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

SALAH SALEM SARSOUR,

etitioner,

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

Case No. 2:26-cv-00224-JPH-MKK

REPLY MEMORANDUM IN SUPPORT OF
PETITIONER'S AMENDED PETITION
FOR WRIT OF HABEAS CORPUS

INTRODUCTION

On March 30, 2026, the government detained Petitioner Salah Sarsour, stripping him of his freedom after 33 years of peaceful residence in the United States. His detention is the result of an unconstitutional policy targeting noncitizens for their lawful speech and associations—a policy designed to silence dissent and chill speech. Respondents are now attempting to shield the government's conduct from judicial scrutiny.

The Supreme Court and Congress have made clear that challenges to unconstitutional detention are excluded from the jurisdiction-stripping clauses relied on by Respondents. Indeed, the same jurisdictional arguments advanced by Respondents have been rejected by this Court and most others around the country. Respondents' reading of the Immigration and Nationality Act (the "INA") would render unconstitutional detention effectively unreviewable and suspend the Writ of Habeas Corpus, and must therefore be rejected.

FACTUAL BACKGROUND[1]

Respondents assert a variety of meritless claims purportedly justifying Mr. Sarour's arrest, detention, and removal from the country. (Dkt. No. 29-2, at 11-14, 20-21.) Nearly all of the claims relate to decades-old allegations that the government has known about and investigated multiple times since Mr. Sarsour immigrated to the United States as a lawful permanent resident. The sudden, decades-later invocation of these bases for Mr. Sarsour's detention is intended to obscure the real purpose for his detention: his protected speech in support of Palestinian human rights.

Mr. Sarsour was born and raised in Al-Bireh, in the Israeli-occupied West Bank. (Sarsour Decl., Dkt. No 32-2, ¶ 5.) At the age of 15, Mr. Sarsour was taken from his home in the middle of the night by Israeli soldiers. He was subsequently detained, tortured, and "convicted" by an Israeli

[1]A thorough recitation of the facts was provided in Petitioner's Memorandum of Law in Support of his Motion for Release Pending Adjudication of his Habeas Petition and is incorporated herein. (Dkt. No. 33.)

military court for allegedly "throwing stones" in 1988. (*Id*. ¶ 21.) Mr. Sarsour was then subjected to horrific physical torture and psychological abuse for two years. (*Id*. ¶ 26.) 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. (Thomas Decl., Dkt. No., 29-2, at Ex. C.) 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 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 cannot read and could not understand. (Am. Pet. ¶¶ 32-34.) The United States government has been aware of his second detention and torture since at least 1995. (*Id*. ¶¶ 59-61.) 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 false, politically motivated, and without any basis. (*Id*. ¶¶ 51-52.)

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 groups such as 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."[2] As a result, Mr. Sarsour became a target of the administration, along with other non-citizen supporters of Palestinian human rights, like Mahmoud Khalil, Rumeysa Öztürk, Badar Khan Suri, Mohsen Mahdawi, Yunseo Chung, and Momodou Taal.

Mr. Sarsour's activism for Palestinian human rights is the basis of the only recent, non-decades old allegation against him. Unbeknownst to Mr. Sarsour, Secretary of State Marco Rubio

[2] *About AMP*, available at https://www.ampalestine.org/about-amp (last visited May 3, 2026).

issued a secret memorandum in June of 2025, determining that Mr. Sarsour was deportable for speech and associations protected by the First Amendment pursuant to INA § 237(a)(4)(C). This is the same deportability ground levied against Mr. Khalil, Mr. Mahdawi, and Dr. Khan Suri, and protected speech was also the basis for the attempted deportation of Ms. Öztürk, Ms. Chung, and Mr. Taal. *See* Am. Petition, Ex. 2. This "determination" is required from the Secretary of State specifically because 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).

After a string of detentions for lawful speech in March and April of 2025, multiple courts recognized the government's unlawful Policy and ordered the release of Mr. Khalil, Mr. Mahdawi, Ms. Öztürk, and Dr. Khan Suri. In September 2025, 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 had a Policy of "targeting 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." *Am. Ass'n of Univ. Professors v. Rubio* ("*AAUP*"), 802 F. Supp. 3d 120, 194 (D. Mass. 2025).

Faced with losses at multiple district courts, the government's strategy evolved. 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."[3] To do this, the government dug up inflammatory allegations against Mr. Sarsour that the government has been aware of for decades. *See* Respondents' Return in Response to

[3] 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/.

Petition, Dkt. No. 29, (hereinafter the "Return") at 2-3, 20 ("Sarsour, the convicted arsonist").

The government's detention of Mr. Sarsour, at the same time that the government has announced its intent to target and dismantle lawful advocacy groups, is not a coincidence. Rather, it is a continuation of the government's Policy to use the INA to violate the First Amendment freedoms of Mr. Sarsour and other non-citizens who speak out in support of Palestinian human rights (the "Policy"). *See AAUP*, 802 F. Supp. 3d at 194.

ARGUMENT

I. THE INA DOES NOT DEPRIVE THIS COURT OF JURISDICTION OVER MR. SARSOUR'S CLAIMS OF UNCONSTITUTIONAL DETENTION

This Court has jurisdiction to review Mr. Sarsour's petition for a writ of habeas corpus on the basis of his unconstitutional detention. Courts across the country, including this one, have found that the jurisdictional bars raised by Respondents do not preclude review of the legality of confinement. *E.g.*, *Alejandro v. Olson*, No. 1:25-cv-02027, 2025 U.S. Dist. LEXIS 201543, at *6-8 (S.D. Ind. Oct. 11, 2025) (Hanlon, J.); *Arizmendi v. Noem*, 812 F. Supp. 3d 819, 823 (N.D. Ill. 2025) ("[t]he vast majority of courts who have addressed this challenge to their jurisdiction, including many judges in this District, have rejected the challenge") (collecting cases).

Section 1252(b)(9) only applies to judicial review of a final order of removal, which is not at issue here, and the Supreme Court has repeatedly determined that it does not bar challenges to unconstitutional detention. Section 1252(g) only applies to decisions to commence proceedings, adjudicate cases, or execute removal orders, none of which are being contested by Mr. Sarsour's petition. Petitioner's removal case will proceed regardless.

In contrast, barring review would render the constitutional injuries Mr. Sarsour is suffering "effectively unreviewable," because by the time a final order of removal is eventually entered, the unlawful detention "would have already taken place." *Jennings v. Rodriguez*, 583 U.S. 281, 293

(2018). Finally, to avoid suspending the writ of habeas corpus, the provisions raised by Respondents must be interpreted narrowly, consistent with Supreme Court precedent.

A. Section 1252(b)(9) is Inapplicable

1. Section 1252(b)(9) Only Applies to Final Orders of Removal

Because Mr. Sarsour does not have a final order of removal, §1252(b)(9) is not implicated. This provision requires that claims "arising from any action taken or proceeding brought to remove an alien from the United States" be raised "only in judicial review of a final order." 8 U.S.C. § 1252(b)(9). Section 1252(b) sets out requirements only "[w]ith respect to review of an order of removal under subsection (a)(1)." *Id*. Because Mr. Sarsour has not been ordered removed, § 1252(b)(9) is inapplicable. *See, e.g.*, *Öztürk v. Hyde*, 136 F.4th 382, 399 (2d Cir. 2025) (denying stay pending appeal); *Suri v. Trump*, No. 25-1560, 2025 WL 1806692, at *9, 2025 U.S. App. LEXIS 16172 (4th Cir. July 1, 2025) (same); *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007); *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1367 (11th Cir. 2006); *see also Alejandro,* 2025 U.S. Dist. LEXIS 201543, at *9 n.2 (finding the jurisdictional bar in 8 U.S.C. § 1252(a)(5) "plainly inapplicable" because it only applied to judicial review of an order of removal).

2. Section 1252(b)(9) Does Not Apply To Constitutional Challenges To Detention

Constitutional challenges to detention fall outside the scope of Section 1252(b)(9). Petitioner attacks the unjustifiable deprivation of his liberty in retaliation for protected speech and associations and does not ask this Court to determine whether he is ultimately removable. Because a constitutional challenge to Mr. Sarsour's detention is "distinct from the merits of his removability," § 1252(b)(9) does not bar jurisdiction. *See Aguilar v. English*, No. 3:25-CV-898, 2025 U.S. Dist. LEXIS 231463, at *5 (N.D. Ind. Nov. 25, 2025); *Alejandro,* 2025 U.S. Dist. LEXIS 201543, at *8; *Pacheco v. Crowley*, No. 1:26-CV-02052, 2026 U.S. Dist. LEXIS 47811, 2026 WL

658890 (N.D. Ill. Mar. 9, 2026); *Ochoa v. Noem*, No. 25 CV 10865, 2025 U.S. Dist. LEXIS 204142, at *6 (N.D. Ill. Oct. 16, 2025). The legislative history of the REAL ID Act confirms that Congress did not intend for § 1252(b)(9) to preclude challenges to detention. *See* H.R. Rep. No. 109-72 at 175 (House Conference Committee Report) (noting that the bill "would not preclude habeas review over challenges to detention that are independent of challenges to removal orders").[4]

Whether Petitioner is "removable" under the statute is a question for the immigration judge; whether Petitioner is being unconstitutionally imprisoned in retaliation for his protected speech is a question for this Court. The Supreme Court has explicitly rejected the "expansive view" that § 1252(b)(9) "cram[s]" review of every collateral claim into the final removal order. *Jennings*, 583 U.S. at 293. It has also consistently found that § 1252(b)(9) does not preclude review of detention challenges, even in the context of mandatory detention statutes such as § 1227(a)(4)(B). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 533 n.4 (2021); *Nielsen v. Preap*, 586 U.S. 392, 402 (2019).

Respondents rely heavily on the split panel decision in *Khalil v. Trump*, 164 F.4th 259 (3d Cir. 2026), petition for reh'g en banc filed, Nos. 25-2162 & 25-2357 (3d Cir. March 31, 2026).[5] The *Khalil* majority is inconsistent with the other circuits that have considered this question. *See, e.g., Öztürk v. Hyde*, 136 F.4th 382, 399 (2d Cir. 2025) (denying stay pending appeal); *Suri v. Trump*, No. 25-1560, 2025 WL 1806692, at *9 (4th Cir. July 1, 2025) (same); *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007); *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1367 (11th Cir. 2006). It is also inconsistent with *Jennings,* which explicitly rejected an "expansive interpretation of § 1252(b)(9)" because it "would lead to staggering results." *Jennings*, 583 U.S. at 293). As the *Khalil*

[4] Respondents misleadingly cite this same legislative history in support of their position. *See* Return at 7.

[5] The petition for en banc review can be found at https://ccrjustice.org/sites/default/files/attach/2026/03/115_3-31-26_Petition-rehearing_w.pdf.

dissent points out, the majority's reading of *Jennings* violates the Supreme Court's method for determining the holding in plurality decisions. *Id.* at 283-85 (dissent) (citing *Marks v. United States*, 430 U.S. 188, 193 (1977)). A majority of the justices in *Jennings* voted for a *narrow* interpretation of the jurisdictional bar. *Id.* at 283-85 (dissent). As a result, the *Khalil* majority's expansive reading of § 1252(b)(9) contradicts the holding in *Jennings*. *Compare Khalil*, 164 F.4th at 276 ("[E]ach of the legal questions Khalil raises in his petition can be decided later, on a PFR.") with *Jennings*, 583 U.S. at 293 ("[C]ramming judicial review of those questions into the review of final removal orders would be absurd.").

3. Section 1252(g) Does Not Apply to Habeas Challenges To Detention

Similarly, 8 U.S.C. § 1252(g) does not bar the Court from jurisdiction over Mr. Sarsour's habeas petition. Section 1252(g) is a "narrow" provision that applies to "only three discrete actions": to "commence proceedings, adjudicate cases, or execute removal orders." *Reno v. American-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 482 (1999) (quoting 8 U.S.C. § 1252(g)); *Alejandro v. Olson*, No. 1:25-cv-02027, 2025 U.S. Dist. LEXIS 201543, at *6-7 (S.D. Ind. Oct. 11, 2025) (Hanlon, J.).

Mr. Sarsour does not challenge the decision to commence or adjudicate removal proceedings against him, and no removal order exists. Indeed, if released from custody, his immigration court proceedings would still proceed. Instead, Mr. Sarsour challenges the legality of his detention in violation of his constitutional rights, which is not barred by 1252(g). *See, e.g*, *Alejandro*, 2025 U.S. Dist. LEXIS 201543, at *6-7 (distinguishing a challenge to the legality of detention from the "decision to detain"); *Silva Sanchez v. Hott*, No. 1:25-cv-02137-JRS-TAB, 2025 U.S. Dist. LEXIS 267238, at *6 (S.D. Ind. Dec. 30, 2025); *Suri v. Trump*, No. 25-1560, 2025 U.S. App. LEXIS 16172, at *19 (4th Cir. July 1, 2025) (explaining that "the Supreme Court specifically

rejected the idea that § 1252(g) stripped federal courts of jurisdiction over habeas challenges to present immigration confinement"); *Pacheco v. Crowley*, No. 1:26-CV-02052, 2026 U.S. Dist. LEXIS 47811, at *4-5 (N.D. Ill. Mar. 9, 2026) (finding that 1252(g) does not bar habeas challenge brought by petitioner in mandatory detention); *Mahdawi*, 136 F.4th at 450-51. Respondents misapprehend this distinction and rely on a litany of cases for the propositions that 1252(g) bars review of decisions "about whether and when to **commence removal proceedings**," (Return at 12-13) (citing *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002)), the "decision to **execute a removal order**," (Return at 12) (citing eight cases), or "the exercise of discretion to **institute removal proceedings**," (Return at 13) (citing three cases), and the "**method . . . to commence removal proceedings**," (Return at 13-14) (citing *Alvarez v. U.S. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016); *Carreo v. Farrelly*, 270 F. Supp. 3d 851, 877 (D. Md. 2017)) (emphasis added). As this Court and numerous others have already explained, a challenge to the legality of detention is not a challenge to the three discrete actions listed in 1252(g).

B. Respondents' Expansive Interpretation of 1252(b)(9) and (g) Would Render All Detention Claims Effectively Unreviewable

Mr. Sarsour has been detained since March 30, 2026 based on his protected speech and associations, and seeks redress for harms that cannot be meaningfully addressed on a petition for review. *See Am. Ass'n of Univ. Professors v. Rubio,* No. 25-10685, 2026 WL 686418, at *7, 2026 U.S. Dist. LEXIS 50585 (D. Mass. Mar. 11, 2026) ("Proceeding through the administrative process—controlled by Article II administrative hearing officers—is exactly the injury that [the government] intend[s], and exacerbates the injury.") (cleaned up) (quoting *Aguilar*, 510 F.3d at 14). His ongoing detention in violation of his First and Fifth Amendment rights is causing "irreparable" injury—one that can only be redressed now, rather than in months to years while awaiting a petition for review. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976).

As the Supreme Court warned in *Jennings*, requiring a petitioner to wait until a final order of removal is entered to challenge their detention would render the claim "effectively unreviewable." 583 U.S. at 293. By the time a final order is entered, the unconstitutional detention "would have already taken place" such that the petitioner would be deprived of any "meaningful chance for judicial review." 583 U.S. at 293; *Öztürk*, 136 F.4th at 401;*Alejandro v. Olson*, No. 1:25-cv-02027, 2025 U.S. Dist. LEXIS 201543, at *8 (S.D. Ind. Oct. 11, 2025) (Hanlon, J.) ("harms would be complete and irreversible").

"Neither the [Immigration Judge] nor the [Board of Immigration Appeals] has 'jurisdiction to decide constitutional issues.'" *Öztürk*, 136 F.4th at 400 (quoting *Rabiu v. INS*, 41 F.3d 879, 882 (2d Cir. 1994)). And while challenges to removal can be heard in a petition for review, "the same is not true of constitutional challenges to detention," like those raised here. *Mahdawi*, 136 F.4th at 452.[6]

The government erroneously argues that Mr. Sarsour can challenge his detention in immigration court and is therefore barred from doing so here. (Return at 7, 9-10.) This is incorrect. As discussed above, Mr. Sarsour cannot meaningfully challenge his ongoing detention on constitutional grounds in immigration court, a fact bolstered by the government's own argument that an immigration judge "may *not* redetermine conditions of custody" imposed on Mr. Sarsour according to administrative regulations.[7] (Return at 16.)

C. Constitutional Avoidance and Statutory Interpretation Mandate a Narrow Interpretation of the Jurisdictional Bars in 1252(b)(9) and 1252(g)

[6] This was illustrated recently in Mr. Mahdawi's immigration proceedings, where, over one year since he was first detained, the BIA declined to consider Mr. Mahdawi's constitutional arguments and the challenge to his removal are still not ripe for federal court review.

[7] The government's insistence that the Immigration Judge does not have authority to redetermine custody pursuant to 8 C.F.R. § 1003.19(h)(2)(i)(C) only bolsters the similarities between Mr. Mahdawi and Mr. Sarsour. Mr. Mahdawi was also subject to 8 C.F.R. § 1003.19(h)(2)(i)(C), and both the District of Vermont and the Second Circuit rejected the jurisdictional arguments that the government advances here.

The essential canons of statutory interpretation, including the doctrine of constitutional avoidance, mandate a narrow reading of §§ 1252(b)(9) and 1252(g). *INS v. St. Cyr*, 533 U.S. 289, 298–300 (2001). The Supreme Court has repeatedly explained that Congress must clearly state an intent to strip judicial review, especially "where a provision precluding review is claimed to bar habeas review." *Demore v. Hyung Joon Kim*, 538 U.S. 510, 517 (2003); *see Webster v. Doe*, 486 U.S. 592 (1988). There is no such statement at issue here.

Indeed, the government concedes that certain challenges to the legality of detention are permitted under §§ 1252(b)(9) and 1252(g). (Return at 22-23; 10-11) (referring to *Vidal-Martinez v. Acuff*, No. 21-cv-224-NJR, 2021 U.S. Dist. LEXIS 85875 (S.D. Ill. May 5, 2021), as authorizing challenges to detention "such as length or conditions of confinement"). Rather than identifying a clear statement against judicial review or habeas, Respondents simply assert that some challenges to the legality of detention are permitted while others are not.

Neither § 1252(b)(9) nor § 1252(g) makes any distinction between a claim of unconstitutional detention brought several months into a detention and a claim of unconstitutional detention brought on day one of a detention, nor does it distinguish between Due Process and First Amendment Claims. If Mr. Sarsour can properly bring a challenge to the length or conditions of confinement on the basis of constitutional violations—which he plainly can—then he can properly bring this petition, which challenges his confinement in violation of his First Amendment and Due Process rights.

Respondents' interpretation of §§ 1252(b)(9) and 1252(g) would be unconstitutional as a violation of the suspension clause and should therefore be viewed skeptically. Congress may not strip federal courts of habeas jurisdiction unless it provides an adequate and effective alternative to habeas review. *Osorio-Martinez*, 893 F.3d at 177 (quoting *Swain v. Pressley*, 430 U.S. 372, 381

(1977)). Such an alternative to habeas must—at the absolute minimum—provide a petitioner with "a meaningful opportunity to demonstrate that he is being held" unlawfully. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008); *see Osorio-Martinez*, 893 F.3d at 177 (the substitute must be adequate and effective). A Petition for Review ("PFR") is not an adequate substitute for habeas review when it comes to First Amendment claims challenging removal because speech will remain chilled for the pendency of removal proceedings. Moreover, there may be no remedy at all if Petitioner is deported or even if Petitioner wins on a PFR on other grounds. The constitutionally guaranteed manner for challenging unlawful detention is habeas.

II. MR. SARSOUR'S PETITION SHOULD SUCCEED ON THE MERITS

A. First Amendment

Mr. Sarsour was arrested and is being detained on the basis of his First Amendment-protected speech in support of Palestinian rights and association with AMP. His arrest and detention are pursuant to a Policy whereby government officials, including Respondent Secretary of State Marco Rubio, "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.

Respondents make two arguments in response. First, that the First Amendment claims are precluded by the presumption of regularity, and second, that lawful permanent residents like Mr. Sarsour lack the First Amendment rights enjoyed by citizens. (Return at 24-26.) Each argument is self-refuting.

The presumption of regularity—were that warranted given the government's well-documented misconduct in immigration enforcement over the past year—is inapposite. Here, the government *has already conceded* that the Rubio Determination justifying Mr. Sarsour's detention as a "compelling" foreign policy interest targets his "lawful" speech and associations. The

provisions pursuant to which Secretary Rubio made the determination, 8 U.S.C. § 1227(a)(4)(C)(ii) and 8 U.S.C. § 1182(a)(3)(C)(iii), expressly provide that a noncitizen is not 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." *Id.*; (Return at 26 n.5) (emphasis added). In other words, Secretary Rubio made the determination—indeed *had* to make the determination—specifically *because* Mr. Sarsour's "beliefs, statements, or associations" were "lawful within the United States." Regularity or not, the provision relied on by the government proves Mr. Sarsour was targeted for speech and associations protected by the First Amendment.

Contrary to Respondent's attempts to diminish these protections, 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.

Respondents rely upon *Bluman v. FEC* to claim that, "in certain discrete areas," the First Amendment protections of lawful permanent residents are "less robust" than full citizens. (Return at 25.) However, *Bluman* itself acknowledges that "resident aliens [are] protected by the First Amendment in the context of deportation," 800 F. Supp. 2d 281, 286 (D.D.C. 2011). And *Bridges v. Wixon*, cited in *Bluman*, expressly states that the government is "precluded from enjoining or imprisoning an alien for exercising his freedom of speech." *Bridges*, 326 U.S. at 162. Yet that is exactly what has happened here.

B. Due Process

Respondents have an unconstitutional Policy of targeting non-citizens on the basis of protected speech in support of Palestinian rights, and Mr. Sarsour was targeted and detained pursuant to that Policy. (Am. Petition at Ex. 2.) *See AAUP,* 802 F. Supp. 3d 120 at 194 (confirming the existence of the Policy). The Executive Branch's application of this Policy to detain Mr. Sarsour violates his due process rights.

The Fifth Amendment protects all "persons" within the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Because immigration detention is civil, not criminal, it is constitutionally justified only to ensure appearance at proceedings or to prevent danger to the community. *Id*. at 690. Here, Respondents make no argument that Mr. Sarsour is a danger or a flight risk. Nor could they. Instead, the government's actions demonstrate that his detention is strictly punitive, in violation of Mr. Sarsour's due process rights. The government has known about each of the claimed bases for detention for decades—Thomas Decl., Ex. C and Brady Decl. ¶¶ 3-9, 14—and only after the Secretary of State targeted Mr. Sarsour's lawful speech, the government targeted others for similar speech, and a DOJ official announced that the government would target AMP, was Mr. Sarsour abducted and detained.

Respondents argue that Mr. Sarsour may only challenge his detention as a violation of due process after six months, or perhaps can challenge his conditions of confinement. (Return at 22-23; 10-11.) This misses the forest for the trees. Mr. Sarsour challenges his detention as an unconstitutional violation of his due process rights because it results from a Policy of targeting non-citizens for protected speech. *Zadvydas* and *Vidal-Martinez* do not limit the availability of that claim; they merely provide examples of different, successful claims under the due process clause. Respondents provide no reason why a Petitioner can challenge unconstitutional detention after six

months, but not on day one.

Constitutional injury begins the moment the government deprives an individual of liberty without cause. *Zadvydas*, 533 U.S. at 690. When detention is used not to facilitate removal, but to incarcerate an individual based on an unlawful Policy of targeting non-citizens for protected speech, the detention "looks penal" and "tilts the scales toward finding the detention unreasonable." *See German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020). The Due Process Clause does not grant the government a grace period to arbitrarily incarcerate; because Mr. Sarsour's detention bears no reasonable relation to a legitimate purpose, it is unconstitutional.

C. Administrative Procedure Act / *Accardi* Doctrine

Respondents violated the Administrative Procedure Act and the *Accardi* doctrine in targeting Mr. Sarsour based on the 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" and "arbitrary or capricious." *AAUP*, 802 F. Supp. 3d at 175.

D. Equal Protection

Mr. Sarsour is entitled to full Equal Protection under law. The Equal Protection clause's provisions "are universal in their application, to *all persons within the territorial jurisdiction*." *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (emphasis added). Respondents targeted Mr. Sarsour on the basis of his Muslim faith and Palestinian identity. (Sarsour Decl. ¶ 6.) The Constitution protects these classes from invidious discrimination. *United States v. Armstrong*, 517 U.S. 456, 464 (1996). Mr. Sarsour does not claim that he was targeted on the basis of his identity as a noncitizen, and Respondents' inapposite case law cannot shield them from their unconstitutional conduct. (Return at 23) (citing *Mathews v. Diaz*, 426 U.S. 67, 79–80 (1976), which stands for the proposition that

alienage is not a protected class)). The government's Policy of suppressing speech 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 Badar Khan Suri. The government has known about each of the claimed bases for Mr. Sarsour's detention for decades, and only after the government targeted others for similar speech, the Secretary of State targeted Mr. Sarsour's lawful speech, and a DOJ official announced that the government would target AMP, was Mr. Sarsour abducted and detained. So long as Respondents' arrest and detention of Mr. Sarsour had a discriminatory effect—which it did—and was motivated by a discriminatory purpose—which it was—Mr. Sarsour has demonstrated an equal protection claim.

CONCLUSION

This Court has jurisdiction over this case, and Petitioner is unlawfully detained in violation of the "laws or treaties of the United States," 28 U.S.C. § 2241(c)(3).

Dated: May 5, 2026

Respectfully submitted,

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