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

FEDERAL RESPONDENTS' RETURN IN OPPOSITION TO PETITIONER'S AMENDED PETITION FOR WRIT OF HABEAS CORPUS

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

INTRODUCTION

Federal Respondents (hereafter "the Government") submit this return in opposition to Petitioner Salah Salem Sarsour ("Sarsour's") amended habeas petition. Sarsour is a native and citizen of Jordan, who was convicted in 1989 of throwing a Molotov cocktail at the home of a person he believed to be a "collaborator" with Israel and for throwing stones at Israeli soldiers. In 1995, Sarsour was again criminally convicted, this time for unlawfully attempting to hold weapons and ammunition. Sarsour serially concealed his convictions from immigration authorities, and consistent with Sarsour's loose relationship with the truth, Sarsour lied about having U.S. citizenship to register to vote in Wisconsin. And between August and October 1994, he is charged by ICE for providing monetary support to HAMAS. On March 30, 2026, Sarsour was arrested by ICE because removal proceedings were initiated against him. He is charged with five different grounds of removability, including two charges of removability under § 1227(a)(4)(B) (terrorism), and one charge each under 1227(a)(4)(C)(i) (detrimental to foreign affairs), 1227(a)(1)(A) (removable as ineligible at adjustment or entry for inadmissibility under § 1182(a)(6)(C)(i) (fraud)), and § 1227(a)(3)(D) (falsely claiming U.S. citizenship).

Notwithstanding all the above, Sarsour advances the remarkable claim that his five grounds of removability could not possibly or lawfully be the reason for his detention. Instead, he essentially claims that "his advocacy in support of Palestinian rights" should insulate him from any immigration consequences stemming from his convictions, concealing his convictions, and registering to vote by unlawfully claiming to be a U.S. citizen. Am. Pet. ¶ 81. In essence, he claims that this Court should find that he has a constitutional right to avoid immigration consequences because of his support for Hamas. The Amended Petition is little more than a collateral attack on

the initiation of his removal proceedings, which this Court lacks jurisdiction to entertain.

BACKGROUND

I. Sarsour's Immigration History and Detention.

Sarsour is a native and citizen of Jordan and holds the status of "lawful permanent resident" of the United States. *See* Declaration of Deportation Officer, ERO Chicago Field Office, Akilah Thomas ("Thomas Decl.") (Dkt. 29) ¶¶ 5-7. On March 30, 2026, 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. Thomas Decl. ¶ 11, Ex. C at 13. ICE subsequently transported Petitioner to the Clay County Jail in Brazil, Indiana, where he currently remains. Thomas Decl. ¶ 13. He is in removal proceedings pursuant to 8 U.S.C. § 1229a. *Id*., Exs. B, F.

Sarsour is charged as deportable in removal proceedings under several provisions of the "INA" stemming from a litany of allegations of conduct related to criminal and terrorist activity. According to his Form I-862, Notice to Appear, as subsequently 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, among other conduct, sheltering a member of Hamas (Sarsour's brother-in-law) wanted by Israeli authorities, attempting to procure a weapon for that individual, giving monetary 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 Department of State, based

on evidence provided by DHS, namely ICE HSI, determined that Sarsour's activities and presence in the United States,

> would have potentially serious adverse foreign policy consequences and would compromise 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 Am. Pet, Ex. 2 (Dkt. 21-2) at 2-3. Based on these factual allegations, DHS has charged Petitioner as deportable under 8 U.S.C. §§ 1227(a)(4)(B) and (C)(i). Thomas Decl., 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 alleged 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. *Id*., Ex. B at 8.

II. Sarsour's Amended Habeas Petition

On Monday, April 13, 2026, Sarsour's counsel filed the instant (amended) habeas petition under 28U.S.C. § 2241 (Dkt. 21 at 4), while Sarsour was physically present in Indiana. Thomas Decl. ¶ 13, Ex. E. Sarsour's amended petition challenges his current immigration detention as unlawful, and he seeks an order from this Court requiring ICE to immediately release him. *See* Amended Petition (Dkt. 21) at 20. Petitioner alleges he was arrested by ICE and charged with removability under 8 U.S.C. § 1227(a)(4)(C)(i). *See* Am. Pet. ¶¶ 78-79. The Amended Petition brings a claim under the First Amendment (Count I), alleging that the Government was motivated by his advocacy for Palestinian rights and association with the American Muslims for Palestine organization, and took action to discourage and others from expressing similar views. *Id*. ¶ 88-90; and the Due Process clause of the Fifth Amendment (Count Two) and Equal Protections guarantee of the Fifth Amendment (Count Three), alleging that his detention is unjustified, punitive, and

bears no "reasonable relation" to any legitimate government purpose, and further motivated by "anti-Palestinian animus …." *Id*. ¶¶ 102, 113.

Sarsour also brings a claim under the Administrative Procedure Act ("APA") and the *Accardi* Doctrine (Count Four), alleging that the U.S. Government "reversed eighteen years of adjudicative inaction" and violated its "own prior directives" prohibiting "the use of First Amendment activity as an enforcement factor" by detaining him. *Id*. ¶¶ 115-16. Finally, he brings a claim for release on bail pending adjudication of his habeas petition (Count Five), alleging that he has shown an extraordinary circumstance—e.g., "detention of a long-time legal permanent resident for First Amendment-protected advocacy"—that make an immediate grant of bail necessary for habeas relief to be effective. *Id*. ¶ 122.

Sarsour requests that this Court assume jurisdiction over this matter and declare the Government's "policy of targeting noncitizens for apprehension and detention based on perceived support for Palestinian rights" unconstitutional and violative of the First Amendment and the APA. *Id*. at 20. He further requests that this Court order his immediate release pending final adjudication of the instant matter. *Id*.

LEGAL STANDARD

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*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241 provides 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 her 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).

LEGAL ARGUMENT

I. This Court Lacks the Jurisdiction to Consider Sarsour's Attack on His Removal Proceedings.

This Court lacks jurisdiction under the federal immigration laws to act upon Sarsour's petition for writ of habeas corpus. While federal courts may have a general inherent authority to grant bail or release in certain circumstances, that authority can be conditioned by statute. *Cf. Armstrong v. Exceptional Child Ctr., Inc.,* 575 U.S. 320, 327-28 (2015) ("The power of federal courts of equity to enjoin unlawful executive action is subject to express and implied statutory limitations. Courts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law.") (cleaned up); *Federal Trade Commission v. Credit Bureau Center, LLC*, 937 F.3d 764, 785-86 (7th Cir. 2019) ("[I]mportant as *stare decisis* is, it is equally important for us to respect the statutes that Congress has passed and to correct any problems we see in our prior interpretations of those statutes.") (internal quotations omitted); *accord Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985) (holding that a defendant unable to "bring himself within" the terms of 18 U.S.C. § 3143(b) is not entitled to bail pending resolution of a motion for relief under 28 U.S.C. § 2255.).

Here, the INA bars such relief. Tellingly, Sarsour does not attempt to address binding federal immigration laws other than to assert that references to the INA in this case were pretextual. *See* Am. Pet. ¶¶ 79-82.

A. Section 1252(b)(9) Applies to Sarsour's Claims.

Sarsour's habeas claims challenge removability and the Secretary of State's designation,

which he acknowledges the Government has indicated are the basis for his detention. *See, e.g.*, *id.* ¶ 79. He asks this Court to declare these acts unlawful and thereby release him from custody. Am. Pet., Prayer for Relief. While Sarsour's Amended Petition attempts to avoid characterizing his claim as expressly challenging his removability charges, his challenge to detention in inextricably linked—asking this Court to find that the Government's decision to place him in removal proceedings under charges that prevent the Immigration Judge from redetermining ICE's custody determination pursuant to the regulatory provision at 8 C.F.R. § 1003.19(h)(2)(i)(C) was unlawful. The petition cannot avoid running afoul of the INA in this regard. "For an alien challenging his removal," the appropriate jurisdictional "path begins with a petition for review of his removal order, not a habeas petition." *Tazu v. Att'y Gen.*, 975 F.3d 292, 294 (3d Cir. 2020); *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.").

Congress has prescribed a single path for judicial review of orders of removal: "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5); *Johnson*, 647 F.3d at 124. The 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, at 174-75.

The exact type of claim Sarsour brings here was that which the Third Circuit in *Khalil*, found § 1252(b)(9) barred: there, like here, Sarsour "challenges both his removal and his detention pending removal proceedings, claiming that both are unlawful on various grounds. Those 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). Indeed, Sarsour likens his Amended Petition to that of Mahmoud Khalil repeatedly in his Amended Petition. *See* Am. Pet. ¶¶ 7, 52, 55, 56, 63, 111.

In *Khalil*, a legal permanent resident was charged as removable under an INA provision allowing for the removal of an alien whose "presence or activities in the United States … would have potentially serious adverse foreign policy consequences for the United States." 164 F.4th at 266 (quoting 8 U.S.C. § 1227(a)(4)(C)). Khalil sought habeas relief in federal 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.

Like Khalil, Sarsour expressly attacks "[t]he government's *decision* to arrest and detain [him.]" Am. Pet. ¶ 81, which is fully and inseparably linked to its decision to place him in removal proceedings. *See* Thomas Decl., Ex. A at 2, Ex. B at 4-8, Ex. C at 12-14, Ex. F at 20; *see also* Am. Pet., 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.

In fact, "most claims that even relate to removal" are improper if brought before the district

court. *Id*., at 275; *see also Reno v. Am. Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471, 483 (1999) (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 nay issue—whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition-for-review] process."). Sarsour is currently in removal proceedings, which means his challenge to the Government's *decision* to place him into removal proceedings and detain based on First Amendment or other grounds is "inextricably linked" to his removal proceedings and its conclusion. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Indeed, his claim that the Government's stated removal charges—triggering the regulatory provision at 8 C.F.R. § 1003.19(h)(2)(i)(C) since he is an alien described under INA § 237(a)(4)(B), *see* Am. Pet. ¶ 79; Thomas Decl. ¶ 10, Exh. D at 16—are unmoored from the evidence simply asks 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. For the reasons described *supra*, such review is impermissible under 8 U.S.C. § 1252(b)(9). *Id*.; *Johnson v. Whitehead*, No. PJM-08-1872, 2009 U.S. Dist. LEXIS 145965, *2, 12-13 (D. Md. May 14, 2009) (dismissing the habeas petition and finding that "in removal proceedings [Petitioner] can claim citizenship as a defense, and if the immigration judge rejects the defense and orders removal, the person can, after properly exhausting administrative channels, petition the Court of Appeals for review of the final order of removal, including for review of the citizenship claim."), *aff'd*, 647 F.3d at 124 (citing §§ 1252(a)(5), (b)(9)), *cert. den'd*, 565 U.S. 1111 (2012).

Here, Petitioner clearly challenges the Government's underlying decision to place him in removal proceedings and the mandatory detention that results by placing him in removal proceedings; therefore, he must bring his First and Fifth Amendment claims as challenges to his removability charge in removal proceedings, not in federal district court. *See id*. at 125; *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*, 259 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.").

Sarsour's reliance on *Cherek*, 767 F.2d 335, *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001), and *Vidal-Martinez v. Acuff*, No. 21-cv-224-NJR, 2021 U.S. Dist. LEXIS 85875 (S.D. Ill. May 5, 2021), for the proposition that this Court may grant bail pending habeas review in an immigration case do not help his claims. Both *Cherek* and *Vidal-Martinez*, as cited by Petitioner, are inapposite. In *Cherek*, the circuit stated generally that federal district courts have inherent power to admit applicants to bail, but that such power should "be exercised very sparingly." *See* 767 F.2d at 337. Nevertheless, the court in *Cherek* narrowly addressed the propriety of applying the statute governing bail pending appeal from a criminal conviction, 18 U.S.C. § 3143(b), concluding that such was inapplicable where the petitioner sought postconviction relief. *See id*. In *Vidal-Martinez*, the petitioner sought relief from his immigration detention; however, the district court concluded his detention pursuant to 8 U.S.C. § 1226(a) had become unreasonably prolonged as to violate due process. *See* 2021 U.S. Dist. LEXIS 85875 at *16-17. While *Vidal-Martinez* represents an example

of a collateral attack on detention (such as length or conditions of confinement), Sarsour makes no analogous claim here.

Finally, *Mapp* offers Sarsour no safe harbor to insulate his attack on the underlying decision to charge him under, *inter alia*, § 1227(a)(4)(B) and trigger regulatory detention pursuant 8 C.F.R. § 1003.19(h)(2)(i)(C). *Mapp* merely offers a mechanism, where adopted, for the Court to consider the appropriateness of bail or release pending resolution of the underlying petition. *See, e.g.*, 241 F.3d at 225-26; *but see Bolante v. Keisler*, 506 F.3d 618, 620 (7th Cir. 2007) ("Rule 23 of the appellate rules does not apply in such cases because the court of appeals is not being asked to release a person pending the appeal of a decision by a district court on his quest for habeas corpus."). In sum, Sarsour's claims are jurisdictionally barred from review, and he offers no relevant authority supporting his contrary contention.

B. Sarsour Cannot Overcome the Jurisdictional Bar in Section 1252(g).

Likewise, Sarsour's amended petition cannot prevail because his claims run headlong into the jurisdictional bar in § 1252(g). He seeks to challenge the decision to commence proceedings via habeas petition, but Congress prohibited the district courts from reviewing such actions.

Section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of 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). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory)."[2] *Id*. Though this section

[2] 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

"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 § 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 (quoting *AADC*, 525 U.S. at 485). This limitation exists for "good reason": "[a]t each stage the Executive has discretion to abandon the endeavor." *AADC*, 525 U.S. at 483-84. 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 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.").

Section 1252(g) prohibits district courts from hearing challenges to decisions and actions about whether and when to commence removal proceedings. *See 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."). Circuit courts, including the Seventh Circuit, have held § 1252(g) applies to the discretionary decision to execute a removal order. *See, e.g.*, *Fedorca v. Perryman*, 197 F.3d 236 (7th Cir. 1999); *see also Tazu*, 975

Code, or any other habeas corpus provision, and sections 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)).

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).

On multiple occasions, the Seventh Circuit has readily concluded § 1252(g) bars review of the exercise of discretion 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)."). Arresting 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) (holding that the district court did not have jurisdiction to review a claim 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 alleges that his initial and, at this point, short detention violates the APA, the Due Process Clause, Equal Protections guarantee, and the *Accardi* Doctrine. *See* Am. Pet. ¶¶ 83-116. But courts have rejected the notion that a petitioner could avoid the jurisdictional limitations of § 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."). Therefore, this Court lacks jurisdiction under §

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 § 241(a)(4)(C)(i) of the INA, 8 U.S.C. § 1251(a)(4)(C)(i), as applied to an alien in deportation proceedings). Sarsour's reliance on *Vidal-Martinez*, 2021 U.S. Dist. LEXIS 85875 is inapposite. As discussed earlier, the district there found that petitioner's detention pursuant to 8 U.S.C. § 1226(a) had become unreasonably prolonged as to violate due process. *See* 2021 U.S. Dist. LEXIS 85875 at *16-17. Here, Sarsour has not claimed that the conditions nor length of his confinement have resulted in violations of Due Process warranting habeas relief. *See generally* Am. Pet. Rather, Sarsour attacks the Government's decision to confine him notwithstanding that the Government's decision is inextricably linked to its decision to commence—and indeed, because of its decision to commence—removal proceedings against him. *See Id*. ¶¶ 79-82; *see also* Thomas Decl. ¶ 11. While the petitioner in *Vidal-Martinez* arguably attacked the lawfulness of his detention separate and apart from the commencement of his removal proceedings, Sarsour's collateral challenge targets the Government's purported underlying basis for detention. However, since Sarsour is an alien described under INA § 237(a)(4)(B), 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).

In relevant part, 8 C.F.R. § 1003.19(h)(2)(i)(C) states, "an immigration judge may not

redetermine conditions of custody imposed by the Service with respect to the following classes of aliens … Aliens described in section 237(a)(4) of the Act ….” *See* Thomas Decl. ¶¶ 10-11, 14-15, Ex. A at 2, Ex. B at 4, 7-8, Ex. F at 20. In essence, Sarsour cannot attack the decision to detain him without attacking the Government’s bases and decision to charge him under § 1227(a)(4)(B). But, as discussed earlier, a “challenge to the Attorney General’s decision to ‘commence proceedings’ against them falls squarely within § 1252(g).” *AADC*, 525 U.S. at 487.

Sarsour’s reliance on *Mahdawi v. Trump*, 781 F. Supp. 3d 214 (D. Vt. 2025) is likewise uninstructive in the instant matter, and the supposed similarities with Sarsour’s matter are superficial at best. In *Mahdawi*, while the petitioner made similar arguments concerning the constitutionality of the DHS’s basis for his detention (and commencement of removal proceedings), several facts make the instant case distinguishable. Sarsour, unlike Mahdawi, was placed into removal proceedings, *inter alia*, for his history of criminal conduct, material support of a terrorist organization, *and* designation as an individual whose:

> activities and presence … in the United States would have potentially serious adverse foreign policy consequences and would compromise a compelling U.S. foreign policy interest because his action undermine U.S. foreign policy to combat antisemitism around the world as well U.S. foreign policy to combat activity that supports foreign terrorist organizations.

Am. Pet., Ex. 1 at 2-3; *see also* Thomas Decl. ¶ 15, Ex. B at 4, 7-8, Ex. F. at 20.[3] These factual differences are important because they provide the full context regarding the decision to detain Sarsour. The specific charge triggered a specific provision which remains inseparable from the underlying decision to detain him. *See, e.g.*, *Khalil*, 164 F.4th at 274 (rejecting claims that “raise

[3] The Government does not concede that *Mahdawi* was rightly decided in light of its previously discussed position regarding the jurisdiction of district courts to grant review claims in habeas which attack the Government’s decision to commence removal proceedings. *Supra* at § I(A); *see also Ozturk*, 155 F.4th at 189.

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)).

Further insulating Sarsour's claims from review is a provision in the detention authority at issue which allows him to,

> seek[] a redetermination of custody conditions by the Service in accordance with part 1235 or 1236 of this chapter. In addition, with respect to paragraphs (h)(1)(i)(C), (D), and (E) of this section, nothing in this paragraph shall be construed as prohibiting an alien from seeking a determination by an immigration judge that the alien is not properly included within any of those paragraphs.

8 C.F.R. § 1003.19(h)(1)(ii). This provision serves as a nail in the coffin of jurisdiction because it explicitly directs Sarsour to the proper forum for review of the *basis* for his detention and removal proceedings—the agency. Sarsour has presented no claim or allegation that he made any such effort to seek redetermination of custody conditions or review of his charges before the immigration judge. *See generally* Am. Pet. In sum, Sarsour has yet to avail himself of the due process afforded by regulation while simultaneously seeking to invite this Court to preempt the proper forum for review of his challenges to the Government's decision to put him in removal proceedings via habeas petition.

In sum, this Court does not have jurisdiction to grant Petitioner the relief sought because the jurisdiction stripping provisions under §§ 1252(b)(9), (g) preclude judicial review of an alien's

attack on the Government's decision to commence removal proceedings. *See, e.g.*, *E.F.L.*, 986 F.3d at 964-65; *accord Bolante v. Keisler*, 506 F.3d 618, 620–21 (7th Cir. 2007) ("Even if in the absence of legislation a federal court could grant bail to an alien challenging a removal order, it cannot do so if Congress has forbidden it.").[4] Consequently, the Court should deny Sarsour's amended petition for writ of habeas corpus. Notwithstanding the jurisdictional hurdles discussed *supra*, Sarsour's claims ultimately fail on their merits. Sarsour's detention is constitutional and statutorily mandated pursuant to 8 U.S.C. §1226(c). *Demore v. Kim*, 538 U.S. 510, 530 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."). Section 1226 provides the framework for the arrest, detention, and release of noncitizens in removal proceedings. *See* 8 U.S.C. § 1226. Section 1226(a) grants DHS the discretionary authority to determine whether a noncitizen should be detained, released on bond, or released on conditional parole pending the completion of removal proceedings. In contrast, detention pursuant to Section 1226(c) is mandatory for noncitizens that commit certain criminal offenses. This detention may end prior to the conclusion of removal proceedings "only if the [noncitizen] is released for witness-protection purposes." *Jennings*, 583 U.S. at 306 (internal quotation marks and citations omitted).

[4] That does not mean Sarsour is unable to challenge his custody determination. Sarsour may seek review as to whether he is properly subject to his removal provision. 8 C.F.R. § 1003.19(h)(2)(ii). If adverse, Sarsour may seek appeal of that determination. 8 C.F.R. § 1003.19(f). But Sarsour does not allege to have done so, and that poses a separate hurdle that this Court could use to justify dismissal his habeas claim. *See Rodriguez v. Ratledge*, 715 F. App'x 261, 265 (4th Cir. 2017) ("Prior to hearing a § 2241 petition, federal courts require exhaustion of alternative remedies, including administrative appeals."). "The exhaustion requirement is a prudential restraint, not a statutory requirement" and "allows agencies to exercise autonomy and discretion and prevents premature judicial intervention." *Id.*; *see also Williams v. Reed*, 145 S. Ct. 465, 471 (2025) ("…a plaintiff who asserts a due process claim without exhausting will usually lose because of the requirement that the challenged procedural deprivation must have already occurred…" (marks omitted)).

II. Sarsour's Petition Fails on the Merits.

Notwithstanding the jurisdictional hurdles discussed *supra*, Sarsour's claims ultimately fail on their merits. Sarsour's detention is constitutional and statutorily mandated pursuant to 8 U.S.C. §1226(c). *Demore v. Kim*, 538 U.S. 510, 530 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."). Section 1226 provides the framework for the arrest, detention, and release of noncitizens in removal proceedings. *See* 8 U.S.C. § 1226. Section 1226(a) grants DHS the discretionary authority to determine whether a noncitizen should be detained, released on bond, or released on conditional parole pending the completion of removal proceedings. In contrast, detention pursuant to Section 1226(c) is mandatory for noncitizens that commit certain criminal offenses. This detention may end prior to the conclusion of removal proceedings "only if the [noncitizen] is released for witness-protection purposes." *Jennings*, 583 U.S. at 306 (internal quotation marks and citations omitted).

A. Sarsour's Due Process and Equal Protections Claims Fail.

Sarsour, the convicted arsonist, alleges that his due process rights were violated because the Government had not demonstrated that his detention bears reasonable relation to a legitimate, nonpunitive purpose. Am. Pet. ¶ 105. But "[d]etention 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. United States 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.

Because "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. Accordingly, the Supreme Court has long held that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Id.* at 522–23. This has resulted in the Supreme Court ruling that individuals 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.").

Here, Sarsour unpersuasively asserts that his detention is punitive, "wholly unjustified," and "bears no reasonable relation to any legitimate nonpunitive government purpose." Am. Pet. ¶¶ 102, 105. These arguments are belied by clear precedent. "The Supreme Court has held that brief detention without a bond hearing is constitutional pending removal proceedings." *Vargas v. Beth*, 378 F. Supp. 3d 716, 726 (E.D. Wisc. Mar. 22, 2019). Notably, in *Demore*, the Supreme Court resolved a circuit split concerning whether mandatory detention of lawful permanent residents under § 1226(c) was unconstitutional explaining that detention pending removal "necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that … the aliens will be successfully removed …." 538 U.S. at 528-31. Mandatory detention is thus facially constitutional as applied to those who concede removability or who are detained for only brief periods. *Id.*; *see also Hussain v. Mukasey*, 510 F.3d 739, 742 (7th Cir. 2007) (holding that lawful permanent residents who challenge the statutory basis for removability are nevertheless not entitled to release pending judicial review of the removal order since that review "takes only a limited amount of time and if

there is hardship to the petitioner the court can agree to expedite the proceeding."); *Velez-Lotero v. Achim*, 414 F.3d 776, 782 (7th Cir. 2005) (rejecting a facial challenge to constitutionality of mandatory detention without bond of all aggravated felons in deportation proceedings); *accord Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999) ("Given the sweeping powers Congress possesses to prescribe the treatment of aliens, *see Fiallo v. Bell*, 430 U.S. 787, 792 (1977), the constitutionality of § 1226(c) is ordained."). Sarsour falls within § 1226(c)(1)(D) because of his charges of removability. *See* Thomas Decl., Ex. B at 8 (NTA charging Sarsour under §§ 237(a)(4)(C)(i) and (a)(4)(B) of the INA), as amended in Ex. F at 20. Thus, Sarsour's continuing mandatory detention under § 1226(c)(1)(D) is lawful until his removal proceedings have concluded.

These congressional objectives held constitutional by the Supreme Court—detention of aliens in removal proceedings and mandatory detention of criminal aliens—thus render unsound Sarsour's allegations that his civil detention (or detention of those in removal proceedings generally) is tantamount to punishment. *See Nielsen v. Preap*, 586 U.S. 392, 397 (2019); *see also* 8 U.S.C. § 1226(c) (mandatory detention for those convicted of crimes of moral turpitude, controlled substances offenses, and terrorism offenses); 8 U.S.C. § 1231(a)(2) (mandatory detention for certain aliens ordered removed); 8 U.S.C. § 1231(a)(6) (detention beyond removal period for aliens ordered removed and determined a risk to the public or not likely to comply with the order); *Harvey v. Chertoff*, 263 F. App'x 188, 191 (3d Cir. 2008) (noting that "an immigration detainee is akin to that of a pretrial detainee").

To the extent that Sarsour is basing his claim on *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), cited in his brief (*see* Am. Pet. ¶ 100), such claim takes time to mature, and are not available until post-order immigration detention exceeds a minimum of six months. *Zadvydas*, 533 U.S. at

693 (adopting six months of post-final order detention as a presumptively reasonable period of detention following a final order of removal). Here, Sarsour's removal proceedings just started, Thomas Decl. ¶ 10, and he is a long way away from the indefinite detention with which *Zadvydas* was concerned. And even then, the claim is far from automatic. *Jennings*, 583 U.S. 281, 311-14 (2018). Sarsour has been detained for three weeks since March 30, 2025, *see* Thomas Decl. ¶ 13, and is not able to show a reasonable likelihood of success on any of the claims contemplated by the cases cited. Accordingly, just like in *Demore*, the detention here is of a much shorter duration than the indefinite and potentially permanent detention in *Zadvydas*.").

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.

As previously discussed, Sarsour does not bring a substantial constitutional claim. In fact, Sarsour's claim consists of minimal allegations, and he offers no workable standard by which to determine whether he would likely succeed on the merits of his equal protections claim. Notwithstanding assertions that the Government has targeting him and others on the basis of "anti-Palestinian animus" rather than his criminal convictions, his support for terrorism, his illegal voter registration, his misrepresentations and concealments to immigration authorities, and so on –

Petitioner, as he must, ignores his own evidence in reaching that conclusion. *See* Am. Pet., Ex. 2 at 2-3. Moreover, as referenced *supra*, the bases for arrest, detention, and commencement of removal proceedings are clearly enshrined in the INA. *See* Thomas Decl., Ex. B at 8, Ex. F at 20.

B. Sarsour's first Amendment Claim Fails.

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 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. Indeed, if mere "presence" is something Congress allowed to form the basis of a § 1227(a)(4)(C) determination, then speech certainly can be as well. 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 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. Meaning, those First Amendment considerations do not overcome the Executive's prerogative and control over immigration. *See Mandel*, 408 U.S. at 767–68.[5]

Thus, Sarsour has not shown a clear case for habeas relief. 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 about foreign policy matters.

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[5] Congress also made clear that it intended to prioritize foreign policy considerations when it came to the 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 passport 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, enacted post-9/11, 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 inadmissible).

C. Sarsour's APA and *Accardi* Claims Fail.

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 (CKK), 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*.

Under long-standing principles limiting APA claims, Sarsour's *Accardi* claim, which he brings under the APA, 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 is unlikely to succeed on either count. Sarsour fails to identify a final agency action on which to base his APA claim. *See* Am. Pet. ¶¶ 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, that agency action would be directly tied to the Secretary'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.

III. Sarsour's Claim for Release Pending Review Should Be Dismissed as Moot.

In Count V, Sarsour attempts to allege that he should be entitled to release pending review. Release pending review is not a freestanding claim, it is a form of discretionary, rarely-granted interim relief pending a decision on Sarsour's habeas petition. He has not moved separately for this relief. As the Court is poised to pass on the remainder of his Amended Petition, the claim for interim release pending review will be moot. In any event, the lack of merit in and jurisdiction over his Amended Petition would require relief to be denied. As such, the Court need not determine whether such relief is available in other cases.

CONCLUSION

For the foregoing reasons, the Court should deny the Amended Petition for Writ of Habeas Corpus.

Dated: April 20, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 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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