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

SALAH SALEM SARSOUR,

Petitioner,

v.

Brison SWEARINGEN, Sheriff of Clay County, Indiana; Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; Markwayne MULLIN, Secretary of the United States Department of Homeland Security; Marco RUBIO, Secretary of State; Todd BLANCHE, Acting Attorney General,

Respondents.

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

REPLY MEMORANDUM IN SUPPORT OF PETITIONER'S MOTION FOR RELEASE

INTRODUCTION

Mr. Sarsour is being detained because of a politically-motivated government policy targeting the free speech and association rights of non-citizens advocating for Palestinian human rights ("the Policy"). Mr. Sarsour is neither a flight risk nor a danger to the community—facts the government does not dispute. Instead, the government resurrects decades-old, false claims that it has long-known about as a pretext for its unconstitutional actions. To conceal the extraordinary nature of Mr. Sarsour's detention, Respondents resort to racial tropes, sensationalist descriptions, and irrelevant legal precedent.

The Court has authority to hear Mr. Sarsour's petition and order his release while the petition is being resolved. Respondents' jurisdictional arguments have been previously examined and rejected by this Court in *Alejandro v. Olson*, and by courts across the country. This Court should release Petitioner Salah Sarsour pending final resolution of his habeas petition. Alternatively, the Court should grant Mr. Sarsour a preliminary injunction, enjoining Respondents and releasing Mr. Sarsour from unlawful detention.

ARGUMENT

I. RELEASE PENDING RESOLUTION OF MR. SARSOUR'S HABEAS PETITION IS WARRANTED AND JUSTIFIED

Federal courts have inherent authority to release immigration habeas petitioners on bail. *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985); *Mapp v. Reno*, 241 F.3d 221, 224-25 (2d Cir. 2001); *Vidal-Martinez v. Acuff*, No. 21-cv-224-NJR, 2021 U.S. Dist. LEXIS 85875, at *9 (S.D. Ill. May 5, 2021); *Lucas v. Hadden*, 790 F. 2d 365 (3d Cir. 1986); *Calley v. Callaway*, 496 F.2d 701 (5th Cir. 1974). In fact, in *Bolante*, a case cited by Respondents for the opposite proposition, the Seventh Circuit reaffirmed that such judicial authority to grant bail "is a natural incident of habeas corpus, the vehicle by which a person questions the government's right to detain

him." *Bolante v. Keisler*, 506 F.3d 618, 620 (7th Cir. 2007) ("A judge ought to be able to decide whether the petitioner should be allowed to go free while his claim to freedom is being adjudicated."). Courts across the country have exercised this authority when confronted with the arrest and detention of non-citizens as a result of speech and associations in support of Palestinian rights. *See, e.g.*, *Mahdawi v. Trump*, 781 F. Supp. 3d 214 (D. Vt. 2025); *Ozturk v. Trump*, 783 F. Supp. 3d 801, 811 (D. Vt. 2025); *Suri v. Trump*, No. 1:25-CV-480 (PTG/WBP), 2025 U.S. Dist. LEXIS 94297, 2025 WL 1392143, at *1 (E.D. Va. May 14, 2025).

Nothing presented by Respondents conflicts with the habeas release standards set out in *Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001), which is widely relied on by courts when considering release pending a habeas decision. Under this standard, the court asks (1) whether the habeas petition raises "substantial claims" and (2) whether "extraordinary circumstances" exist "that make the grant of bail necessary to make the habeas remedy effective." *Mapp*, 241 F.3d at 230; *Petrunak v. United States*, No. 1:17-cv-04396-WTL-MJD, 2017 U.S. Dist. LEXIS 225620, at *2 (S.D. Ind. Dec. 21, 2017) (citing *Mapp*, 241 F.3d at 226).[1]

A. Mr. Sarsour Has Raised Substantial Claims

In his opening brief, Petitioner explained how his detention is a part of the recognized policy of targeting non-citizens for protected speech. *Am. Ass'n of Univ. Professors v. Rubio*

[1] *Mapp* draws from the Supreme Court's heightened standard in *Aronson v. May*, intended for habeas bail motions in criminal cases where the petitioner has already been "tried, convicted, and sentenced by a court of law," *Aronson v. May*, 85 S. Ct. 3 (1964), a process which Mr. Sarsour has not received. Nor is Mr. Sarsour appealing a determination by an immigration judge. The *Mapp* standard also mirrors those adopted by courts across the Country in habeas bail motions. *See, e.g.*, *Lucas v. Hadden,* 790 F.2d 365 (3d Cir. 1986) (explaining that courts have typically required habeas bail petitioners to "(1) make out a clear case for habeas relief on the law and the facts, or (2) establish that exceptional circumstances exist warranting special treatment, or both") (citing *Eaton v. Holbrook*, 617 F.2d 670, 670 (1st Cir. 1982); *Iuteri v. Nardoza*, 662 F.2d 159, 161 (2d Cir. 1981); and *Calley v. Callaway*, 496 F.2d 701, 702 (5th Cir. 1974)).

("*AAUP*"), 802 F. Supp. 3d 120, 194 (D. Mass. 2025). This raises substantial First Amendment retaliation claims, substantive due process claims, and equal protection claims.

Respondents claim that the First Amendment's protections must yield to the presumption of regulatory and vague invocations of "foreign affairs." (Opp. at 22) (citing *AADC*, 525 U.S. at 491). Neither suggestion is justified on the facts of this case, and never in our nation's history has such a blinkered view of the First Amendment prevailed. *See Bridges v. Wixon*, 326 U.S. 135, 148 (1945) (rejecting government's "weak and unconvincing proof" of a threat to "national security" in a First Amendment claim brought by a non-citizen). Petitioner does not seek any review of the Secretary of State's determinations about foreign policy; rather, Mr. Sarsour challenges Respondents' authority to detain Mr. Sarsour for protected speech and associations. This Court can, and must, ensure the Executive branch respects the First Amendment. *See Holder v. Humanitarian L. Project*, 561 U.S. 1, 34 (2010) ("We do not defer to the Government's reading of the First Amendment, even when [national security and foreign policy] interests are at stake."); *John Doe, Inc. v. Mukasey*, 549 F.3d 861, 882–83 (2d Cir. 2008) ("The fiat of a governmental official, though senior in rank and doubtless honorable in the execution of official duties, cannot displace the judicial obligation to enforce constitutional requirements.").

Respondents also try to evade the First Amendment by relying on the outlandish assertion that individuals like Mr. Sarsour—who have resided as lawful permanent residents of this country for years—are somehow not "on the same constitutional footing as citizens." (Opp. at 23) (citing 8 U.S.C. § 1227(a)(4)(C), which says nothing of the sort). This is not the case. *Bridges,* 326 U.S. at 148 ("Freedom of speech and of press is accorded aliens residing in this country."). Respondents claim *Gonzalez v. U.S. Dep't of State* stands for the proposition that non-citizens, including the

over 12.8 million lawful permanent residents in the United States,[2] "stand on different ground[]" with respect to the Constitution. (Opp. at 23.) It does not. *Gonzalez v. U.S. Dep't of State,* 23-4205, 2026 U.S. App. LEXIS 12518, at *13 (9th Cir. Apr. 30, 2026) ("[T]he Court has drawn a clear line between lawful residents and those who have never been lawfully admitted."). Mr. Sarsour, a lawful permanent resident of 33 years, is protected by the full force of the First Amendment. *Bridges,* 326 U.S. at 148. Respondents' imprisonment in retaliation for his speech and associations is a blatant violation of the Constitution.

As for Mr. Sarsour's Due Process and Equal Protection claims, Respondents do not contest that the Policy, as applied, violates Mr. Sarsour's constitutional rights. Rather, Respondents misconstrue Petitioner's claims as an attack on the generalized authority of the federal government to treat non-citizens in ways that are sometimes disparate from citizens. (Opp. at 19-21). Respondents' authority does not extend to a discriminatory policy to detain non-citizens in retaliation for protected speech. The racial tropes used in the governments' papers only strengthen Mr. Sarsour's Equal Protection Claim by exposing Respondents' animus towards Palestinians and Muslims. *Conley v. United States*, 5 F.4th 781, 789 (7th Cir. 2021). Mr. Sarsour's detention bears no "reasonable relation" to any nonpunitive government purpose, *see Zadvydas*, 533 U.S. at 690, because the only recent bases for the detention are his lawful speech and associations.

Respondents' claim that Mr. Sarsour does not identify any "final agency action" in his Administrative Procedure Act challenge also fails. *AAUP*, 802 F. Supp. 3d 120, 191 (D. Mass. 2025) (finding that the government Policy of targeting noncitizens for detention on the basis of protected speech is a "final agency policy.").

[2]Sarah Miller, *Estimates of the Lawful Permanent Resident Population in the United States and the Subpopulation Eligible to Naturalize: 2024 and Revised 2023*, available at https://ohss.dhs.gov/sites/default/files/2024-11/2024_1108_ohss_lawful_permenent_resident_population_estimate_2024_and_revised_2023.pdf

B. The Circumstances Of Mr. Sarsour's Arrest And Respondents' Conduct Are Extraordinary

The policy precipitating the arrest and detention of Mr. Sarsour is extraordinary, as several courts have observed. The District of Massachusetts in *AAUP* held that "[s]uch conduct [arresting and detaining non-citizens for pro-Palestine speech] is not only unconstitutional, but a thing *virtually unknown* to our constitutional tradition." 802 F. Supp. 3d 120, 184 (D. Mass. 2025) (emphasis added); *Mahdawi*, 781 F. Supp. 3d at 233 (noting the "extraordinary" nature of "this case and others like it" in which legal residents "are being arrested and threatened with deportation for stating their views on the political issues of the day."). Notably, Respondents never address the *AAUP* Court's findings.

As over 200 people attest under penalty of perjury, Mr. Sarsour is a "well-known" and "beloved" figure in Milwaukee. (Droubi Decl., Exhibit A-011.) His arrest and detention does extraordinary harm to the First Amendment freedoms of the communities to which he belongs, and to the rest of the country. By arresting Mr. Sarsour after 33 years of lawful permanent residency, the government has sent a chilling message to him, his community, and millions of lawful permanent residents across the country: stay silent, or risk governmental retaliation and due process deprivations. Mr. Sarsour's status as a prominent local and national figure heightens the extraordinary circumstances of this case.

Respondents' pretextual justifications of Mr. Sarsour's arrest and detention with allegations they have known about for decades exemplifies the extraordinary nature of this case. (*See e.g.*, Thomas Decl., Dkt. No., 29-2, at Ex. C; Sarsour Decl. ¶¶ 59-61.)[3] The sudden decision

[3] Mr. Sarsour's account of his abuse is consistent with the Israeli state-sanctioned system of brutality documented in a 1994 Human Rights Watch ("HRW") Report. *Torture and Ill-Treatment: Israel's Interrogation of Palestinians from the Occupied Territories*, Human Rights Watch/Middle East, at 2, 250 (available at https://www.hrw.org/reports/pdfs/i/israel/israel946.pdf (hereinafter "HRW Report")

to weaponize these stale allegations makes clear that the government's true motivation is not a sudden concern for national security, but rather a more nefarious pretext. *AAUP*, 802 F. Supp. 3d at 184.

Respondents' opposition only highlights the extraordinary circumstances of this case. Throughout their Opposition, Respondents baselessly refer to "Sarsour's support for HAMAS" and his nonexistent "Pro-HAMAS activity," in an outrageous attempt to smear Mr. Sarsour and lend breathless justification for their pretextual, retaliatory, and unconstitutional actions. (Opp. at 3-4, 19). Respondents go so far as to misrepresent the bases of their claims to the Court, falsely claiming that Mr. Sarsour was convicted of throwing a molotov cocktail, Opp. at 2, 22, and "terror related offenses," Opp. at 20, and "providing safe harbor to those who attack allied soldiers," Opp. at 23. Such baseless and inflammatory rhetoric only highlights the extraordinary circumstances of this case.

Respondents attempt to divert the Court's attention from their unconstitutional conduct by pointing to the other immigration charges against Mr. Sarsour as the basis of his detention. (Opp. at 17.) Respondents falsely claim that Sarsour "does not dispute . . . . every ground" of removal and that "the Government can lawfully detain him incident to removal proceedings on the undisputed grounds." (Opp. at 4.) This is false. Mr. Sarsour is disputing each and every ground of removal in the immigration court proceedings. In *this* proceeding, Mr. Sarsour is requesting his release from unlawful detention. The validity of the government's removability claims against Mr. Sarsour is not at issue in this case.

Mr. Sarsour's habeas petition alleges that the government detained him because of who he is and his point of view—in clear violation of the First and Fifth Amendments. Respondents' attempts at diversion cannot hide that Mr. Sarsour's detention is a part of the recognized Policy of

targeting non-citizens for protected speech. *AAUP*, 802 F. Supp. 3d at 194.

C. Mr. Sarsour is Not a Danger to Society or a Flight Risk

Respondents do not argue that Mr. Sarsour is a flight risk or a danger to his community. Indeed, it is hard to fathom an individual who is less of a flight risk or of more value to his community, as over 240 individuals have attested. (Droubi Decl., Dkt. No. 32-1.) Even under Respondents' theory, the only purported bases of Mr. Sarsour's arrest are his lawful speech and associations or claims that the government has known about and not acted on for decades. Respondents have pointed to nothing that justifies his sudden detention after thirty-three years of lawful permanent residency.

Because immigration detention is civil rather than criminal, it is justified only to "ensur[e] the appearance of [noncitizens] at future immigration proceedings and prevent[] danger to the community." *Zadvydas*, 533 U.S. at 690. At 53 years old, Mr. Sarsour is currently separated by hundreds of miles from his wife, children, and grandchildren. (Sarsour Decl. ¶¶ 1, 3, 5.) He suffers daily from the physical toll of diabetes and is unable to provide necessary support for his elderly mother. (*Id*. ¶¶ 95-98.) Mr. Sarsour poses no danger to the community and presents no risk of flight; his detention is punitive.

D. Mr. Sarsour Seeks Release to Allow the Habeas Remedy to be Effective

Mr. Sarsour should be released. Keeping him in detention pending adjudication on the merits "would ratify the chilling effect that the government intends to create." *Mahdawi*, 781 F. Supp. 3d at 233-34. As other courts have observed in similar cases: "to allow this retaliatory conduct to proceed would broadly chill protected speech, among not only activists subject to final orders of deportation but also those citizens and other residents who would fear retaliation against others." *Ozturk*, 779 F. Supp. 3d at 491.

Mr. Sarsour has already been detained for nearly 40 days. The jurisdictional issues raised by the Respondents are currently on appeal in numerous jurisdictions. The appeals will inevitably cause significant delays. In the case of *Mahdawi v. Trump*, for example, Petitioner Mahdawi was detained on April 14, 2025 and released on bail on April 30, 2025, yet the government's appeal of his release to the Second Circuit on jurisdictional grounds remains pending as of the date of this filing. *Mahdawi v. Trump*, No. 25-1113 (2d Cir.).

Mr. Sarsour's claim that he is being irreparably harmed by an unconstitutional detention must be adjudicated here and now for relief to be meaningful. *See, e.g., E.O.H.C. v. Sec'y United States Dep't of Homeland Sec*., 950 F.3d 177, 186 (3d Cir. 2020) (INA does not bar habeas review of "now-or-never" claims where "constitutional harm from those matters could not be remedied after a final order of removal"). Although Respondents claim that Mr. Sarsour could challenge his detention "on a PFR, but not here," Opp. at 22, Mr. Sarsour's claims of unlawful detention would become "effectively unreviewable" by the time a final order of removal was entered—and "of course, it is possible that no such order would ever be entered . . . , depriving [Mr. Sarsour] of any meaningful chance for judicial review." *Jennings v. Rodriguez*, 583 U.S. 283, 293 (2018).

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

Alternatively, and for substantively the same reasons argued above, this Court can release Mr. Sarsour pursuant to a preliminary injunction under Fed. R. Civ. P. 65, enjoining Respondents from continuing to detain him. *Alejandro*, 2025 U.S. Dist. LEXIS 201543, at *11.

A petitioner seeking a preliminary injunction must establish that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008). "The two most important considerations are

likelihood of success on the merits and irreparable harm." *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023). "The third and fourth elements merge when the government is the Respondent." *Alejandro*, 2025 U.S. Dist. LEXIS 201543, at *11 (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Mr. Sarsour has more than met the standard for a preliminary injunction.

First, every additional day that Mr. Sarsour is detained, he suffers irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). The Respondents' retort is, in sum and substance, that immigration detention can almost never be challenged in a habeas petition. (Opp. at 29.) However, "[t]here are only narrow, nonpunitive circumstances under which a special justification authorizes such restraint." *Alejandro*, 2025 U.S. Dist. LEXIS 201543, at *20 (citing *Zadvydas*, 533 U.S. at 690). And for the same reasons the Court found in *Alejandro*, "protracted civil detention clearly threatens irreparable harm to" Mr. Sarsour. *Id.* at *21.

Mr. Sarsour has also demonstrated likelihood of success on the merits, *supra* Section I(A). One Court has already determined that the unconstitutional Policy exists. In *AAUP*, the District of Massachusetts concluded after an extensive trial that the government enforced an unconstitutional Policy of detaining noncitizens based on their speech in support of Palestinian rights. *AAUP*, 802 F. Supp. 3d at 194. Other courts have found, in similar circumstances, that detention pursuant to the Policy was unconstitutional, and ordered release. *See, e.g.*, *Mahdawi*, 781 F. Supp. 3d at 214; *Ozturk*, 783 F. Supp. 3d at 811. The circumstances surrounding Mr. Sarsour's detention demonstrate that he was detained pursuant to the same unconstitutional Policy: Respondent Rubio issued a foreign policy determination against Mr. Sarsour in June 2025, around the same time that other noncitizens were detained for protected speech. In an escalation of tactics, the government waited to detain Mr. Sarsour until after it had dredged up decades old false charges and only after

a high-ranking government attorney announced a plan to target non-profit American Muslims for Palestine, for which Mr. Sarsour sits on the Board.

Finally, an injunction would be in the public interest, and the balance of equities weighs heavily in Mr. Sarsour's favor. "[T]he interest of the habeas petitioner in release pending appeal [is] always substantial." *Mahdawi v. Trump*, 136 F.4th 443, 455 (2d Cir. 2025) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987)). This is "especially true given [Mr. Sarsour's] First Amendment claims." *Id.* Mr. Sarsour is a pillar of his family and his community. Respondents' conduct would create an extraordinary chilling effect among the many people who know, have worked with, or look up to Mr. Sarsour. *See, e.g.*, *Suri*, No. 25-1560, 2025 U.S. App. LEXIS 16172, at *24 (4th Cir. July 1, 2025) ("[T]he equities and the public interest lie firmly in Suri's favor"). On the other hand, Respondents would lose nothing if they are unable to continue their unconstitutional policy of depriving Mr. Sarsour of his constitutional rights, and the parties are returned to the status quo ante.

III. THE COURT HAS JURISDICTION TO RELEASE MR. SARSOUR PENDING ADJUDICATION OF HIS HABEAS PETITION

Mr. Sarsour is challenging the legality of his detention on the basis of, *inter alia*, his First and Fifth Amendments rights. His challenge is separate from the government's decision to commence the removal proceedings against him, and the relief he seeks would not implicate his removal proceedings. This Court has already determined, consistent with courts around the country, that no provision of the INA precludes the Court's jurisdiction to hear Mr. Sarsour's petition, or grant his release while it is resolved.

A. This Court has already determined that it has jurisdiction over cases like this

In *Alejandro v. Olson*, this Court set forth a clear principle: §§ 1252(b)(9) and (g) are narrow provisions which bar what they say they do, and that does not include challenges to the

"legality of [] confinement." *Alejandro*, 2025 U.S. Dist. LEXIS 201543, at *7. In rejecting the very interpretation of the INA that Respondents advance in their pleadings, *Alejandro* explains that, "theoretically, legal questions related to detention" may "aris[e] from" removal proceedings, but such an expansive interpretation of 1252(b)(9) would lead to "staggering results" by "cram[ming] review of every collateral claim into review of the final removal order"—one which may never issue. *Id.* at *7-8 (quoting *Jennings*, 583 U.S. at 293).

Respondents try to distinguish the instant case on grounds that the Petition challenges Respondents' "reason to detain," and not their "legal authority to do so." (Opp. at 15.) This is a false distinction. Respondents fail to explain how Mr. Sarsour's challenge to the constitutionality of his detention is distinct from a challenge to the government's "legal authority" to detain him. If 1252(g) and (b)(9) do not bar challenges to the *statutory* legality of a detention—which this Court held in *Alejandro* that they do not—then they also do not bar challenges to the *constitutional* legality of a detention. *Alejandro*, 2025 U.S. Dist. LEXIS 201543, at *6-*8.

B. *Bolante v. Keisler* Does Not Hold That The Court Lacks Jurisdiction

Respondents' reliance on *Bolante* for the proposition that the INA strips this Court of jurisdiction is misplaced. (Opp. at 5) (citing *Bolante v. Keisler*, 506 F.3d 618 (7th Cir. 2007)). The *Bolante* court addressed only the court's authority to release an immigration detainee while hearing his Petition for Review of a final order of removal from an immigration court. *Bolante*, 506 F.3d at 619-21. *Bolante* did not involve a writ of habeas corpus or determine the court's release authority incident to a habeas petition. In contrast, Petitioner's immigration case has just begun, he is not appealing the fact-finding or conclusions of a criminal or immigration judge, and there has been no order of removal, final or otherwise.

C. Section 1252(b)(9) does not bar Mr. Sarsour's Challenge to the Constitutionality of his Detention

As stated in Petitioner's MOL in Support of Release and in Petitioner's Reply to Respondents' Return, Dkt. Nos. 33 & 36, Section 1252(b)(9) only applies to final orders of removal. *Öztürk v. Hyde*, 136 F.4th 382, 399 (2d Cir. 2025); *Suri v. Trump*, No. 25-1560, 2025 WL 1806692, at *9 (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).

The legislative history of 1252(b)(9) as amended by the REAL ID Act only bolsters the legitimacy of Mr. Sarsour's challenge to his detention. Notwithstanding Respondents' misleading argument to the contrary, Opp. at 6-7, the House Conference Committee Report makes clear that the INA "*would not* preclude habeas review over *challenges to detention* that are independent of challenges to removal orders." H.R. Rep. No. 109-72 at 175 (emphasis added).

This Court should not rely on the anomalous split-panel decision in *Khalil*. To start, the panel's decision is currently under consideration for en banc review and runs contrary to the decisions of every other Circuit to have ruled on the issue. The panel's decision is an outlier for good reason. The *Khalil* majority rests its interpretation of 1252(b)(9) on a reading of *Jennings* which contradicts the plurality opinion in *Jennings* itself. *See, e.g., Ozturk,* 136 F.4th at 399 (explaining that the discussion of 1252(b)(9) in *Jennings* is "not part of the plurality opinion," which actually "rejected the government's expansive interpretation" of (b)(9)).

Besides *Khalil*, Respondents do not cite a single case which supports their overly expansive reading of (b)(9). (Opp. at 12) (citing *Massieu v. Reno*, 91 F.3d 416, 422 (3d Cir. 1996) (interpreting a wholly different provision of the INA, 8 U.S.C. § 1105a(c), to confer jurisdiction to the courts of appeals over "any properly exhausted claims *directly attacking a final order of deportation*")); *INS v. Chadha*, 462 U.S. 919, 937-39 (1983) (also interpreting 8 U.S.C. § 1105a(c)); *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011) (interpreting § 1252(a)(5) to

bar a mandamus action seeking to compel USCIS to make a determination on the merits of petitioner's I-212 application); *Johnson v. Whitehead,* 647 F.3d 120, 124 (4th Cir. 2011) (interpreting § 1252(b)(9) to bar habeas petition challenging a final order of removal on the basis of petitioner's claims to citizenship).

D. 1252(g) Does Not Bar Mr. Sarsour's Habeas Petition

Mr. Sarsour challenges the constitutionality of his ongoing detention, including the manner in which his detention has deprived him of his rights under the First Amendment, Due Process, and Equal Protection clauses. Section 1252(g) does not bar these sorts of challenges to the legality of detention. *Alejandro*, 2025 U.S. Dist. LEXIS 201543, at *6-7; *Silva Sanchez v. Hott*, No. 1:25-cv-02137, 2025 U.S. Dist. LEXIS 267238, at *6 (S.D. Ind. Dec. 30, 2025). As stated in Petitioner's Memorandum of Law in Support of Release and in Petitioner's Reply to Respondents' Return, Dkt. Nos. 33 & 36, 1252(g) is a narrow provision which bars only three discrete actions, none of which is at issue here.

In contrast to the "uniform body of caselaw" confirming that Mr. Sarsour may properly bring a challenge to the constitutionality of his detention in this Court, *Suri v. Trump*, No. 25-1560, 2025 U.S. App. LEXIS 16172, at 20-21* (4th Cir. July 1, 2025), Respondents "[do not] point[] to a single case holding that § 1252(g) strips jurisdiction over habeas challenges to present confinement." *Id.* Instead, Respondents rely on a host of cases which demonstrate only that 1252(g) bars challenges to the decision to ***commence removal proceedings***, *Jiminez-Angeles,* 291 F.3d at 599 (Petitioner contended that the INS "should have" commenced deportation proceedings upon first becoming aware of her illegal presence in the United States) (cited in Opp. at 8); *Sissoko v. Rocha*, 509 F.3d 947, 950 (9th Cir. 2007) (Plaintiff "directly challenge[d] . . . decision to commence expedited removal proceedings" in a *Bivens* action seeking damages) (cited in Opp. at 9); *Humphries v. Various Fed. USINS Emps*., 164 F.3d 936, 945 (5th Cir. 1999) (Petitioner

challenged the Attorney General's decision to place him in exclusion proceedings) (cited in Opp. at 9); *Alvarez v. U.S. ICE,* 818 F.3d 1194, 1203 (11th Cir. 2016) (Petitioner challenged ICE's decision to require him to attend removal proceedings rather than agree to a stipulated order) (cited in Opp. at 10); *AADC*, 525 U.S. at 487-92 (challenge to the initiation of deportation proceedings) (cited in Opp. at 10), or ***execute a removal order***. *Fedorca v. Perryman*, 197 F.3d 236 (7th Cir. 1999) (challenge to removal order) (cited in Opp. at 8); *Tazu v. Att'y Gen.,* 975 F.3d 292, 297-99 (3d Cir. 2020) (same) (cited in Opp. at 8); *Rauda v. Jennings,* 55 F.4th 773, 777-78 (9th Cir. 2022) (same) (cited in Opp. at 8); *E.F.L v. Prim*, 986 F.3d 959, 964-65 (same) (cited in Opp. at 8); *Camerena v. Director*, 988 F.3d 1268, 1272, 1274 (11th Cir. 2021) (same) (cited in Opp. at 8); *Hamama v. Homan,* 912 F.3d 869, 874 (6th Cir. 2018) (same) (cited in Opp. at 8); *Bhatt v. Bd. of Immigration Appeals*, 328 F.3d 912, 914 (7th Cir. 2003) (same) (cited in Opp. at 9, 15). These cases are plainly inapplicable. Mr. Sarsour does not challenge the initiation of removal proceedings nor the execution of a removal order (none exists here).[4] Indeed, were this Court to grant Mr. Sarsour all the relief he seeks here, his removal proceedings would continue undisturbed.

CONCLUSION

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

[4] In fact, Respondents cite cases which explicitly preserve the court's jurisdiction in cases such as this one. *Jiminez-Angeles*, 291 F.3d at 599 (excluding due process claims from the ambit of 1252(g) because "such claims[] constitute general collateral challenges to unconstitutional practices and policies"); *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 944-45 (5th Cir. 1999) (Court allows Petitioner to bring claims for mistreatment in detention, stating that it bears "no more than a remote relationship" to the commencement of exclusion proceedings).

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Respectfully submitted,

/s/ Jennifer Nimer
Jennifer Nimer, Esq. (IN)
Nimer Law, LLC
6500 Emerald Pkwy, Suite 100
Dublin, OH 43016
T: 614.927.0550
jnimer@nimerlaw.com
Local Counsel for Petitioner

/s/ Luna Droubi
Luna Droubi* (NY #5004304)
Matthew Melewski* (NY #4697959)
Tala Alfoqaha* (NY #6222251)
Beldock Levine & Hoffman LLP
99 Park Ave., PH/26th Floor
New York, NY 10016
ldroubi@blhny.com
mmelewski@blhny.com
talfoqaha@blhny.com
Counsel for Petitioner (PHV)

/s/ Kathryn H. Brady
Kathryn H. Brady, Esq. (TX #24033620)*
Muslim Legal Fund of America
100 N. Central Expy, Suite 1010
Richardson, TX 75080
T: 972.331.9021
kate.brady@mlfa.org
Counsel for Petitioner (PHV)

/s/ Munjed A. Ahmad
Munjed A. Ahmad, Esq.*
Ahmad & Guerard, LLP
7701 W. Barnard Ave.
Greenfield, WI 53220
T: 414.455.7707
mahmad@law-ag.com
Counsel for Petitioner (PHV)

/s/ Hassan M. Ahmad
Hassan M. Ahmad, Esq. (VSB #83428)*
THE HMA LAW FIRM, PLLC
6 Pidgeon Hill Dr., Suite 330
Sterling, VA 20165
T: 703.964.0245
hma@hmalegal.com
Counsel for Petitioner (PHV)

/s/ Samuel B. Cole
Kevin Fee***
Samuel B. Cole***
Priyanka Menon***
The Roger Baldwin Foundation of the ACLU, Inc.
150 N. Michigan Avenue, Suite 600
Chicago, Illinois 60601
T: 312.201.9740
kfee@aclu-il.org
scole@aclu-il.org
pmenon@aclu-il.org
Counsel for Petitioner (PHV)

*Admitted Pro Hac Vice

***Pro Hac Vice forthcoming