UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MOHAMMED HOQUE,

Petitioner,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; PAMELA BONDI, in her official capacity as Attorney General of the United States; PETER BERG, in his official capacity as Saint Paul Field Office Director, United States Immigration and Customs Enforcement; JAMIE HOLT, in her official capacity as the St. Paul Agent in Charge for Homeland Security Investigations for U.S. Immigration and Customs Enforcement; TODD LYONS, in his official capacity as Acting Director, United States Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; MARCO RUBIO, in his official capacity as Secretary of State; RYAN SHEA, in his official capacity as Freeborn County Sheriff; and MIKE STASKO, in his official capacity as Freeborn County Jail Administrator,

Respondents.

Case No. 0:25-cv-01576 (JWB/DTS)

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A TEMPORARY RESTRAINING ORDER

INTRODUCTION

Respondents' arrest and detention of Petitioner Mohammed Hoque is extraordinary and unlawful, because it is in retaliation for his speech on matters of public concern—namely, his expressive activity in support of Palestinian human rights—and seeks to compel other lawfully-present international students to self-deport from the United States en masse, because they fear facing a similar fate. Neither is a legitimate basis for immigration detention. With this motion, Mr. Hoque seeks emergency and temporary relief to halt the government's detention in violation of his First and Fifth Amendment rights to free speech, liberty, and due process, as well as to ensure his presence in this District pending adjudication on the merits of his Petition for a Writ of Habeas Corpus. Because each of the four *Dataphase* factors weigh in Mr. Hoque's favor, the Court should issue a TRO that orders Mr. Hoque's release or, in the alternative, enjoins Respondents from transferring Mr. Hoque out of this District during the pendency of this action.

BACKGROUND

I. RESPONDENTS ARE ARRESTING AND DETAINING INTERNATIONAL STUDENTS PURSUANT TO A RETALIATORY POLICY AND FOR PUNITIVE PURPOSES.

A. Respondents Developed and Implemented a Policy Using the Immigration System to Retaliate Against International Students' Protected Speech and Association.

In furtherance of President Trump's Executive Orders, on or around March 5, 2025, Respondents began implementing the Policy. (*See* Dkt. 1, Pet. ¶¶ 17–21.) Under the Policy, Respondents across multiple agencies of the executive branch coordinate to

retaliate against and detain noncitizen students for their actual or perceived advocacy for Palestinian rights. (*Id.* ¶¶ 22-37.)

The Policy purports to apply, among other provisions of immigration law, the "Foreign Policy Ground," 8 U.S.C. § 1227(a)(4)(C)(i), Immigration and Nationality Act ("INA") § 237(a)(4)(C), to render noncitizens deportable based on their protected speech. While the Foreign Policy Ground gives the Secretary of State authority to determine that a noncitizen's "presence or activities in the United States . . . would have potentially serious adverse foreign policy consequences for the United States,"[1]—it *cannot* be used to justify arrest and detention either in retaliation or as punishment for their constitutionally-protected expressive and associational activities. *See* U.S. Const. amend. I; 8 U.S.C. § 1182(a)(3)(C)(ii), (iii) (Foreign Policy Ground cannot be applied "because of the [noncitizen]'s past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States"). Congress intended the exception to "be used sparingly"—"and not merely because there is a likelihood that an alien will make critical remarks about the United States or its policies." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. (1990), 1990 U.S.C.C.A.N. 6784, 6794–

[1] The Secretary of State must "personally determine[] that the [noncitizen]'s admission would compromise a compelling United States foreign policy interest" and notify the chairs of certain congressional offices of the person's identity and the reason for the determination. 8 U.S.C. § 1182(a)(3)(C)(iii)–(iv); *see also* 8 U.S.C. § 1227(a)(4)(C)(ii).

95; *id.* (the "compelling foreign policy interest" standard is a "significantly higher" than the "reasonable ground to believe" standard).[2]

DHS policies also caution against abuse of immigration laws to chill protected speech. Internal memoranda state that "DHS does not profile, target, or discriminate against any individual for exercising his or her First Amendment rights."[3] Further, DHS personnel "shall not," except in limited circumstances, collect or use information about how a citizen or a legal permanent resident exercises their First Amendment rights, including information about an individual's political beliefs, journalistic activities, or participation in non-violent protests against government policy or actions.[4]

Despite these protections, Respondents—pursuant to the Policy—have used immigration laws to retaliate against noncitizens across the country for expressing speech in support of Palestinians. For example, Mahmoud Khalil, a 30-year-old legal permanent resident and recent graduate of Columbia University's School of International and Public Affairs, was detained even though he was not charged with any crime. Statements by

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[2] Congress sought "to take away the executive branch's authority to deny visas to foreigners solely because of the foreigner's political beliefs or because of his anticipated speech in the United States." S. Rep. No. 75, 100th Cong., 1st Sess. (1987), 1987 U.S.C.C.A.N. 2314, 2326.

[3] Kevin K. McAleenan, *Information Regarding First Amendment Protected Activities*, DEP'T OF HOMELAND SECURITY, (May 17, 2019), https://www.dhs.gov/sites/default/files/publications/info_regarding_first_amendment_protected_activities_as1_signed_05.17.2019.pdf. (April 21, 2025 Declaration of Anupama D. Sreekanth ("Sreekanth Decl.") Ex. 1.)

[4] *Id.*

federal officials made clear that Mr. Khalil was being targeted for political speech—his involvement in pro-Palestinian protests—not purported support for Hamas as was publicly claimed.[5] When asked if criticism of Israel or the United States is a "deportable offense," Deputy Secretary of Homeland Security Troy Edgar stated on NPR's *Morning Edition*:

> [L]et me put it this way, . . . imagine if he came in and filled out the form and said, 'I want a student visa.' They ask him, 'What are you going to do here?' [A]nd he sa[ys], 'I'm going . . . [t]o go and protest.'. . . We would never have let him in the country."[6]

Although Deputy Secretary Edgar stated Mr. Khalil was "a terrorist," when asked what "terrorist activity" Mr. Khalil had engaged in, Edgar replied only, "I mean, . . . have you watched it on TV? It's pretty clear," and failed to offer specifics.[7] Similarly, Respondents have sought to detain and deport, among others, two students who attended pro-Palestinian demonstrations,[8] a student who "lik[ed] or shar[ed] posts that highlighted 'human rights

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[5] For example, on March 9, 2025, DHS posted from its official X account that Mr. Khalil had led activities "aligned to" Hamas, and that ICE had arrested Mr. Khalil "in support of President Trump's executive orders prohibiting anti-Semitism, and in coordination with the Department of State." DHS (@DHSgov), X (Mar. 9, 2025, 6:29 PM), https://bit.ly/4ikGauI. (Dkt. 1-9, Pet. Ex. I at 2.)

[6] Michel Martin (Host), *DHS Official Defends Mahmoud Khalil Arrest, but Offers Few Details on Why It Happened*, NPR MORNING EDITION (Mar. 13, 2025, 4:18 AM), https://bit.ly/3Ych75C (Transcript). (Sreekanth Decl. Ex. 2.)

[7] *Id.*

[8] Jonah E. Bromwich and Hamed Aleaziz, *Columbia Student Hunted by ICE Sues to Prevent Deportation*, N.Y. TIMES (Mar. 24, 2025), https://bit.ly/3XIY1E0 (Sreekanth Decl. Ex. 3); Stephanie Saul, *Cornell Student Facing Deportation Felt Drawn to Protest*, N.Y. TIMES (Mar. 28, 2025), https://bit.ly/4chXYVB. (Sreekanth Decl. Ex. 4.)

violations' in the war in Gaza,"[9] a professor whose only offense appears to be his relation by marriage to Palestinians.[10] and a student who had co-written an op-ed in a campus newspaper criticizing her university's response to a student government resolution about Gaza.[11]

In addition to detaining and deporting international students in retaliation for their speech and associations, Respondents have, pursuant to the Policy, been unlawfully invoking the Foreign Policy Ground and related laws to revoke the visas of international students in retaliation for their speech—including, and especially, speech supportive of Palestinians in Gaza that is protected under the First Amendment but that Respondents oppose for political or ideological reasons.[12]

For example, Rumeysa Ozturk, a Turkish doctoral student at Tufts University with valid international student status was arrested by six plain-clothed DHS agents outside her

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[9] Luis Ferré-Sadurní and Hamed Aleaziz, *How a Columbia Student Fled to Canada After ICE Came Looking for Her*, N.Y. TIMES (Mar. 15, 2025), https://bit.ly/4jipHbb. (Sreekanth Decl. Ex. 5.)

[10] Hank Sanders and Zolan Kanno-Youngs, *D.H.S. Detains a Georgetown University Academic*, N.Y. TIMES (Mar. 19, 2025), https://bit.ly/4cojRmu. (Sreekanth Decl. Ex. 6.)

[11] Anemona Hartocollis, *Targeting of Tufts Student for Deportation Stuns Friends and Teachers*, N.Y. TIMES (Mar. 29, 2025), https://bit.ly/4luOlay. (Sreekanth Decl. Ex. 7.)

[12] The Policy was in effect as early as March 6, 2025. Secretary Marco Rubio (@secrubio), X (Mar. 6, 2025, 4:30 PM), https://bit.ly/3EjdFzn. (Dkt. 1-9, Pet. Ex. I at 1.) By the end of March, more than 300 vias were reported to have been revoked. Humeyra Pamuk, *Rubio Says US May Have Revoked More Than 300 Visas*, REUTERS (Mar. 27, 2025, 10:15 PM), https://bit.ly/3EgLtgA. (Sreekanth Decl. Ex. 8.)

apartment.[13] Memos between DHS and DOS reviewed by the Washington Post show that Ms. Ozturk was arrested and detained for co-writing an op-ed in the Tufts student newspaper criticizing the university's response to the Israel-Gaza war. These documents also reflect that—contrary to public statements—Respondents were not aware of *any* evidence that she supported violence or terrorist groups such as Hamas.[14]

Reporting has also revealed that Respondents are using the internet and social media to monitor support for Palestinians. As reported in the New York Times, by the end of March 2025, "[i]nvestigators from a branch of ICE that typically focuses on human traffickers and drug smugglers . . . [had] for weeks scoured the internet for social media posts and videos that the administration could argue showed sympathy toward Hamas" and "handed over reports on multiple protesters to the State Department."[15] This is consistent with DHS's April 2025 announcement that it is screening social media activity in reviewing applications for immigration benefits pursuant to President Trump's Executive Orders.[16]

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[13] Jack Healy, Zolan Kanno-Youngs, and Mike Baker, *A Video From Tufts Captures the Fear and Aggression in Trump's Crackdown*, N.Y. TIMES, (Mar. 27, 2025), https://www.nytimes.com/2025/03/27/us/politics/tufts-ice-crackdown.html. (Sreekanth Decl. Ex. 9.)

[14] John Hudson, *No Evidence Linking Tufts Student to Antisemitism or Terrorism, State Department Office Found*, WASH. POST (Apr. 13, 2025), https://www.washingtonpost.com/national-security/2025/04/13/tufts-student-rumeysa-ozturk-rubio-trump/. (Sreekanth Decl. Ex. 10.)

[15] Healy, et al., *supra* n. 13. (Sreekanth Decl. Ex. 9.)

[16] U.S. CITIZENSHIP AND IMMIGR. SERVS., *DHS to Begin Screening Aliens' Social Media Activity for Antisemitism* (Apr. 9, 2025), https://www.uscis.gov/newsroom/news-releases/dhs-to-begin-screening-aliens-social-media-activity-for-antisemitism. (Sreekanth Decl. Ex. 11.)

Once arrested and detained pursuant to the Policy, international students are held in local jails or federal detention centers while they await administrative removal proceedings before an immigration judge. DHS transfers some, like Ms. Ozturk, to detention centers hundreds of miles away, to further separate them from schools, communities, families, and legal representation.[17]

In some cases, Respondents later produce documents purporting to have revoked student visas not on Foreign Policy Grounds, but purportedly under a related revocation provision, Section 221(i) of the INA, 8 U.S.C. 1201(i). However, the purported basis for revocation, including minor criminal offenses, do not support a loss of status. *See, e.g.,* 8 C.F.R. § 214.1(g) (explaining that to result in a loss of student status, criminal activity must be "a crime of violence for which a sentence of more than one year imprisonment may be imposed").

Further, after detained students have been granted bond in immigration court based on immigration judge findings that the student is not dangerous or a flight risk, DHS has been invoking an automatic stay regulation—which requires certification by a senior DHS legal officer—to block the immigration judge's order while DHS appeals the decision to the Board of Immigration Appeals. *See* 8 C.F.R. § 1003.19(i)(2). Using this automatic stay regulation, DHS prevents the release of detained students by a period of up to 90 days,

[17] Jaclyn Diaz & Adrian Florido, *Why Is Trump Sending Immigrant University Scholars to Louisiana and Texas?*, NPR (Apr. 8, 2025, 5:00 AM), https://www.npr.org/2025/04/08/nx-s1-5351645/ice-detention-louisiana-university-scholars. (Sreekanth Decl. Ex. 12.)

which can be further extended. *See Review of Custody Determinations,* 71 Fed. Reg. 57873, 2006 WL 2811410 (Oct. 2, 2006).

Thus, under the Policy, targeted noncitizens are forced to remain in detention for prolonged periods, even though the grounds for their detention violate the U.S. Constitution and federal law.

B. Respondents Are Arresting and Detaining Some International Students to Compel Hundreds—if not Thousands—of Others to Self-Deport, Even Though They Are Still in Lawful Student Status.

In recent weeks, DHS has also been unconstitutionally detaining some international students—predominantly from majority-Muslim countries—for a different and impermissible purpose: to compel other students to self-deport out of fear for a similar fate. Respondents intend to use the arrest and detention of international students to create an atmosphere of fear (if not terror) among international students at college campuses. The arrests and detentions have, in fact, had their intended outcome of furthering DHS's project of mass self-deportations as described below.

In the last several weeks, DHS has advised hundreds, if not thousands, of students that they have lost their student status because their F-1 visas have been revoked and/or their visa records have been terminated. One source estimates that as of April 18, 2025, more than 240 colleges and universities have identified 1,500-plus international students and recent graduates who have been affected.[18] Respondents are using the unlawful

[18] Ashley Mowreader, *International Student Visas Revoked*, INSIDE HIGHER ED, https://www.insidehighered.com/news/global/international-students-

termination of SEVIS records[19] and/or purported revocation of F-1 visas to mislead students into believing that they have lost their status and must leave the country.

For example, on March 5, 2025, DOS informed a graduate student at Columbia University, Ranjani Srinivasan, that her F-1 student visa had been cancelled, with her SEVIS record terminated.[20] Srinivasan self-deported.[21] On March 14, 2025, DHS Secretary Kristi Noem issued a post on X: "I'm glad to see one of the Columbia University terrorist sympathizers use the CBP Home app to self deport."[22] Again, however, DHS did not provide any evidence for its allegation that she was supporting a terrorist organization.[23]

Respondents' arrest and detention of international students based on purported visa revocation and/or SEVIS record termination is punitive and unrelated to the lawful purposes of immigration detention. Instead, it is intended to—and actually does—frighten, if not terrify, students who have been told their visas were revoked or SEVIS records

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us/2025/04/07/where-students-have-had-their-visas-revoked (last visited Apr. 18, 2025). (Sreekanth Decl. Ex. 13.)

[19] The Student and Exchange Visitor Information Systems ("SEVIS") is a centralized government database that tracks international students' compliance with their F-1 status. *See About SEVIS*, DEP'T OF HOMELAND SECURITY, https://studyinthestates.dhs.gov/site/about-sevis (last visited Apr. 20, 2025). (Sreekanth Decl. Ex. 14.)

[20] Ferré-Sadurní & Aleaziz, *supra* n. 9. (Sreekanth Decl. Ex. 5.)

[21] *Id.*

[22] Kristi Noem (@KristiNoem), X (Mar. 14, 2025, 11:01 AM), https://x.com/Sec_Noem/status/1900562928849326488. (Dkt. 1-9, Pet. Ex. I at 4.)

[23] Ferré-Sadurní & Aleaziz, *supra* n. 9. (Sreekanth Decl. Ex. 5.)

terminated regarding the consequences of continuing to stay in the United States, despite the fact that they have lawful status. Two Courts of this District have already temporarily enjoined this practice. *See Ziliang J. v. Noem, et al.*, No. 25-cv-01391 (PJS-DLM), Dkt. 13, Order (D. Minn. Apr. 17, 2025); *Ratsantiboon v. Noem, et al.*, No. 25-cv-01315 (JMB-JFD), Dkt. 20, Order (D. Minn. Apr. 15, 2025). However, others may not have access to the legal representation or information needed to challenge Respondents' actions.

II. MR. HOQUE WAS ARRESTED AND DETAINED PURSUANT TO RESPONDENTS' RETALIATORY POLICY AND FOR UNLAWFUL PURPOSES.

A. Mr. Hoque is in the United States With Lawful Nonimmigrant Status and Engaged in Protected Political Speech.

Petitioner Mohammed Hoque is a 20-year-old citizen of Bangladesh and an observant Muslim. (*See* Dkt. 1-1, Declaration of Mohammed Hoque ("Hoque Decl.") ¶¶ 2, 4.) Mr. Hoque began college studies at Minnesota State University, Mankato ("MSU") in a valid F-1 student status in 2021. (*Id.* ¶¶ 5–7.) He met all of the requirements necessary to maintain his student status up to and through his unlawful arrest and detention by DHS on March 28, 2025, including by being enrolled in the minimum required number of credits at MSU. (*Id.*; *see also* Dkt. 1-2, Pet. Ex. B at 4.) At the time of his unlawful arrest and detention by DHS, Hoque was on track to graduate in 2026 with a major in Management Information Systems. (Dkt. 1-1, Hoque Decl. ¶¶ 8–9.)

Approximately two years before his unlawful arrest, and just months after turning eighteen, Mr. Hoque was charged with disorderly conduct and fifth degree assault for pushing his brother's friend after a disagreement. (*Id.* ¶¶ 26–32; Dkt. 1-2, Pet. Ex. B at 3.)

Mr. Hoque accepted a plea agreement regarding the disorderly conduct charge, and a 90-day sentence was stayed for one year while he completed probation. (Dkt. 1-1, Hoque Decl. ¶ 30; *see also* Dkt. 1-2, Pet. Ex. B at 4.) Mr. Hoque travelled to Bangladesh to visit family in summer 2023 while his criminal case was pending. (Dkt. 1-1, Hoque Decl. ¶ 33.) After openly discussing the pending case with airport immigration inspectors, he was admitted back into the country to continue his studies. (*Id.* ¶ 34.)

Mr. Hoque believes all people have human rights and that no person should be attacked or killed because of their religion. (*Id.* ¶ 11.) For this reason, he opposes and has been deeply disturbed by violence against people living in Gaza. (*Id.*)

Mr. Hoque has engaged in speech on matters of public concern, including his support of Palestinians in Gaza. (*Id.* ¶ 12.) Mr. Hoque has expressed his political views, including on social media, where he has shared posts and media coverage documenting incidents of violence against Palestinians in Gaza that he considers to be violations of human rights. (*Id.*) His Instagram account biography includes the hashtag "#Free Palestine." (*Id.*)

Mr. Hoque does not support violence and has never supported political violence. (*Id.* ¶¶ 11–12.) Mr. Hoque does not support, and has never expressed support for, any groups that attack or kill others because of their religion. (Declaration of Mohammed Hoque dated April 20, 2025 ("Second Hoque Decl.") ¶ 6.) Specifically, he does not support, and has never expressed support for, Hamas and any other kind of terrorist group. (*Id.*) He opposes violence and is against killing of people because of their religion anywhere, including in Israel and in Palestine. (*Id.*) His support for a free Palestine and

his opposition to violence in Gaza does not make him a supporter of any violent groups, including Hamas. (*Id.*)

B. DHS Officers Arrested and Detained Mr. Hoque on the Morning of March 28, 2025.

On March 28, 2025, Mr. Hoque attended class, helped a friend with a speech for his class, and attended his coding class at MSU. (Dkt. 1-1, Hoque Decl. ¶ 39.) After class, Mr. Hoque noticed a truck parked next to his car. (*Id.* ¶¶ 39–41.) As he began the drive home, Mr. Hoque was aggressively followed by the truck, which cut in front of other traffic to stay behind him. (*Id.* ¶ 41.) When he arrived at his house, additional vehicles surrounded him. (*Id.* ¶ 42.) Two men in plain clothes approached him, said they were with DHS, and told him that his visa had been revoked. (*Id.*)

The officers did not provide copies of any visa revocation papers, or show him any warrant or badge. (*Id.* ¶ 43.) Mr. Hoque told them that he had not been informed about any visa revocation. (*Id.*) He was instructed to put his hands behind his back. (*Id.*) He was handcuffed and chained around the waist. (*Id.*)

Mr. Hoque was arrested at approximately 12:00 p.m. (Dkt. 1-3, Pet. Ex. C at 4.) He was driven by DHS officers to Fort Snelling. (*Id.*; Dkt. 1-1, Hoque Decl. ¶¶ 45–47.)

C. After his Arrest and Detention, Mr. Hoque's Visa Was Revoked and/or His SEVIS Record Was Terminated.

That same day, at 2:57 pm—after his arrest and while Mr. Hoque was being processed at Fort Snelling—his SEVIS visa record was terminated by "DHS Official." (Dkt. 1-4, Pet. Ex. D at 4.) The termination reason listed in the SEVIS record was

"Otherwise Failure to Maintain Status." (*Id.*) In the explanation section, it states: "Student is terminated pursuant to INA 237(a)(1)(C)(i) and 237(a)(4)(C)." (*Id.*)

Later on March 28, DHS transported Mr. Hoque to Freeborn County Jail, where he remains in DHS custody as of today. (Dkt. 1-1, Hoque Decl. ¶ 48.)

Days after his arrest, on April 1, 2025, Mr. Hoque received a letter with no official letterhead, date, named author, or signature. (*Id.* ¶ 49; Dkt. 1-5, Pet. Ex. E.) The letter purported to notify him that his F-1 visa had been revoked. (*Id.*)

Because he remained in detention, Mr. Hoque missed an April 2, 2025 appointment with his surgeon to discuss a needed hernia repair operation. (*See* Dkt. 1-1, Hoque Decl. ¶ 25.)

On or around April 8, 2025, Mr. Hoque's SEVIS record was modified to state that the reason for his termination was, "Individual identified in criminal records check and/or has had their VISA revoked." (Dkt. 1-6, Pet. Ex. F.)

D. Respondents Continue to Detain Mr. Hoque.

After being detained for almost two weeks, Mr. Hoque had a bond hearing before an immigration judge on April 9, 2025. (Dkt. 1-2, Pet. Ex. B at 1.) The Immigration Judge ruled that Mr. Hoque was "not a danger to the community" and ordered that he be released on bond in the amount of $7,500. (*Id.* at 2–3.) Following this decision, DHS sought an automatic stay, denying Mr. Hoque the opportunity to pay the bond and forcing him to remain in detention. (*Id.*)

On April 16, 2025, Mr. Hoque had the initial hearing on his removal proceedings. (Dkt. 1-7, Declaration of Ashley J. Roth ("Roth Decl.") ¶ 2.) At that time, DHS's sole

charge of removability was INA Section 237(a)(1)(C) for failure to maintain lawful status. (Dkt. 1-3, Pet. Ex. C.) At the hearing—now weeks after Mr. Hoque was detained—DHS presented no additional evidence in support of its charge of removability. (Dkt. 1-7, Roth Decl. ¶¶ 6–9.) Instead, DHS sought a continuance. (*Id.* ¶¶ 12–16.)

Later that day, DHS submitted to the immigration court a memorandum purportedly dated March 23, 2025, from DOS Senior Bureau Official, John Armstrong, to DHS Official Andre Watson, Assistant Director, National Security Division, stating:

> On March 23, 2025, in response to a request from DHS/ICE and the information from DHS/ICE that Mohammed Monjurul HOQUE has been charged by U.S. law enforcement officials with Assault-5th Degree Misdemeanor, Disorderly Conduct and now poses a threat to U.S. public safety, the Bureau of Consular Affairs approved revocation, effective immediately, of the F-1 visa of HOQUE . . . Bangladesh, Visa Foil . . ., pursuant to authority in section 221(i) of the Immigration and Nationality Act, 8 U.S.C. 1201(i). We understand that DHS/ICE intends to immediately pursue removal of HOQUE, and due to ongoing ICE operational security, this revocation will therefore be silent; the Department of State will not notify the subject of the revocation.

(Dkt. 1-8, Pet. Ex. H.) DHS provided no explanation for the assertion that Mr. Hoque "now poses a threat to U.S. public safety." The memorandum suggests that DHS/ICE's "inten[tion] to immediately pursue removal" *predated* the purported visa revocation.

On April 18, 2025—the same day Mr. Hoque commenced this action—Respondents amended the charges against Mr. Hoque in immigration court to include a charge under INA 237(a)(1)(B). (Sreekanth Decl. Ex. 15.) Under this charge—filed three weeks after his arrest and detention—Respondents contend that Mr. Hoque is subject to deportation because his visa was purportedly revoked. (*Id.*)

III. WITHOUT INJUNCTIVE RELIEF, MR. HOQUE WILL SUFFER MULTIPLE IRREPARABLE HARMS, INCLUDING ONGOING DETENTION AND BURDENS ON HIS PROTECTED SPEECH.

Mr. Hoque is in ICE custody within this District. While in detention, Mr. Hoque cannot fully engage in the protected speech for which he was targeted and he has been deprived of his liberty. Further, Mr. Hoque continues to experience ongoing and painful complications of a prior abdominal surgery. (Dkt. 1-1, Hoque Decl. ¶¶ 13–25, 50–53.) Because he is not able to have surgery while in detention, his symptoms continue and condition may worsen. (*Id.;* Second Hoque Decl. ¶ 5.)

Mr. Hoque's family is frightened and scared over what is happening to him. (Second Hoque Decl. ¶ 4.) Mr. Hoque "is not sure [he] can keep putting them through this, or endure it [himself]." (*Id.*) His family is torn apart, his parents are living in extreme anxiety, and they are afraid that every time his brother and sister go to class that "DHS could arrest them next." (*Id.* ¶ 7.)

ARGUMENT

Mr. Hoque seeks temporary relief that: 1) orders his release pending the full adjudication on the merits of his Petition; and 2) if he is not released, enjoins Respondents from transferring him out of this District during the pendency of this proceeding. Such relief would return the parties to the *status quo ante*.

To warrant a TRO, Mr. Hoque must show: 1) the threat of irreparable harm; 2) the balance between this harm and the injury that granting the injunction will inflict on other parties; 3) the probability that he will succeed on the merits; and 4) the public interest. *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981); *S.B. McLaughlin*

& Co. v. Tudor Oaks Condo. Project, 877 F.2d 707, 708 (8th Cir. 1989) (holding that the same legal standard applies to both a request for a temporary restraining order and a request for a preliminary injunction). Although the probability of success on the merits is the predominant factor, the Eighth Circuit has "repeatedly emphasized the importance of a showing of irreparable harm." *Caballo Coal Co. v. Ind. Mich. Power Co.*, 305 F.3d 796, 800 (8th Cir. 2002). Mr. Hoque can establish each of these elements.

I. MR. HOQUE IS LIKELY TO SUCCEED ON THE MERITS.

Mr. Hoque is likely to succeed on the merits of his claim because Respondents' continued detention of him is in violation of his constitutionally-protected rights on multiple grounds.

A. Mr. Hoque's Unlawul and Retaliatory Detention Pursuant to the Policy Violates the First Amendment Because it is Viewpoint Discriminatory and Retaliatory.

Mr. Hoque is likely to succeed on his claim that his detention violates the First Amendment because it is in retaliation for his protected speech and association.

1. The Policy Constitutes an Unconstitutional Viewpoint-based Restriction.

Under the Policy, Respondents are targeting for punishment speech by noncitizens that is supportive of Palestinian rights—one side of the post-October 7, 2023 political debate. This is textbook viewpoint discrimination: it "targets not subject matter, but particular views taken by speakers on a subject," *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995), and does so "based on their 'specific motivating ideolog[ies] or the[ir] opinion or perspective.'" *Viewpoint Neutrality Now! v. Bd. of*

Regents of the Univ. of Minn., 109 F.4th 1033, 1040 (8th Cir. 2024) (alteration in original) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 168 (2015)). The government may not pick and choose which sides of an issue will be aired publicly and which will be suppressed. *See, e.g.*, *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 892 (2018) ("'If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics . . . or other matters of opinion.'") (quoting *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)).

Respondents' purported invocation of alleged foreign policy concerns, on their own, do not justify viewpoint discrimination. *See, e.g.*, *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1056 (9th Cir. 1995) (government's invocation of foreign policy does not deprive courts of their "essential function in ensuring that [noncitizens] are not targeted by [the government] in retaliation for exercising their acknowledged constitutional rights"); *Holder v. Humanitarian L. Project*, 561 U.S. 1, 34 (2010) ("[C]oncerns of national security and foreign relations do not warrant abdication of the judicial role. We do not defer to the Government's reading of the First Amendment, even when such interests are at stake."). Moreover, constitutionally-compelled tolerance of dissent is not an endorsement of the views expressed by dissidents. *Cf. Widmar v. Vincent*, 454 U.S. 263, 271 n.10 (1981) ("[B]y creating a forum the University does not thereby endorse or promote any of the particular ideas aired there. Undoubtedly many views are advocated in the forum with which the University desires no association."); *Viewpoint Neutrality Now!*, 109 F.4th at 1039 (majority), 1044 (Grasz, J., concurring).

2. The Policy is Retaliatory in Violation of the First Amendment.

To succeed on a First Amendment retaliation claim, Mr. Hoque must show: "(1) [he] engaged in [constitutionally] protected activity; (2) [Respondents] caused an injury to [Mr. Hoque] that would chill a person of ordinary firmness from continuing the activity; (3) and a causal connection between the retaliatory animus and injury." *Quraishi v. St. Charles Cnty., Mo.*, 986 F.3d 831, 837 (8th Cir. 2021).[24] Mr. Hoque's arrest and detention meets all of these criteria.

First, Mr. Hoque engaged in constitutionally-protected speech. His speech in support of Palestinian rights—including through his Instagram bio which states "#Free Palestine," and his sharing of information regarding incidents involving Palestinians—is constitutionally protected because it relates to matters of widespread "public concern" in the United States.[25] *See Snyder v. Phelps*, 562 U.S. 443, 451–42 (2011) ("Speech on matters of public concern is at the heart of the First Amendment's protection." (cleaned

[24] Once a petitioner has made a showing of a First Amendment retaliation claim, the burden shifts to the government to show "by a preponderance of the evidence that it would have reached the same decision . . . even in the absence of the protected conduct." *Osborne v. Grussing*, 477 F.3d 1002, 1006 (8th Cir. 2007) (alteration in original) (internal quotation marks omitted) (citation omitted). "The Government must show more than that they *could* have punished the plaintiffs in the absence of the protected speech; instead, the burden is on the defendants to show through evidence that they *would* have punished the plaintiffs under those circumstances." *Bello-Reyes v. Gaynor*, 985 F.3d 696, 702 (9th Cir. 2021) (internal quotation marks omitted) (citation omitted); *cf. Osborne v. Grussing*, 477 F.3d at 1006 (the Respondent must show it would have made the same decision even absent protected conduct).

[25] Mr. Hoque is not a supporter of political violence or Hamas. Nor has he ever expressed views in support of Hamas, any other terrorist organization, or any organization that engages in political violence. (Second Hoque Decl. ¶ 6.)

up)); *see also Gerber v. Herskovitz*, 14 F.4th 500, 509 (6th Cir. 2021) ("[T]he content and form of the protests demonstrate that they concern public matters: American-Israeli relations."); *Jan v. People Media Project*, No. 3:24-CV-05553-TMC, 2025 WL 359009, at *10 (W.D. Wash. Jan. 31, 2025) (speech about the conflict in Israel and Palestine is "core political speech addressing matters of public concern"). As a noncitizen residing in this country, Mr. Hoque is entitled to the protection of the First Amendment, including while in detention. *Bridges v. Wixon*, 326 U.S. 135, 148 (1945) ("Freedom of speech and of press is accorded [noncitizens] residing in this country."); *Bello-Reyes*, 985 F.3d at 698 (bond revocation); *Rueda Vidal v. DHS*, 536 F. Supp. 3d 604, 619–623 (C.D. Cal. 2021) (denial of DACA application); *Ragbir v. Homan*, 923 F.3d 53, 71–72 (2d Cir. 2019), *cert. granted, judgment vacated on other grounds sub nom. Pham v. Ragbir*, 141 S. Ct. 227 (2020) (selective enforcement of removal order); *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 921 (W.D. Tex. 2018) (parole revocation).

Second, the Policy constitutes adverse action that would "chill a person of ordinary firmness from continuing in the activity." *Revels v. Vincenz*, 382 F.3d 870, 876 (8th Cir. 2004).[26] Without doubt, a reasonable person's speech would be chilled by the potential for detention or other loss of liberty. *See, e.g.*, *Hoyland v. McMenomy*, 869 F.3d 644, 657 (8th Cir. 2017), *abrogated on other grounds by Nieves v. Bartlett*, 587 U.S. 391 (2019) ("[T]here can be little doubt that being arrested for exercising the right to free speech would

[26] This is analyzed under an objective standard: "[t]he question is not whether the plaintiff herself was deterred, though how plaintiff acted might be evidence of what a reasonable person would have done." *Garcia v. City of Trenton*, 348 F.3d 726, 729 (8th Cir. 2003).

chill a person of ordinary firmness from exercising that right in the future." (internal quotation marks omitted) (citation omitted)); *Beaulieu v. Ludeman*, 690 F.3d 1017, 1025 (8th Cir. 2012) (unlawful to punish an inmate for exercising their constitutional right of access to courts (citing *Sisneros v. Nix*, 95 F.3d 749, 751–52 (8th Cir. 1996)); *see also Gomez v. Vernon*, 255 F.3d 1118, 1127 (9th Cir. 2001) (threat to transfer prisoner from one facility to another for filing grievances or lawsuits against prison conditions had chilling effect). Moreover, the Supreme Court has "long recognized" that deportation is "a particularly severe 'penalty,'" *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010), and "may result in the loss 'of all that makes life worth living.'" *Bridges*, 326 U.S. at 147. Indeed, the threat of retaliation has already intimidated ordinary persons, chilling exercise of their constitutionally-protected speech rights.[27]

Third, Respondents' disagreement with protected speech is a substantial or motivating factor for the Policy. *See Lyles v. Cnty. of Monterey*, No. C 05-04042 JW, 2006 WL 8460259, at *3 (N.D. Cal. Mar. 20, 2006) ("[W]here the First Amendment is

[27] *See, e.g.*, Elena Moore, *For Some Students Who Protested War in Gaza, Fear and Silence is a New Campus Reality*, NPR (Apr. 12, 2025, 6:01 AM), https://www.npr.org/2025/04/11/nx-s1-5343940/college-students-say-trump-administrations-crackdown-on-activism-incites-fear (Sreekanth Decl. Ex. 16.); Anvee Bhutani, *US Student Journalists Go Dark Fearing Trump Crusade Against Pro-Palestinian Speech*, THE GUARDIAN (Apr. 7, 2025, 7:00 AM), https://www.theguardian.com/us-news/2025/apr/07/student-journalists-remove-stories-trump (Sreekanth Decl. Ex. 17.); Annie Ma, Makiya Seminera and Christopher L. Keller, *Visa Cancellations Sow Panic for Int'l Students, With Hundreds Fearing Deportation*, ASSOCIATED PRESS (Apr. 16, 2025, 9:07 AM), https://apnews.com/article/international-student-f1-visa-revoked-college-f12320b435b6bf9cf723f1e8eb8c67ae (Sreekanth Decl. Ex. 18.); Max Matza, *University Student Targeted by Trump Leaves the US,* BBC (Mar. 31, 2025), https://www.bbc.com/news/articles/c934y9kv07eo. (Sreekanth Decl. Ex. 19.)

concerned, the motives of government officials are indeed relevant, if not dispositive, when an individual's exercise of speech precedes government action affecting that individual.") Respondents have made clear their Policy targets noncitizens for expressing views about post-October 7, 2023 events with which they disagree. Although sometimes publicly framed as conduct that is "anti-Semitic," "pro-terrorist," or "pro-Hamas," Respondents' actions indicate that they are, in fact, focusing merely on speech that is supportive of Palestinian rights.

For example, Ms. Ozturk was arrested and detained based on her protected speech criticizing her university's response to the Israel-Gaza war, despite the fact that the Department of State found no evidence that she supported Hamas or terrorist organizations.[28] Further, although DHS did not provide any evidence for its allegation that Ranjani Srinivasan was supporting a terrorist organization, she was singled out by DHS Secretary Noem and ultimately self-deported.[29] Others who were targeted merely attended pro-Palestinian demonstrations,[30] "lik[ed] or shar[ed] posts that highlighted

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[28] Hudson, *supra* n. 14. (Sreekanth Decl. Ex. 10.)

[29] Kristi Noem (@KristiNoem), X (Mar. 14, 2025, 11:01 AM), https://x.com/Sec_Noem/status/1900562928849326488 (Dkt. 1-9, Pet. Ex. I at 4.); Ferré-Sadurní & Aleaziz, *supra* n. 9. (Sreekanth Decl. Ex. 5.)

[30] Bromwich & Aleaziz, *supra* n. 8. (Sreekanth Decl. Ex. 3.); Saul, *supra* n. 8. (Sreekanth Decl. Ex. 4.)

'human rights violations' in the war in Gaza,"[31] or are related by marriage to Palestinians.[32]

These examples reveal that disagreement with protected expressive activity is a substantial or motivating factor for the Policy. Respondents' monitoring of noncitizen-students' social media posts, Mr. Hoque's public support of Palestinians, the citation to the Foreign Policy Ground in Mr. Hoque's SEVIS record termination, and the absence of any evidence of another reason for Mr. Hoque's detention lead to only one conclusion: Mr. Hoque's public expression of support for Palestinian rights played a motivating role in the government's decision to target Mr. Hoque for detention and removal. *See Ragbir*, 923 F.3d at 71. Therefore, all three elements of a First Amendment retaliation claim are met in this case.

B. The Policy is Void for Vagueness under the Fifth Amendment.

Further, Mr. Hoque is likely to succeed on his claim that the Policy is void for vagueness. To comport with due process, "laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). A policy is unconstitutionally vague if (1) the government fails to "provide the kind of notice that will enable ordinary people to understand what conduct

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[31] Ferré-Sadurní & Aleaziz, *supra* n. 9 (Sreekanth Decl. Ex. 5.)

[32] Sanders & Kanno-Youngs, *supra* n. 10. (Sreekanth Decl. Ex. 6.)

it prohibits," *or* (2) if it would "authorize and even encourage arbitrary and discriminatory enforcement." *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999).

Further, "[w]hen speech is involved, rigorous adherence to [due process] requirements is necessary to ensure that ambiguity does not chill protected speech." *F.C.C.*, 567 U.S. at 253–54. Rigorous scrutiny is also heightened where a law or policy carries serious penalties. *See, e.g.*, *Reno v. ACLU*, 521 U.S. 844, 871–72 (1997). When a law implicates deportation, "the most exacting vagueness standard should apply." *Sessions v. Dimaya*, 584 U.S. 148, 156 (2018) (Kagan, J., for four justices). Because "deportation is a drastic sanction, one which can destroy lives and disrupt families," *Gastelum-Quinones v. Kennedy*, 374 U.S. 469, 479 (1963), courts have enforced rigorous standards when the government seeks to deport noncitizens based on their membership in, or affiliation with, a disfavored political group. *See, e.g.*, *id.*; *Rowoldt v. Perfetto*, 355 U.S. 115, 120–21 (1957) (reversing removal order based on Communist Party affiliation and stressing "the solidity of proof that is required for a judgment entailing the consequences of deportation"). "Guilt by association does not suffice," for it "presents serious due process concerns." *Yusupov v. Att'y Gen.*, 650 F.3d 968, 983 (3d Cir. 2011). Because removal from the United States is "a particularly severe 'penalty,'" *Padilla*, 559 U.S. at 365, the Policy must satisfy the most exacting vagueness standard. The Policy, here, cannot meet these standards for at least two reasons.

First, the Policy is too vague to give fair notice of what speech or conduct is impermissible. Respondent Rubio has stated he will revoke visas of "Hamas supporters in

America so they can be deported,"[33] and DHS spokesperson Tricia McLaughlin has suggested Mr. Khalil was subjected to the Policy because he is "aligned to Hamas."[34] Terms like "support" and "aligned" are highly subjective and may encompass so much constitutionally protected expression that it is impossible for individuals to know if or when the Policy will be enforced against them. *See Rosenberger* 515 U.S. at 836 (emphasizing "vast potential reach" of term "promote[]"); *Bridges*, 326 U.S. at 147–48 (interpreting "affiliation" narrowly to comport with First Amendment in deportation case).

Indeed, the government has not provided any guidance on what constitutes being a "supporter" of or "aligned to" Hamas. Nor has the government provided any evidence that recently-deported students are supporters of Hamas. Rather, as noted above, reporting suggests they were targeted based solely on support of Palestinians. A law, such as the Policy, that "fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement" is unconstitutionally vague. *Johnson v. U.S.*, 576 U.S. 591, 595 (2015).

Second, the Policy is unconstitutionally vague for the independent reason that it permits arbitrary and discriminatory enforcement. "Standards provide the guideposts that

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[33] Sec. Marco Rubio (@marcorubio), X (Mar. 9, 2025, 6:10 PM), https://bit.ly/4iZ1M0I. (Sreekanth Decl. Ex. 20.)

[34] Surina Venkat, *Department of Homeland Security Confirms Arrest of Palestinian Activist Mahmoud Khalil, SIPA '24*, COLUMBIA SPECTATOR (Mar. 9, 2025, 11:43 PM), https://www.columbiaspectator.com/news/2025/03/10/department-of-homeland-security-confirms-arrest-of-palestinian-activist-mahmoud-khalil-sipa-24/. (Sreekanth Decl. Ex. 21.)

check the [official]"; without them, "*post hoc* rationalizations . . . and the use of shifting or illegitimate criteria are far too easy." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 758 (1988). The Policy, however relies on subjective determinations about whether speech is impermissibly supportive of or "aligned to" Hamas, and encompasses constitutionally-protected speech. A law or policy that "reach[es] a substantial amount of innocent conduct," *Morales*, 527 U.S. at 60–61, provides the government with "an unfettered power of interpretation" and is the type of ad hoc and subjective application of a policy with which the vagueness doctrine is concerned. *United States v. Evans*, 883 F.3d 1154, 1164 (9th Cir. 2018) (internal quotation marks omitted) (citation omitted); *cf. Stahl v. City of St. Louis, Mo.*, 687 F.3d 1038, 1041 (8th Cir. 2012) (where the speaker does not know if his or her speech is criminal until after the government decides the speech is criminal, the rule is void for vagueness).

Here, one official implementing the Policy may find protected speech supporting Palestinians to be supportive of Hamas, while another does not. Indeed, the Policy is seemingly so vague that nothing would stop Respondents from designating any noncitizen as "adverse" to U.S. foreign policy interests simply because the person engages in speech with which Respondents disagree.

C. Mr. Hoque's Retaliatory and Unlawful Detention Violates Due Process under the Fifth Amendment Because it is Punitive in Intent and Effect.

Mr. Hoque is also likely to succeed on the claim that his detention violates due process. Immigration detention is civil and must "bear a reasonable relation to the purpose for which the individual [is detained]" so that it is "nonpunitive in purpose and effect."

Zadvydas v. Davis, 533 U.S. 678, 690 (2001) (cleaned up). There are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See id.*; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017); *see also Chen v. Banieke*, No. 15-2188 (DSD/BRT), 2015 WL 4919889, at *1 (D. Minn. Aug. 11, 2015) (flight risk). Here, the government is detaining Mr. Hoque for two independent, unconstitutional, and *illegitimate* reasons.

First, Respondents are using detention to punish Mr. Hoque for his speech. Civil detention cannot be a "mechanism for retribution," *Kansas v. Crane*, 534 U.S. 407, 407 (2002) (internal quotation marks omitted), because "[r]etribution and deterrence are not legitimate nonpunitive governmental objectives," *Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979). And unlawful detention necessarily harms Mr. Hoque. *See Barker v. Wingo*, 407 U.S. 514, 532 (1972) (detention has a "serious," "detrimental impact on the individual"); *Hernandez*, 872 F.3d at 994 (unconstitutional detention for an indeterminate period is irreparable harm); *Doe v. Becerra*, 704 F. Supp. 3d 1006, 1017 (N.D. Cal. 2023), *abrogated on other grounds by Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) ("'Liberty is the norm; every moment of [detention] should be justified.'") (alteration in original) (citation omitted).

Second, Respondents are detaining Mr. Hoque to compel other students with lawful status to self-deport out of fear for a similar fate (detention). As discussed above, based on public reports, DHS has advised hundreds, if not thousands, of students in the last several weeks that they have lost their student status because their F-1 visas have been revoked and/or their visa records have been terminated. Such purported visa revocations do not,

however, result in a loss of status. *See* 8 C.F.R. § 214.2(f) (providing that once a student enters the United States on an F-1 visa, that student is granted permission to remain for the duration of status, as long as the individual continues to meet the requirements established by the regulations governing their F-1 classification, such as maintaining a full course load). Moreover, revocation of a visa is not grounds to terminate student visa records within the government database used to track international students' compliance with F-1 visa status.[35] If an F-1 visa is revoked, DHS is *not* authorized to terminate the student's SEVIS record. Thus, Respondents' arrest and detention of international students such as Mr. Hoque has the intent and effect of forcing students who are advised of revocations/termination (who may not have access to representation)—and who fear the same arrest and detention forced on noncitizens targeted under the Policy—to abandon their lawful status and "self-deport" without protesting or mounting legal challenges to their unlawful SEVIS terminations.

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[35] ICE, *Policy Guidance 1004-04—Visa Revocations* 3 (June 7, 2010) ("Visa revocation is not, in itself, a cause for termination of the student's SEVIS record."), https://bit.ly/3Etrxae. (Sreekanth Decl. Ex. 22.) While SEVIS records can be terminated if a student fails to meet regulatory requirements to maintain their status, in the absence of a student's conduct causing a status violation, ICE may only terminate SEVIS records in three circumstances: (1) a previously-granted waiver under 8 U.S.C. § 1182(d)(3) or (4) is revoked; (2) a private bill to confer lawful permanent residence is introduced in Congress; or (3) DHS publishes a notification in the Federal Register identifying national security, diplomatic, or public safety reasons for termination. 8 C.F.R. § 214.1(d). DHS cannot otherwise unilaterally terminate nonimmigrant status. *See Jie Fang v. Dir. U.S. Immigr. & Customs Enf't*, 935 F.3d 172, 185 n.100 (3d Cir. 2019).

Mr. Hoque's detention is not in furtherance of the legitimate purposes of immigration detention, because Mr. Hoque is not a danger to the community or a flight risk. His only criminal history involves minor incidents that do not affect his status.[36] *See* 8 C.F.R. § 214.1(g) ("[A] crime of violence for which a sentence of more than one year imprisonment may be imposed (regardless of whether such sentence is in fact imposed) constitutes a failure to maintain status[.]"); Minn. Stat. § 609.72 (misdemeanor disorderly conduct); Minn. Stat. § 609.224 (misdemeanor assault in the fifth degree); Minn. Stat. § 609.02, subd. 3 (defining misdemeanor as "a crime for which a sentence of not more than 90 days or a fine of not more than $1,000, or both, may be imposed"). And, he has strong ties to the Mankato community where he has lived and studied for several years and members of his family now reside. (Dkt. 1-1, Hoque Decl. ¶¶ 6–7, 10.)

As a result, Mr. Hoque's detention is for an illegitimate and punitive purpose—not in accordance with the lawful purposes of civil immigration detention—and should be enjoined.

D. The Policy Forming the Basis for Mr. Hoque's Unlawul Detention Violates the *Accardi* Doctrine.

Mr. Hoque is also likely to succeed on his *Accardi* doctrine claim. Under the *Accardi* doctrine, a court may enforce an agency's own procedures when an agency has done "precisely what [its] regulations forbid [it] to do." *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954); *accord United States v. Lee*, 274 F.3d 485, 492

[36] *See also* Dkt. 1-2, Pet. Ex. B.

(8th Cir. 2001) ("[T]he *Accardi* doctrine bars administrative agencies from taking action inconsistent with their internal regulations when it would affect individual rights[.]" (internal quotation marks omitted) (citation omitted)).

Two agency memoranda, both still in effect, are relevant. First, during the first Trump administration, then-DHS Acting Secretary Kevin McAleenan issued a memorandum addressed to "All DHS Employees" titled "Information Regarding First Amendment Protected Activities," stating, "DHS does not profile, target, or discriminate against any individual for exercising his or her First Amendment Rights."[37] Second, during the Biden administration, then-Secretary Alejandro Mayorkas issued a DHS memo addressed to ICE leadership, which emphasized that a "noncitizen's exercise of their First Amendment rights . . . should *never* be a factor in deciding to take enforcement action."[38]

The Policy, which targets noncitizens for arrest, detention, and removal based on the content of their protected speech, squarely conflicts with the McAleenan and Mayorkas memoranda. *See Accardi*, 347 U.S. at 267 (agency may not violate its own rules and processes simply because Attorney General singled petitioner out for deportation). DHS has prohibited the targeting of individuals based on protected speech, and must respect those rules. *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures."). Because the

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[37] McAleenan, *supra* n. 3. (Sreekanth Decl. Ex. 1.)

[38] Alejandro N. Mayorkas, *Guidelines for the Enforcement of Civil Immigration Law*, DEP'T OF HOMELAND SECURITY (Sept. 30, 2021), https://bit.ly/4ckeVif (emphasis added). (Sreekanth Decl. Ex. 23.)

Policy is incompatible with the memoranda, it is unlawful. *See, e.g.*, *Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 982 (C.D. Cal. 2024) (setting aside agency policy that contravened agency's own internal procedures).

E. Because Mr. Hoque Presents at least "Serious Questions" on the Merits, The Court Should Enter the TRO.

For the foregoing reasons, Mr. Hoque is likely to succeed on the merits of his claims. However, even if the Court disagrees, Mr. Hoque presents at least "serious questions going to the merits," alongside "a balance of hardships tipping decidedly" in his favor. *Dataphase*, 640 F.2d at 112; *see Rodgers v. Bryant*, 942 F.3d 451, 456 (8th Cir. 2019) ("Generally, if a party shows a likely violation of his or her First Amendment rights, the other requirements for obtaining a preliminary injunction are . . . deemed to have been satisfied." (alteration in original) (internal quotation marks omitted) (citation omitted)). Indeed, the constitutional concerns herein are of the weightiest order and colorable.

II. MR. HOQUE FACES IRREPARABLE INJURY ABSENT A TRO.

As to the second *Dataphase* factor, Mr. Hoque will suffer irreparable injury absent a temporary restraining order for his release. Those injuries include disruption of his complex medical care, loss of his education and tuition paid, potential delay in graduation and entry into the workforce, and emotional distress for himself and his family.[39] (*See, e.g.,* Second Hoque Decl. ¶¶ 4-5, 7.) This is on top of the harms from the ongoing deprivation of Mr. Hoque's First and Fifth Amendment rights. *Ng v. Bd. of Regents of the*

[39] Transferring Mr. Hoque would also remove him from his family, friends, and counsel and deprive Mr. Hoque of the full and fair adjudication of his pending Petition.

Univ. of Minn., 64 F.4th 992, 998 (8th Cir. 2023) ("[T]he denial of a constitutional right is a cognizable injury and an irreparable harm."); *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), *overruled by Phelps-Roper v. City of Manchester, Mo.*, 697 F.3d 678 (8th Cir. 2012) ("[L]oss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. . . . In a First Amendment case, therefore, the likelihood of success on the merits is often the determining factor in whether a preliminary injunction should issue." (internal quotation marks omitted) (citation omitted)); *Hernandez*, 872 F.3d at 994–95; *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). Further, Mr. Hoque is irreparably harmed because indefinite detention bears no "reasonable relation" to its purpose. *Deqa M. Y.*, 2020 WL 4928321, at *3; *see Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing "[a]ny amount of actual jail time is significant and has exceptionally severe consequences for the incarcerated individual" (cleaned up) (internal quotation marks omitted) (citation omitted)).

III. THE EQUITIES WEIGH IN PETITIONER'S FAVOR AND A TRO WILL SERVE THE PUBLIC INTEREST.

As to the remaining *Dataphase* factors, when the government is the party opposing emergency relief, the last two factors of the analysis (balance of the equities and the public interest) merge. *Schmitt v. Rebertus*, No. 24-cv-34 (JRT/LIB), 2024 WL 3904665, at *5 (D. Minn. Aug. 22, 2024) ("The balance of harms and public interest merge when the government opposes injunctive relief." (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

Here, the balance of hardships overwhelmingly favors Mr. Hoque, who faces irreparable injury in the form of ongoing constitutional violations and harm if the TRO is not granted.

"[I]t is always in the public interest to protect constitutional rights." *Phelps-Roper*, 545 F.3d at 690. Moreover, when "[f]aced with . . . preventable human suffering, . . . the balance of hardships tips decidedly in plaintiffs' favor." *Hernandez*, 872 F.3d at 996 (internal quotation marks omitted) (citation omitted); *see Phelps-Roper*, 545 F.3d at 690 ("The balance of equities . . . generally favors the constitutionally-protected freedom of expression.") Additionally, there is critical public interest in ensuring executive agencies act lawfully. Respondents "cannot reasonably assert that [the government] is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983).

Absent injunctive relief, the government will continue to unjustifiably chill Mr. Hoque's speech and detain him in retaliation for exercising his constitutional rights. However, "it is *always* in the public interest to protect constitutional rights." *Phelps-Roper*, 545 F.3d at 690 (emphasis added). Therefore, the public interest weighs in favor of an injunction.

IV. NO SECURITY IS NECESSARY.

"The district court may dispense with the filing of a bond when . . . there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003); *see also Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps. Of Eng'rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (recognizing that the existence of an important public interest weighs in favor of dispensing with a

bond.). Such is the case here. Respondents will incur no harm from complying with Mr. Hoque's proposed TRO, and no security is necessary.

CONCLUSION

For the foregoing reasons, Mr. Hoque respectfully requests the Court grant a TRO to restore the *status quo ante*: (1) ordering Mr. Hoque's release or, in the alternative, (2) enjoining Respondents from transferring Mr. Hoque out of this District during the pendency of this action.

Dated: April 21, 2025

s/ Anupama D. Sreekanth

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