for his removability—including fraudulently claiming to be a U.S. citizen to register to vote—that he does not contest here, and which have nothing to do with allegedly protected speech.

A. Sarsour Has Not Shown a High Probability of Success on His Due Process and Equal Protections Claims.

Sarsour alleges that his due process rights were violated because Sarsour unpersuasively asserts that his detention is punitive, "wholly unjustified," and "bears no reasonable relation to any legitimate nonpunitive government purpose." Dkt. 21 ¶¶ 102, 105; *see also* Dkt. 33 at 17 ("Respondents' detention of Mr. Sarsour bears no 'reasonable relation' to any nonpunitive government purpose."). A vast body of case law says otherwise. Dkt. 21 ¶ 105; Dkt. 33 at 16-18.

"Detention of aliens pending their removal in accordance with the INA is constitutional and is supported by legitimate governmental objectives." *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 328–29 (3d Cir. 2020) (citing *Demore v. Kim*, 538 U.S. 510, 531 (2003), and *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *SPLC v. v. U.S. Dep't of Homeland Sec*., No. 18-0760 (CKK), 2023 U.S. Dist. LEXIS 43726, at *10 (D.D.C. Mar. 15, 2023) ("[I]mmigration detention is presumptively constitutional."). Indeed, the Supreme Court "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore*, 538 U.S. at 522. As the Supreme Court explained, "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Id.* at 522–23. The Supreme Court has also long held that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Id.* at 522–23. Aliens held during the

pendency of removal proceedings may be detained even without an individualized determination as to flight risk or dangerousness. *See, e.g.*, *Carlson v. Landon*, 342 U.S. 524, 528–34, 538 (1952); *Wong Wing*, 163 U.S. at 235 (holding deportation proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character.").

In this case, ICE has decided to exercise its authority under § 1226(a) to detain Sarsour because he has several charges of removability pending against him, including those based on terror-related convictions rendered in Israel. Congress has made detention mandatory for those charged with removability on terrorism-related grounds. 8 U.S.C. § 1226(c). At most, Sarsour attempts to collaterally attack the convictions entered by the Ramallah Military Court (Dkt. 32-2),[6] but he does not dispute the fact of his convictions. Sarsour also does not dispute that there is *clearly* a legitimate interest in detaining aliens convicted of terror-related offenses pending the conclusion of their removal proceedings. Indeed, he cannot: throughout the INA, Congress has stressed the importance of detaining alien terrorists—including in §§ 1226(c), 1226a, 1231(a)(2)(A), 1534(i), 1537(b)(1)—which itself is evidence that detaining those with terror concerns serves a "legitimate nonpunitive government purpose." *See Hope*, 972 F.3d at 329. Moreover, Sarsour does not dispute that there is a legitimate governmental interest in detaining those, like Sarsour, who appears unlikely to be able to overcome all five of the removal charges against him, who have been dishonest in dealing with the Government before (Dkt. 29-2 at 7-8), who have no objection to falsely claiming U.S. citizenship in order to fraudulently vote (Dkt. 29-2 at 8), and who are believed to continue to support HAMAS, a sworn enemy of the United States. Dkt. 21-2 at 2. Again, "[d]etention of aliens pending their removal in accordance with the INA is constitutional and is supported by legitimate governmental objectives." *Hope*, 972 F.3d at 328-29.

[6] He is free to collaterally attack his convictions in immigration proceedings.

Sarsour's equal protections claim is likewise meritless. The Fifth Amendment's Due Process Clause prohibits the Government from denying a person the equal protection of laws. *See Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). "'Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 224 (1995) (quoting *Buckley v. Valeo*, 424 U.S. 1, 93 (1976) (*per curiam*)). "In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79–80 (1976). "The fact that an Act of Congress treats aliens differently from citizens does not in itself imply that such disparate treatment is 'invidious.'" *Id*. at 80.

But here, the Government arrested, detained, and initiated removal proceedings against Sarsour because of facts stemming from his previous criminal convictions in Israel, terrorism-related activities underpinning those convictions, misrepresentations made to the Government about those convictions (including in pursuit of entry and adjustment of status), and by falsely claiming U.S. citizenship in order to register to vote – a charge he does not address anywhere in any of his papers, much less dispute. *See* Dkt. 29-2, Exs. B, F; *see also* Dkt. 21-2. The Government's bases are well-documented as shown here. He does not dispute the fact of his convictions or that such convictions would support a § 1227(a)(4)(B) or § 1227(a)(4)(C) determination. That the Government detained and commenced removal proceedings against Sarsour pending his removal proceedings after charging him as deportable on several grounds is not only rational, it is expressly provided for in the INA.

B. Sarsour's First Amendment Claim is Unlikely to Succeed on the Merits.

Sarsour's First Amendment claim suffers from a lack of merit in addition to a lack of jurisdiction. *Landano*, 970 F.2d at 1239. Indeed, the nature of his claim reveals the very reason that Congress opted to channel these actions into administrative proceedings. He can challenge the

constitutionality of the statute on a PFR, but not here. *Khalil v. President*, 164 F.4th 259, 276 (3d Cir. 2026) (finding no jurisdiction over the same claim).

Nor does the Secretary of State's determination run afoul of any constitutional limit. For one, Sarsour's accusations against the Secretary run headlong into the presumption in favor of regularity—it would be remarkable, and surely unjustified on this record, to countenance a claim that the Secretary of State was motivated by bias and unlawful targeting. *See Nardea v. Sessions*, 876 F.3d 675, 680 (4th Cir. 2017) (citing *USPS v. Gregory*, 534 U.S. 1, 10 (2001), *United States v. Chem. Found., Inc.*, 272 U.S. 1, 14-15 (1926)). All the more so where this decision involves the sensitive area of foreign affairs and is committed to the Secretary's discretion. *See AADC*, 525 U.S. at 491 (The government "should not have to disclose its 'real' reasons for deeming nationals of a particular country a special threat… and even if it did disclose them a court would be ill equipped to determine their authenticity and utterly unable to assess their adequacy."); *cf. Trump v. Hawaii*, 585 U.S. 667, 685–86 (2018) (finding it "questionable" that when making a finding under 8 U.S.C. § 1182(f), which "exudes deference to the President in every clause," the President must "explain that finding with sufficient detail to enable judicial review"); *Kerry v. Din*, 576 U.S. 86, 106 (2015) (Kennedy, J. concurring) ("…the dangers and difficulties of handling such delicate security material further counsel against requiring disclosure in a case such as this. Under *Mandel*, respect for the political branches' broad power over the creation and administration of the immigration system extends to determinations of how much information the Government is obliged to disclose…."). That is why "matters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention." *Vanderklok v. United States*, 868 F.3d 189, 206 (3d Cir. 2017) (citing *Haig v. Agee*, 453 U.S. 280, 292 (1981)). Indeed, it should be clear and obvious that gratuitously hosting those who were convicted of throwing Molotov cocktails at

perceived Israeli collaborators and providing safe harbor to those who attack allied soldiers would have negative foreign relations implications.

Regardless, Sarsour misapprehends how the First Amendment applies in this context. While "[f]reedom of speech and of press is accorded aliens residing in this country," *Bridges v. Wixon*, 326 U.S. 135, 148 (1945), the Supreme Court has "indicated that aliens' First Amendment rights might be less robust than those of citizens in certain discrete areas." *Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281, 287 (D.D.C. 2011) (three-judge panel) (citing *Harisiades v. Shaughnessy*, 342 U.S. 580, 591–92 (1952)), *aff'd*, 565 U.S. 1104 (2012); *see OPAWL - Bldg. AAPI Feminist Leadership v. Yost*, 118 F.4th 770, 779–81 (6th Cir. 2024). Moreover, the government's power and its interests are at their apex in the context of regulating immigration. *See Mathews*, 426 U.S. of 81–82; *see also Gonzalez v. U.S. Dep't of State*, No. 23-4205, --- F. 4th ----, 2026 WL 1174557, at *5 (9th Cir. Apr. 30, 2026) (reiterating that aliens not lawfully admitted "stand on different grounds" with respect to the First Amendment than citizens). Indeed, if mere "presence" is something Congress has said can form the basis of a § 1227(a)(4)(C) determination, then speech certainly can be an acceptable basis as well. That § 1227(a)(4)(C) permits the Secretary to make a foreign affairs determination based on non-criminal conduct, including "activities" but also mere "presence," is yet another Congressional reaffirmation that aliens simply do not stand on the same constitutional footing as citizens. 8 U.S.C. § 1227(a)(4)(C). Decisions in this area, which "may implicate our relations with foreign powers" and "changing political and economic circumstances," are "frequently of a character more appropriate to either the Legislature or the Executive than to the Judiciary." *Id.* at 81; *see Harisiades*, 342 U.S. at 588–89 ("Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference."). Courts must give substantial deference to the governmental

findings when, as here, the "litigation implicates sensitive and weighty interests of national security and foreign affairs." *Holder v. Humanitarian L. Project*, 561 U.S. 1, 33-34 (2010). Accordingly, the Supreme Court has found foreign policy and immigration decisions to be constitutional even when they burden U.S. citizens' First Amendment rights. *See id*. at 7-8, 10; *Kleindienst v. Mandel*, 408 U.S. 753, 769-70 (1972). And the Supreme Court has further held that the Government "constitutionally may deport a legally resident alien because of membership in the Communist Party," even though the First Amendment recognizes freedom of association. *Harisiades*, 342 U.S. at 581, 591-92. Aliens' First Amendment considerations do not overcome the Executive's prerogative and control over immigration. *See Mandel*, 408 U.S. at 767-68.[7]

Thus, Sarsour has not shown a substantial likelihood on the merits of his underlying habeas claim. Sarsour—as a resident alien—has limited rights under the First Amendment in this context. *See, e.g.*, *Harisiades*, 342 U.S. at 591-92. The Government has several lawful bases for seeking removal. And the Court should not second-guess the Government's discretionary determinations

[7] Congress also made clear that it intended to prioritize foreign policy considerations when it came to admission and deportability of aliens. *See* 8 U.S.C. § 1227(a)(4)(C)(ii); 8 U.S.C. § 1182(a)(3)(C)(iii) (providing for a determination that an alien would not be deportable for "past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States, *unless the Secretary of State personally determines that the alien's admission would compromise a compelling United States foreign policy interest*") (emphasis added). The Executive can properly act when Congress has authorized it to do so. *See Haig*, 453 U.S. at 282, 289, 309 (upholding Executive authority to revoke passports on national security and foreign policy grounds after concluding revocation was authorized by Congress). Additionally, Congress has indicated that speech may be consequential for aliens in ways that may not be consequential to citizens. For example, the PATRIOT Act specifies that certain "speech" activities that support encourage, endorse, or inspire others to terrorism or to terrorist organizations may lead to inadmissibility. *E.g.*, 8 U.S.C. § 1182(a)(3)(B)(i)(VII) (making aliens who "endorse[] or espouse[] terrorist activity or persuade[] others to endorse or espouse terrorist activity or support a terrorist organization" inadmissible); 1182(a)(3)(B)(iv)(VI)(cc) (those who "afford[] material support" to terrorist organizations are inadmissible).

about foreign policy matters, even where, as here, Petitioner invites such review under the guise of habeas and request for pre-decision relief.

A. Sarsour's APA and *Accardi* Claims Are Unlikely to Succeed on the Merits.

Sarsour fails to demonstrate any merit to his claims brought under the APA and *Accardi v. Shaughnessy*, 347 U.S. 260 (1954). The APA provides a right to judicial review of "final agency action for which there is no other adequate remedy." *Bennett v. Spear*, 520 U.S. 154, 175 (1997). The APA permits challenges to agency action that is arbitrary, capricious, and contrary to law, *see* 5 U.S.C. §§ 702, 706(2), and the *Accardi* doctrine provides that "an agency's failure to follow their own 'existing valid regulations' when coming to an agency decision may render that decision arbitrary or capricious." *SPLC v. U.S. DHS*, No. 18-0760 (CKK), 2023 U.S. Dist. LEXIS 43726, *13 (D.D.C. Mar. 15, 2023); *see also Bd. of Curators v. Horowitz*, 435 U.S. 78, 92 n.8 (1978) (acknowledging that *Accardi* "enunciate[d] principles of federal administrative law, other than of constitutional law binding on the States."). Many courts have generally recognized this connection between *Accardi* and the APA. *See SPLC*, 2023 U.S. Dist. LEXIS 43726, *13 ("[A]n *Accardi* claim is simply a subset of claims for relief cognizable under the APA"); *Ams. for Immigrant Just. v. U.S. DHS*, No. 22-3118, 2023 U.S. Dist. LEXIS 17017, *54 (D.D.C. Feb. 1, 2023) (same). In short, the APA provides the cause of action for claimants to enforce an agency's duty, as set forth in the *Accardi* doctrine, to adhere to its own rules. *See id*.

Although the Amended Petition is not a model of clarity on what his APA claim is directed towards, Sarsour's APA and *Accardi* claim appear to challenge the decision to institute removal proceedings and detain him pending those proceedings under § 1226(a). Am. Pet. ¶ 115. While courts have not construed § 1226(e) to bar all that much, § 1226(e) does—at a minimum—bar *something*: that is, APA challenges leveled against individual detention decisions under § 1226(a).

Gutierrez-Soto v. Sessions, 317 F. Supp. 3d 917, 926 (W.D. Tex. 2018). At a minimum, § 1226(e) renders the APA (and the *Accardi* theory of an APA claim) inapplicable under the terms of the APA, 5 U.S.C. § 701(a)(1), insofar as it challenges the decision to detain him and/or not grant him bond or parole. *See Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018).

Even assuming jurisdiction, under long-standing principles limiting APA claims, Sarsour's *Accardi* claim—which is really just a type of APA claim—is unlikely to succeed because it fails to challenge any agency action cognizable under the APA, let alone the "final" agency action required for APA review. Where "no other statute provides a private right of action, the 'agency action' complained of must be 'final agency action.'" *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 61–62 (2004) (citing 5 U.S.C. § 704). The APA defines "agency action" as including "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(3). The Supreme Court has interpreted this to mean: (1) taking one of the "circumscribed, discrete agency actions" listed under § 551 (and their equivalents); (2) saying no to a request to take one of those actions; or (3) omitting to take one of those actions. *Norton*, 542 U.S. at 62. The only agency action that can be compelled under the APA is action "legally required." *Id.* at 63.

Here, Sarsour's APA claim—to the extent it is aimed at something broader than the decision to detain rather than bond or parole in his case—is unlikely to succeed on either count. Sarsour fails to identify a final agency action on which to base his APA claim. *See* Dkt. 21 ¶¶ 114-116. Indeed, he does not allege that DHS took, denied, or failed to take any of the actions covered by § 551. *See Id*. But even taken on its terms, the sort of overarching policy goal alleged in his amended petition is definitionally not subject to APA review, which requires a consummated decision that itself affects rights and obligations. *See Lujan v. Nat'l Wildlife Federation*, 497 U.S.

870, 890 (1990) ("The term 'land withdrawal review program'… is simply the name by which petitioners have occasionally referred to the continuing (and thus constantly changing) operations of the [Bureau of Land Management]… It is no more an identifiable 'agency action'—much less a 'final agency action'—than a 'weapons procurement program' of the Department of Defense or a 'drug interdiction program' of the Drug Enforcement Administration."); *Bennett*, 520 U.S. at 177–78 (requiring a final agency action to "mark the consummation of the agency's decisionmaking process" and "the action must be one by which "rights or obligations have been determined," or from which "legal consequences will flow"). A "broad attack" on agency operations that "does not center on any individual, discrete determination of rights or responsibilities" is not cognizable under the APA under an *Accardi* theory. *SPLC*, 2023 U.S. Dist. LEXIS 43726 at *16.

Even if Sarsour's APA claim could be liberally construed as challenging the Secretary of State's § 1227(a)(4)(C) determination rather than perceived broad policies or the decision to detain him in this case, that agency action would be directly tied to the Government's decision to initiate removal proceedings against him and the validity of those charges, which must be brought in removal proceedings. 8 U.S.C. § 1252(b)(9). Because Sarsour has an alternative, mandatory forum for his claim, it is not cognizable under the APA. *See Khalil*, 164 F.4th at 279; *Bennett*, 520 U.S. at 175-77. Sarsour's *Accardi* claim is unlikely to succeed for the same reasons: at bottom, Sarsour challenges the Government's decision to initiate removal proceeding against him. *See* Am. Pet. ¶¶ 79-82, 114. To the extent that the claim is not barred by § 1252(g), it must be brought through Sarsour's removal proceedings and raised in a petition for review of his final order of removal. *See* 8 U.S.C. §§ 1252(a)(5), (b)(2), (b)(9); *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) ("The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas

corpus, and may be reviewed only in the courts of appeals.") (citation omitted). Furthermore, Sarsour's cursory allusion to "prior directives"—namely, "guidance" issued by Acting Secretary McAleenan (2019) and Acting Secretary Maryorkas (2021)—are also of no moment because Petitioner reference to nonspecific guidance does not establish a precise agency action requiring the Government to refrain from initiating Sarsour's removal proceedings.

In sum, for the reasons stated in the Government's return to his Amended Petition and reiterated here, Sarsour's claims are highly unlikely to succeed on the merits. Even setting aside the clear jurisdictional bars applicable here, Sarsour counters the record of the Government's bases for commencing removal proceedings and detaining him with specious allegations of unconstitutional conduct and attenuated connections to an alleged policy of anti-Palestinian prejudice. The Government's bases for detaining Sarsour are clear, he is believed deportable and, thus, an appropriate subject for commencement of removal proceedings so that the administrative agency—not the district court—may determine the veracity of the Government's allegations and charges. His attempts to short circuit the INA must fail in light of clear statutory mandate.

III. Sarsour is Not Entitled to a Preliminary Injunction Against His Detention.

Finally, Sarsour's alternative request for a preliminary injunction fails for the same reasons that his claim for pre-decision release fails under *Mapp* and other applicable standards. To succeed, Sarsour 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). For the reasons outlined *infra*, Sarsour fails both these prongs.

As outlined above, Sarsour's claims are jurisdictionally barred; therefore, he necessarily cannot succeed on the merits. *Supra*, § I. Furthermore and notwithstanding those bars, his claims are unlikely succeed on the merits of his challenges to the Secretary of State's designation, nor the Government's broader decision to commence removal proceedings and detain him under § 1226(a) pending resolution of the several removability charges. *Supra*, §§ II. The Government reiterates here that Sarsour is detained for the purpose of ensuring his appearance and compliance with removal proceedings on five charges, any one of which provides legal footing for detention under § 1226(a), and the combination of which only further justifies deciding to detain under § 1226(a) rather than bonding him out or paroling him. Again, Sarsour only contests § 1226(a) detention on the foreign affairs charge, § 1227(a)(4)(C), and ignores the rest almost entirely. *See* Dkt. 33.

As irreparable harm, Sarsour cites the loss of his First Amendment freedoms. Dkt. 33 at 28. However, such loss, as explained *supra*, is incidental to lawful removal proceedings, and Sarsour's Amended Petition only challenges *one* of the five charges. As this Court noted in *Alejandro*, "[t]here are only narrow, nonpunitive circumstances under which a special justification authorizes such restraint" as civil confinement. 2025 U.S. Dist. LEXIS 201543, * 20 (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). This circumstance is clearly among them, given the number of deportability charges arrayed against him. *See* Dkt. 29-2, Exs. B, F. In any event, his First Amendment claim just repackages his challenge to one of his five removal charges for which jurisdiction is barred, and regardless, he has a forum for having his First Amendment claim heard before an immigration court through the PFR process. *Khalil*, 164 F.4th at 279.

Additionally, the asserted public interest here of reuniting Sarsour with his community and family, nor the purported "chilling effect" on the speech and association of others, do not outweigh the obvious public interest expressed by the INA concerning the detention and removal of aliens

who were convicted of terrorism-related offenses, who misrepresented or concealed detentions or convictions for such offenses in the pursuit of obtaining immigration benefits, who have been determined by the Secretary of State personally to negatively impact U.S. foreign relations, and who have falsely claimed U.S. citizenship in order to illegally vote in U.S. elections. Further, as previously discussed, Congress precisely endowed the Executive with the prerogative to determine that certain aliens represent a threat to U.S. foreign policy and equipped the Government with the means to commence proceedings against them. *Supra*, § II. To grant release in this matter is to substitute this Court's judgment for that of the Executive to whom Congress has entrusted with the detention determination § 1226(a) and made unreviewable by § 1226(e). Because his Amended Petition fails, his motion should be denied.

IV. In the Event the Court Grants Release Despite Clear Jurisdictional and Merits Defects, The Court Should Require a Bond and Set Strict Conditions.

To the extent the Court grants release pending review despite all of the defects on jurisdiction and the merits, the Court should set a minimum of $25,000 bond, which is only $5,000 per removal charge, as well as further conditions—such as an ankle monitor, check-ins with ICE, home confinement, and to report back to custody if ordered to do so, all under penalty of criminal contempt of court—as is necessary to mitigate the harms done to ICE's ability to ensure his presence at removal proceedings and to ensure compliance with a removal order.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's motion for pre-decision release prior to its adjudication of his amended petition for writ of habeas corpus.

DATE: May 4, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2026, a copy of the foregoing was filed electronically. Service of this filing will be made on the ECF-registered counsel by operation of the Court's electronic filing system.

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