

**TO UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MOHAMMED HOQUE,

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

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,

**PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE**

Respondents.

INTRODUCTION

Petitioner Mohammed Hoque is a 20-year old student from Bangladesh. He has been lawfully present in the United States as an F-1 student since 2021, studying Management Information Systems at Minnesota State University, Mankato (“MSU”) until March 28, 2025 when he was arrested by plain clothes officers from the Department of Homeland Security (DHS). Respondents’ explanation for Mr. Hoque’s detention and arrest has changed over time, depending on the circumstances, and is not consistent with their documentation. The only inference is that Respondents’ actions are, and have always been, pretextual.

Now, Respondents seek to evade judicial review of their continuing violation of Mr. Hoque’s constitutional rights by mischaracterizing his habeas claims and cloaking their conduct as the lawful exercise of “discretion” by the Executive Branch. But Respondents’ authority to act is limited by constitutional protections such as the First and Fifth Amendment, and Mr. Hoque’s challenge to his detention is based on the precise constitutional violations that the writ of habeas corpus is intended to address. Accordingly, this Court can and should review Mr. Hoque’s claims. Because Mr. Hoque’s arrest and ongoing detention are not constitutional, Mr. Hoque must be released.

BACKGROUND

The Court ordered Respondents to file a Response “certifying the true cause” of Mr. Hoque’s detention and “affidavits and exhibits as are needed to establish the lawfulness”

of his detention. (Dkt. 16, Order at 2.) Respondents' submission has omissions and important concessions.¹

I. RESPONDENTS DO NOT DISPUTE THAT MR. HOQUE WAS IN STATUS AT ALL RELEVANT TIMES.

Prior to March 28, 2025, Mr. Hoque was in student status and there were no grounds to initiate removal proceedings. (Dkt. 1, Pet. ¶¶ 49-51.) Respondents do not dispute this.

II. ON OR BEFORE MARCH 22, 2025, DHS DECIDED TO DETAIN MR. HOQUE.

According to Respondents, Mr. Hoque's detention was initiated on Saturday, March 22, 2025, when DHS/ICE "transmitted written communication to the Department of State" asking if Mr. Hoque's visa should be revoked because he represented a "threat to public safety." (Dkt. 19, Armstrong Decl. ¶ 4.)

This key document—the March 22 DHS/ICE written communication—is conspicuously absent from the record. Instead, Respondents ask the Court to rely on State Department Official John Armstrong's characterization of it, which is inconsistent with DOS's records. According to Mr. Armstrong, on March 22, DHS sought DOS's "determination as to whether [Mr. Hoque's] nonimmigrant visa should be revoked" and "assessment as to whether [Mr. Hoque's] conduct represented a threat to public safety." (*Id.*) In contrast, a March 23, 2025 memorandum by DOS states that DHS had already determined Mr. Hoque "now poses a threat to U.S. public safety" and advised that DHS "intends to immediately pursue removal." (Dkt. 1-8, Pet. Ex. H.) In other words, *before*

¹ Mr. Hoque's Petition should be granted based on the record before the Court. If the Court is inclined to deny his requested relief, he requests an evidentiary hearing to address Respondents' evidence.

DOS was involved, DHS *already* decided to detain him, and *subsequently* asked DOS to create a record to do so.

DHS—through sworn testimony or otherwise—has not stated whether the unproduced March 22, 2025 communication refers to or is based on INA Section 237(a)(4)(C) (the Foreign Policy Grounds),² or if it was created after review or with knowledge of Mr. Hoque’s social media³ or protected speech.⁴

According to Respondents, DHS’s March 22, 2025 communication represented that Mr. Hoque’s 2023 charges of assault in the fifth degree and disorderly conduct made him a current threat to U.S. public safety. (*See* Armstrong Decl. ¶ 4; Pet. Ex. H.) DHS purportedly based this determination on *charges*—not the underlying facts or whether they were substantiated—from two years earlier, without considering the legal process that emanated from those charges. DHS’s determination ignores that Mr. Hoque was never detained, the assault charge was dismissed, and he was convicted of disorderly conduct,

² Respondents concede they have used INA Section 237(a)(4)(C) as “a basis for visa revocation and/or removability” for noncitizens who have engaged in public expressions of support for Palestinians, such as Mr. Hoque. (Dkt. 17, Resp. at 38.)

³ Contrary to Respondents’ assertion (Resp. at 34), Mr. Hoque submitted evidence that Respondents were using social media to identify individuals who expressed certain views at the same time DHS decided to detain Mr. Hoque. *See* 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>. (Dkt. 10-1, First Sreekanth Decl. Ex. 9.)

⁴ Respondents claim that the officers who arrested Mr. Hoque on March 28, 2025 had no knowledge of his speech (Dkt. 20, Minner Decl. ¶ 8)—but present no disclaimer as to any individuals involved in decisions made on or before that date, or since.

with a 90-day sentence stayed pending 1 year of probation, which he successfully completed by March 2025. (First Hoque Decl. ¶¶ 26-32.)

III. AFTER DHS DECIDED TO DETAIN MR. HOQUE, DOS PURPORTEDLY “SILENTLY” REVOKED HIS VISA.

On Sunday March 23, 2025—based on DHS’s unproduced March 22 communication—DOS purportedly revoked Mr. Hoque’s F1 visa “under Section 221(i) of the INA.” (Armstrong Decl. ¶ 4.) DOS documentation does not reflect the “determination” or “assessment” Respondents claim DOS was asked to make. (*Id.*; Pet. Ex. H.) It appears the assessment was, in fact, performed by DHS, and DOS was simply asked to follow suit.

Respondents do not address—through sworn testimony or otherwise—whether DOS revoked Mr. Hoque’s visa with knowledge of—or based upon—Mr. Hoque’s social media or other expression. Mr. Armstrong asserts that “[t]he Secretary of State did not make any determination under Section 237(a)(4)(C) of the INA” (Armstrong Decl. ¶ 5), but it is unclear if he was personally involved in DOS or DHS’s decision, spoke to individuals at DHS or DOS who were, or has foundation for this representation (*id.* ¶ 3).

Respondents also do not address why the revocation was “silent.” (*See* Petition Ex. H.) DOS records reflect this was based on DHS’s *prior* intent to “immediately pursue removal.” (*Id.*)

IV. ON MARCH 28, 2025, MR. HOQUE WAS ARRESTED, AND DETAINED, NOT BASED ON THE PURPORTED VISA REVOCATION, BUT BECAUSE OF AN ALLEGED “FAILURE TO MAINTAIN STATUS.”

According to Mr. Hoque’s DHS I-213, the next day (March 24, 2025) DHS “received an investigative lead” and “conducted records checks” that indicated Mr. Hoque’s visa had been revoked by the DOS. (*See* Dkt. 1-3, Petition Ex. C at *4.) This

narrative is misleading: according to DOS records, DHS initiated and provided the factual basis for the revocation two days earlier. (Pet. Ex. H.)

On March 28, 2025, DHS issued a Warrant for Mr. Hoque’s arrest. (Dkt. 20-4, Minner Decl. Ex. 4.) It is based on the charging document, which cites *one* charge of removability: that Mr. Hoque “failed to maintain or comply with the conditions of [his] change in status” under INA Section 237(a)(1)(C)(i). (Dkt. 20-5, Minner Decl. Ex. 5.) It is undisputed that Mr. Hoque remained in valid student status up to and until he was detained. (Pet. ¶¶ 49-50.) While the Notice to Appear also references an alleged visa revocation, it is in the context of a loss of status—not as independent grounds. (*Id.*) In contrast, today, Respondents predicate all of their actions on visa revocation.

Using the Warrant, plain clothes officers arrested Mr. Hoque as he returned home from class on March 28 and detained him in the Freeborn County Jail. (Pet. ¶ 1.)

V. ALSO ON MARCH 28, 2025, DHS OFFICIALS TERMINATED MR. HOQUE’S SEVIS RECORD—AN ACTION THAT IS INCONSISTENT WITH A VISA REVOCATION—ON “FOREIGN POLICY GROUNDS.”

On March 28, 2025, a “DHS Official” terminated Mr. Hoque’s SEVIS record for “otherwise failing to maintain status.” (Dkt. 1-4, Pet. Ex. D.) This action is inconsistent with Respondents’ assertion that visa revocation was the sole reason for Mr. Hoque’s detention, because DHS guidance maintains that visa revocation is *not* grounds to terminate a SEVIS record. (Dkt. 10-3, First Sreekanth Decl. Ex. 22.)

Notably, the unidentified “DHS Official” who terminated Mr. Hoque’s SEVIS record cited INA Section 237(a)(4)(C) (the Foreign Policy Grounds) (as well as the baseless Section 237(a)(1)(C)(i)). (Pet. Ex. D.) This act and documentation contradicts

Respondents’ position that Foreign Policy Grounds had nothing to do with Mr. Hoque’s case.

Respondents do not—through sworn testimony or otherwise—identify this “DHS Official” or explain why, on what grounds, or by whom this action was taken. Respondents merely state that this “statutory citation is inconsistent with the State Department’s records.” (Resp. at 7 n.2.) Respondents also do not explain why, on what grounds, or at whose direction the reference to Section 237(a)(4)(C) was removed from SEVIS on April 8, 2025.⁵ (Dkt. 1-7, Pet. Ex. F.)

VI. FOR WEEKS, RESPONDENTS DETAINED MR. HOQUE ON GROUNDS OTHER THAN A VISA REVOCATION.

While in detention, Mr. Hoque’s removal proceedings continued based on the sole charge that he allegedly failed to maintain status under INA 237(a)(1)(C). (*See* Pet. Ex. C.) When an immigration judge considered Mr. Hoque’s release on bond, it was based on this sole charge. (*See* Dkt. 1-2, Pet. Ex. B.)

The immigration judge granted Mr. Hoque’s release on bond of \$7,500. (*Id.*) Respondents appealed, using an automatic stay to prevent the order from taking effect.⁶ (Dkt. 21-2, Voss Decl. Ex. 2 at 22-26.) Respondents’ prior use of the automatic stay has

⁵ April 8, 2023 is the same day Respondents received Mr. Hoque’s application to reinstate status. (Dkt. 21-2, Voss Decl. Ex. 2 at 43-103.)

⁶ The appeal cites facts that are incorrect or incomplete, including that Mr. Hoque “interjected himself into the dispute by going to the victim’s address,” while ignoring that he was *invited* to the address by the victim’s spouse “to speak further.” (*Compare* Voss Decl. Ex. 2 at 22-26 *with* Pet. Ex. B.)

been “extraordinarily rare” and its use in this case is a significant departure from past practices. (*See* Declaration of Kerry Doyle⁷ (“Doyle Decl.”) ¶¶ 7, 12.)

On April 16, 2025, Mr. Hoque appeared for his first Master Calendar Hearing. When Mr. Hoque noted that Respondents had not produced evidence in support of the sole charge of removability despite his now more than 2-week detention, Respondents asked for a continuance. (*See* Dkt. 1-7, Pet. Ex. G ¶¶ 9, 12.)

VII. RESPONDENTS DID NOT ADD VISA REVOCATION AS GROUNDS FOR MR. HOQUE’S REMOVAL UNTIL APRIL 18, 2025, AFTER WHICH THEY WITHDREW THE ORIGINAL CHARGE.

On April 18, 2025—the same day Mr. Hoque filed his Petition—Respondents added visa revocation as grounds for removability. (Dkt. 10-2, First Sreekanth Decl. Ex. 15.) Respondents provided notice to Mr. Hoque (via email, while he was still detained) on April 22, 2025—the same day this Court granted Mr. Hoque’s TRO in part.⁸ (Armstrong Decl. Ex. 1.)

At Mr. Hoque’s continued Master Calendar Hearing on April 23, 2025, Respondents *withdrew* their initial charge under Section 237(a)(1)(C) without explanation.⁹ (Second Declaration of Ashley Roth ¶¶ 8-10.)

⁷ Ms. Doyle has been practicing immigration law since 1993 in private practice and with the government. (Doyle Decl. ¶ 2.) She was Principal Legal Advisor (PLA) for ICE, and served on detail as Acting Deputy General Counsel, Office of General Counsel, DHS and Deputy General Counsel. (*Id.*)

⁸ Mr. Hoque received a letter on April 1, 2025 that was undated, unsigned, and not on official letterhead purporting to inform him of his visa revocation. (Dkt 1-5, Pet. Ex. E.) Respondents do not address this April 1, 2025 communication.

⁹ These developments were not reflected in Respondents’ submission.

Respondents have not explained why they arrested and continued to detain Mr. Hoque for weeks on charges that they could not (and never attempted) to prove. Nor have they explained why—if visa revocation was the sole justification for his detention all along—it took weeks for that charge to be asserted.

VIII. MR. HOQUE’S DETENTION IS PART OF RESPONDENTS’ POLICY AND PRACTICE TO DETAIN CERTAIN STUDENTS IN RETALIATION FOR PROTECTED SPEECH AND TO COMPEL OTHERS TO SELF-DEPORT.

Respondents do not address Mr. Hoque’s evidence that his detention is part of a policy and practice to target students who engage in protected speech and use his detention to intimidate other students to self-deport. As Mr. Hoque explained in his Petition, he is not the only student to be detained as a result of protected speech—Ms. Ozturk was arrested and detained three days earlier for the same reasons, despite having no ties to Hamas or terrorist groups. (Pet. ¶¶ 31-32.) Moreover, at or around the time of Mr. Hoque’s detention, international students around the country began receiving notifications that their visas had been revoked and/or their SEVIS records terminated, and that they should self-deport. (*Id.* ¶¶ 40, 43-44.) In response to a data request, the Student and Exchange Visitor Program (SEVP) reported to the Senate and House Committees on the Judiciary on April

10 that more than 4,736 SEVIS records had been terminated.¹⁰ After multiple courts enjoined this practice, Respondents announced a reversal on April 25, 2025.¹¹

Respondents have not explained why Mr. Hoque’s SEVIS record will not be reinstated, or why he—unlike the others—was detained. If Mr. Hoque’s detention is based exclusively on the cited charges, he was treated differently than other similarly situated students who were not detained:

- Doe #2, a student at the University of Iowa with a disorderly conduct conviction. *Doe v. Noem*, No. 3:25-CV-00042-RGE-WPK, 2025 WL 1203472, at *1 (S.D. Iowa Apr. 24, 2025).
- Gexi Guo, a F-1 nonimmigrant in OPT in New York City who “was arrested once in May 2024 for an alleged simple assault, but the charge was dismissed[.]” *Chen v. Noem*, No. 25-CV-03292-SI, 2025 WL 1150697, at *2 (N.D. Cal. Apr. 18, 2025).
- Zeel Patel, pleaded guilty to summary disorderly conduct. *Patel v. Bondi*, No. 1:25-CV-00101, 2025 WL 1134875, at *1 (W.D. Pa. Apr. 17, 2025); *id.* at Dkt. 3.
- Vraj Patel, pleaded guilty to summary disorderly conduct. *Patel v. Bondi*, No. 1:25-CV-00103, 2025 WL 1158708, at *1 (W.D. Pa. Apr. 21, 2025); *id.* at Dkt. 3.
- Krisk Kal Isserdasni, charged with misdemeanor disorderly conduct after he and his friends got into a verbal argument, charges dismissed. *Isserdasani v. Noem*, No. 25-CV-283-WMC, 2025 WL 1118626, at *1 (W.D. Wis. Apr. 15, 2025).

¹⁰ *New Insights into the Growing Number of Actions Against International Students and Scholars*, NAFSA, (April 25, 2025), <https://www.nafsa.org/blog/new-insights-growing-number-actions-against-international-students-and-scholars>. (Second Sreekanth Decl. Ex. 24.)

¹¹ *See, e.g.*, Defendants’ Statement Regarding Reactivation of Plaintiffs’ SEVIS Records, 4:25-cv-03140-JSW, Dkt. 47, (N.D. Cal. Apr. 25, 2025). (Second Sreekanth Decl. Ex. 25.)

Mr. Hoque's access to information is limited to those students who filed federal lawsuits and chose to voluntarily disclose their criminal history. Respondents, who have greater access to the information, did not provide it to the Court.

IX. RESPONDENTS ARE DEPRIVING MR. HOQUE OF NECESSARY MEDICAL CARE.

As a result of the medical conditions previously submitted to the Court, Mr. Hoque has experienced bloody stools every day since he was detained. (Third Hoque Decl. ¶ 1.) He has four hernias,¹² two of which protrude out of his body every time he breathes. (*Id.* ¶ 2.) The other two do not yet protrude, but are swollen and very painful. (*Id.*) If they begin to protrude and he cannot get them to go back in, Mr. Hoque has been told he should go to the emergency room. (*Id.*)

Mr. Hoque has been told that if his hernias are not fixed, there is a chance that parts of his intestines could lose blood supply or burst. (*Id.* ¶ 3.) The longer he waits to have surgery, the more dangerous it may become. (*Id.*) Mr. Hoque is concerned that medical staff who have seen him in detention are downplaying his situation and will only treat him if it gets worse and he needs to be taken to the emergency room. (*Id.* ¶¶ 5, 7.)

ARGUMENT

Respondents' argument that this Court lacks jurisdiction to hear Mr. Hoque's constitutional challenges fails because it is based on a mischaracterization of his claims

¹² A hernia occurs when an organ protrudes through a weak spot in the abdominal muscles. Hernia surgery uses mesh to patch the holes in the abdominal wall. <https://www.mayoclinic.org/diseases-conditions/inguinal-hernia/symptoms-causes/syc-20351547>.

and applicable law. Further, Mr. Hoque has demonstrated that he was retaliated against for protected speech, deprived of due process, and treated in a manner that violated agency policies. Respondents have either not addressed, or failed to rebut, Mr. Hoque's claims. Accordingly, this Court can and should find that Respondents' current proffered justifications are pretextual. The Writ should be granted and Mr. Hoque released.

I. THE COURT HAS JURISDICTION TO REVIEW WHETHER MR. HOQUE'S DETENTION IS CONSTITUTIONAL.

A majority of the Response argues that the Court lacks jurisdiction. "For [Respondents] to prevail [they] must overcome both the strong presumption in favor of judicial review of administrative action and the longstanding rule requiring a clear statement of congressional intent to repeal habeas jurisdiction." *I.N.S. v. St. Cyr*, 533 U.S. 289, 298 (2001) (footnote omitted).

Respondents concede that the "traditional function of the writ is to seek one's release from unlawful detention." (Resp. at 26; *see also id.* ("[T]he writ of habeas corpus and its protections are 'strongest' when reviewing 'the legality of Executive detention.'" (citation omitted)).) Instead of focusing on detention, however, Respondents rely on statutes stripping jurisdiction for challenges Mr. Hoque does not make. Mr. Hoque does not seek an "end to his removal proceedings" or "vacatur of the Secretary of State's determination" as Respondents claim.¹³ (*See id.* at 27.) This mischaracterization of Mr.

¹³ At this time, Mr. Hoque does not seek review or relief regarding any future removal order or any agency adjudication of his removal claims. His request to prevent his unlawful removal relates only to this Court's authority under the All Writs Act, 28 U.S.C. § 1651 to protect its own jurisdiction from the consequences of unlawful removals

Hoque's claims disposes of Respondents' arguments under INA Sections 1201(i), 1252(b)(9) and 1252(a)(5), and 1252(g). Although Section 1226(e) addresses release from detention, it does not strip jurisdiction to hear the constitutional challenges at issue.

A. Section 1201(i) Is Not At Issue in this Case.

Contrary to Respondents' assertion, Section 1201(i), 8 U.S.C. § 1201(i)—which limits judicial review of a visa “revocation under this section”—does not apply because Mr. Hoque is not asking this Court to rule on the validity of his visa revocation at this time.¹⁴ (Resp. at 12-13.) Rather, the circumstances surrounding the purported visa revocation evidence the unconstitutional purpose of his *detention*, in that Respondents decided to detain Mr. Hoque on unconstitutional grounds *before* his visa was revoked, and then used the revocation to further their unconstitutional purpose.

Because the Court need not rule on Mr. Hoque's visa revocation to grant release, and he does not seek a ruling on the application of Section 1201(i), it does not preclude jurisdiction. *See Ozturk v. Trump*, No. 25-CV-10695-DJC, 2025 WL 1145250, at *15 (D. Vt. Apr. 18, 2025) (Section 1201(i) did not apply because “the merits of a visa revocation are not before the Court.”).

Respondents' cited cases do not compel a different result. In two of them, noncitizens directly challenged the merits of visa revocations. *See Aldabbagh v. Sec'y of State*, No. 6:21-CV-532-GAP-EJK, 2021 WL 6298664, at *2 (M.D. Fla. Oct. 5, 2021);

in the absence of any order authorizing it. *See also Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025).

¹⁴ To be clear, Mr. Hoque disputes that his visa revocation was proper.

Tarlinsky v. Pompeo, No. 3:19-CV-659 (VLB), 2019 WL 2231908, at *1 (D. Conn. May 23, 2019). In the third, the petitioner argued that his detention was unlawful solely because the government improperly revoked his visa. *See Bolante v. Achim*, 457 F. Supp. 2d 898, 902 (E.D. Wis. 2006).

Alternatively, if the Court determines that the Petition requires review of the visa revocation, Section 1201(i) does not strip the Court's jurisdiction. First, Section 1201(i) limits review of "discretion[ary]" decisions by the Secretary of State to revoke visas only. 8 U.S.C. § 1201(i). Whether the Secretary of State has exceeded his *authority* by revoking a visa in violation of the Constitution does not require the Court to review the *discretion* granted in Section 1201(i). Discretion "extends only as far as the statutory authority conferred by Congress and may not transgress constitutional limitations." *Abourezk v. Reagan*, 785 F.2d 1043, 1061 (D.C. Cir. 1986), *aff'd*, 484 U.S. 1 (1987); *see also, e.g., Owen v. City of Indep.* 445 U.S. 622, 649 (1980) (holding that the government "has no 'discretion' to violate the Federal Constitution; its dictates are absolute and imperative"); *Loumiet v. United States*, 828 F.3d 935, 944 (D.C. Cir. 2016) ("A constitutional limit on governmental power . . . circumscribes the government's authority even on decisions that otherwise would fall within its lawful discretion.").

Second, because Mr. Hoque's visa revocation "provides the sole ground for removal," Section 1201(i) expressly authorizes "judicial review . . . of a revocation . . . in the context of a removal proceeding." 8 U.S.C. § 1201(i). Respondents argue that judicial review of a visa revocation is limited to a circuit court appeal from a final removal order only. (Resp. at 13 n.6.) However, this interpretation would violate the Suspension Clause.

See U.S. Const. art. I, § 9, cl. 2 (“The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”). Congress may deprive federal courts of habeas jurisdiction without running afoul of the Suspension Clause only if it offers “a collateral remedy which is neither inadequate nor ineffective to test the legality of a person’s detention.” *Swain v. Pressley*, 430 U.S. 372, 381 (1977). The procedure proposed by Respondents does not qualify.

According to Respondents, if the Executive Branch jails a noncitizen for expressing political views it disfavors, the Judicial Branch can do nothing; it must allow the retaliatory detention to continue throughout removal proceedings, including administrative appeals—a process that could take months or years—followed by a petition for review to the circuit court with no meaningful factual record because, according to Respondents, the issue must be addressed by the circuit court in the first instance. This proposal is not a meaningful way to challenge an unconstitutional detention and would gut the habeas remedy. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d 451, 459 (S.D.N.Y. 2018) (requiring that constitutional challenges to arrest and detention be “crammed into a petition for review of a removal order would render such claims effectively unreviewable” (cleaned up)); *Ozturk*, 2025 WL 1145250 at *15 (rejecting the government’s argument that the INA “grants practically limitless, unreviewable power to detain individuals for weeks or months, even if the detention is patently unconstitutional”); Order, *Khalil v. Joyce*, No. 25-CV-01963 (MEF)(MAH) (D.N.J. Apr. 29, 2025) at 55 (“*Khalil*”) (explaining that “the immigration courts could not meaningfully develop this case, legally or factually” and delaying review of petitioner’s claim “knowing that there will be little or nothing to show for it” is

inconsistent with what “the Supreme Court has held over and over again, in numerous contexts, that meaningful review of First Amendment claims generally means rapid, prioritized review”).¹⁵ Respondents’ arguments under Section 1201(i) must be rejected.

B. Sections 1252(b)(9) and 1252(a)(5) Do Not Bar Review.

Respondents also argue that “Section 1252(b)(9) bars relief and review” when “read in conjunction with” Section 1252(a)(5). (Resp. at 15-18.) However, Section 1252(a)(5), 8 U.S.C. § 1252(a)(5), applies only to review of “an order of removal,” which has not been filed. By its plain language this statute does not apply. *See Ozturk*, 2025 WL 1145250 at *13 (“Subsection (a)(5) can be dispensed of quickly, as no ‘removal order’ has been issued here and Ms. Ozturk does not challenge one.”). Similarly, the prefatory language of Section 1252(b) limits subsection (b)(9) to “review of an order of removal.” 8 U.S.C. § 1252(b); *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007) (“By virtue of their explicit language, both §§ 1252(a)(5) and 1252(b)(9) apply only to those claims seeking judicial review of orders of removal.”); Order, *Khalil* at 10 (“Section 1252(b)(9) applies only after a final order of removal has been entered by the immigration courts. The words of the statute say so.”).

Further, Section 1252(b)(9) is not broad enough to bar Mr. Hoque’s case. The Supreme Court rejected Respondents’ argument that Section 1252(b)(9) precludes review of every issue even tangentially connected to removal, calling such an interpretation “absurd.” *See Jennings v. Rodriguez*, 583 U.S. 281, 293-94 (2018) (rejecting broad

¹⁵ A copy of this order is attached as Exhibit 27 to the Second Sreekanth Declaration.

construction of what qualifies as a question “arising from . . . actions taken to remove [an] alien” that would deprive the court of jurisdiction for any collateral issue that could be tied to the removal proceedings and make certain claims “effectively unreviewable”). The Eighth Circuit has never questioned jurisdiction over constitutional challenges to immigration detention, either. *See Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), *rehearing by panel and en banc denied, Banyee v. Bondi*, No. 22-2252, 2025 WL 837914 (8th Cir. Mar. 18, 2025).

Where, as here, a habeas petitioner challenges detention independent of a challenge to a removal order, Section 1252(b)(9) does not strip the Court of jurisdiction. *See Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (confirming that 1252(b)(9) “does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined” (cleaned up)); *Gonzalez v. U.S. Immigr. & Customs Enf’t*, 975 F.3d 788, 810-11 (9th Cir. 2020) (holding that 1252(b)(9) did not bar jurisdiction “because claims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process”); *Hernández v. Gonzales*, 424 F.3d 42, 42-43 (1st Cir. 2005) (holding that detention claims are independent of removal proceedings); *Aguilar v. U.S. Immigr. & Customs Enf’t*, 510 F.3d 1, 11 (1st Cir. 2007) (identifying “challenges to the legality of detention” as squarely outside § 1252(b)(9)’s scope); *Ozturk v. Trump*, No. 25-CV-10695-DJC, 2025 WL 1009445, at *4 n.1 (D. Mass. Apr. 4, 2025) (concluding that Section 1252(b)(9) did not preclude review of a habeas petition alleging the petitioner’s detention violates the Constitution because the

“petition raises challenges ‘wholly collateral’ to removal”); *Ozturk*, 2025 WL 1145250 at *13 (“While Ms. Ozturk’s detention may be related to her immigration status following the revocation of her visa, it does not ‘arise from’ her removal proceedings. . . . Ms. Ozturk was detained before the commencement of her removal proceedings.”).

Respondents’ cited cases do not address Mr. Hoque’s unconstitutional detention. Respondents rely on the Supreme Court’s characterization of Section 1252(b)(9) as a “zipper clause” in *Reno v. Am.-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 483 (1999), but that case was exclusively about removal, not detention. Later Supreme Court decisions have also clarified that Section 1259(b) does not encompass every claim with any possible relation to a removal proceeding. *See Jennings*, 583 U.S. at 294; *Regents of the Univ. of Cal.*, 591 U.S. at 19. Respondents’ other cases stand for the unremarkable proposition that circuit courts can hear constitutional challenges to removal through the petition for review process but are about final orders of removal, not habeas jurisdiction over detention during removal proceedings. (*See Resp.* at 15-18.)

Because Mr. Hoque is not challenging the removal process, only his detention, Section 1252(b)(9) does not apply.¹⁶

C. Section 1252(g) Does Not Bar Review.

Section 1252(g), 8 U.S.C. § 1252(g), limits judicial review of three decisions by the Attorney General: (1) to commence removal proceedings, (2) to adjudicate cases, and (3) to

¹⁶ If the Court concludes that Section 1252(b)(9) strips it of jurisdiction, then the statute must be found to violate Suspension Clause for the reasons discussed in section I.A., *supra*.

execute removal orders. *See, e.g., Jennings*, 583 U.S. at 294 (explaining that Section 1252(g) does not “sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves”); *AADC*, 525 U.S. at 482 (explaining that Section 1252(g) does not strip the federal courts of jurisdiction over claims challenging the multitude of “other decisions or actions that may be part of the deportation process”). It does not cover “the universe of deportation claims” and is not a “shorthand way of referring to all claims arising from deportation proceedings.” *AADC*, 525 U.S. at 482.

Respondents cite inapposite cases with requests to enjoin or overturn the commencement of removal proceedings¹⁷ or the execution of final removal orders¹⁸—which is not what Mr. Hoque seeks.

¹⁷ *See, e.g., AADC*, 525 U.S. at 474 (suit “to prevent the initiation of deportation proceedings”); *Taal v. Trump*, No. 3:25-CV-335 (ECC/ML), 2025 WL 926207, at *2 (N.D.N.Y. Mar. 27, 2025) (plaintiffs sought to “enjoin the commencement of removal proceedings”); *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 598-99 (9th Cir. 2002) (petitioner argued the “the INS should have commenced deportation proceedings against her” sooner); *Alvarez v. U.S. Immigr. & Customs Enf’t*, 818 F.3d 1194, 1203 (11th Cir. 2016) (petitioner “essentially asks this Court to find that the agency should have chosen a different method of commencing proceedings”).

¹⁸ *Silva v. United States*, 866 F.3d 938, 939 (8th Cir. 2017) (seeking compensation for improper execution of removal order); *Hamama v. Adducci*, 912 F.3d 869, 875 (6th Cir. 2018) (jurisdiction existed for “detention-based claims” but not “removal-based claims,” which sought to enjoin the execution of removal orders); *Ruiz v. Johnson*, No. 14-CV-1721 MJD/TNL, 2014 WL 2511094, at *2 (D. Minn. June 4, 2014) (construing a habeas petition “to be challenging the validity of Petitioner’s removal order” where the relief requested was “a reversal of the IJ order”); *Alonso v. Off. of Couns./Immigr. & Customs Enf’t*, No. 13CV02514 MJD/JJK, 2013 WL 5999485, at *4 (D. Minn. Nov. 12, 2013) (petitioner is not “challenging his ongoing custody” but the enforceability of the “deportation order”).

Mr. Hoque seeks an end to his current unconstitutional detention, which is not encompassed by Section 1252(g). *See, e.g., Bello-Reyes v. Gaynor*, 985 F.3d 696, 700 n.4 (9th Cir. 2021) (holding that Section 1252(g) did not deprive jurisdiction to hear a habeas petition alleging that detention pending removal was First Amendment retaliation because the petitioner was not challenging any of “the three actions listed”); *Ozturk*, 2025 WL 1009445 at *4 n.1 (concluding that Section 1252(g) does not preclude review of a habeas petition alleging noncitizen student’s detention violates the First and Fifth Amendment); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (Section 1252(g) is no impediment to adjudicating challenges to “detention while the administrative process lasts”). Section 1252(g) does not bar Mr. Hoque’s habeas petition.

D. Section § 1226(e) Does Not Bar Review.

The last statute Respondents cite is Section 1226(e) (Resp. at 14–15), which authorizes the detention of noncitizens pending a decision on removal and permits the Attorney General to detain noncitizens or release them on bond (except when detention is mandatory). 8 U.S.C. § 1226(e). Although it states that the “Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review,” it does not bar this Petition.

As a preliminary matter, “Section 1226(e) contains no explicit provision barring habeas review.” *Demore v. Kim*, 538 U.S. 510, 517 (2003). If “Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear.” *Webster v. Doe*, 486 U.S. 592, 603 (1988).

More importantly, Mr. Hoque does not challenge the “Attorney General’s discretionary judgment;” rather, he challenges whether the Attorney General has the authority to detain him as retaliation for political speech. Courts “have balked at applying the jurisdiction-stripping provision of Sections 1226(e)” in cases—like this one—“where habeas petitions assert constitutional claims challenging the extent of the Attorney General’s authority, rather than his discretionary decisions.” *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 924–25 (W.D. Tex. 2018) (collecting cases).

The Attorney General “does not have the discretion to violate the Constitution,” so claims that noncitizen detention violates the constitution properly “charge the Attorney General with exceeding his lawful authority.” *Id.* at 925; *see also Wong v. United States*, 373 F.3d 952, 963 (9th Cir. 2004) (“[D]ecisions that violate the Constitution cannot be ‘discretionary[.]’”); *Myers & Myers, Inc. v. U.S. Postal Serv.*, 527 F.2d 1252, 1261 (2d Cir. 1975) (“[A] federal official cannot have discretion to behave unconstitutionally[.]”); *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011) (“[C]laims that the discretionary process itself was constitutionally flawed are ‘cognizable in federal court on habeas because they fit comfortably within the scope of § 2241.’” (citation omitted)); *Oyelude v. Chertoff*, 125 F. App’x 543, 546 (5th Cir. 2005) (“We retain jurisdiction to review [petitioner’s] detention [despite Section 1226(e)] insofar as that detention presents constitutional issues, such as those raised in a habeas petition.”); *Ozturk*, 2025 WL 1009445 at *4 n.1 (concluding that Section 1226(e) did not prevent review of a similar habeas petition because it “does not challenge the government’s discretionary authority” but rather “the legality of her detention under the First and Fifth Amendments and the APA”); *Ozturk*, 2025 WL 1145250 at *11

(“Congress understood § 1226(e) does not operate as a categorical bar to habeas review of detention”).

Respondents’ cases undercut their argument. In *Velasco Lopez v. Decker*, Section 1226(e) did not bar review of a habeas petition challenging detention because whether petitioner “received the due process to which he was entitled ‘is not a matter of discretion’ and is subject to judicial review.” 978 F.3d 842, 850 (2d Cir. 2020) (quotation marks and citation omitted). Similarly, *Ortega v. Bonnar* found jurisdiction to review a habeas petition regarding revocation of bond because it did not challenge DHS’s “discretion,” but its “ability” to act—“the government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process.” 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (quotation marks and citation omitted).¹⁹

Respondents’ discretion ends where the constitution begins. A statute cannot give the Executive Branch discretion to violate the constitution, nor does Section 1226(e) strip jurisdiction to review such violations.

E. The Court Can Extend its Order Preventing Mr. Hoque from Being Transferred out of this District.

Transfer out of this district would prevent Mr. Hoque from fully and fairly adjudicating his Petition. He would lose access to his community, family, and legal

¹⁹ Respondents cite *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106 (W.D. Pa. Mar. 12, 2024), which is not a Section 1226(e) case, and *Mayorga v. Meade*, No. 24-CV-22131, 2024 WL 4298815 (S.D. Fla. Sept. 26, 2024), which is factually distinct—the petitioner challenged whether the police had probable cause for arrest and the immigration judge refused to consider a late-filed brief.

counsel, and be forced to re-file in a new jurisdiction. It is necessary and proper for the Court to continue to retain jurisdiction over Mr. Hoque while his Petition is pending.

For the same reasons, in the alternative to release, it is also proper for the Court to extend its order prohibiting transfer while he remains in removal proceedings. “[H]abeas corpus is, at its core, an equitable remedy[.]” *Schlup v. Delo*, 513 U.S. 298, 319 (1995). *See also Huss v. Graves*, 252 F.3d 952, 958 (8th Cir. 2001). The “flexibility” inherent in “equitable procedure” enables courts “to accord all the relief necessary to correct . . . particular injustices.” *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944). Mr. Hoque has access to pro bono legal counsel in Minnesota for his immigration proceedings, including any appeals, as well as to safeguard his constitutional rights through this habeas action. If he is transferred, his access to those resources and ability to protect his rights will be severely impaired.

II. MR. HOQUE SHOULD BE RELEASED BECAUSE THE GOVERNMENT’S DETENTION OF HIM VIOLATES THE FIRST AMENDMENT.

Mr. Hoque is entitled to First Amendment protections.²⁰ His rights, however, were violated when Respondents arrested and detained him in retaliation for his speech in support of Palestinians. His detention is unconstitutional and he should be released.

²⁰ Respondents argue that a noncitizen’s First Amendment rights are “less robust” than those of citizens in “certain discrete areas,” relying on *Harisiades v. Shaughnessy*, 342 U.S. 580, 591–92 (1952). (Resp. at 39.) *Harisiades* “stands out” as “an extreme application of the expulsion power” and is not applicable here. 342 U.S. at 588. It affirmed the removal of noncitizens under the Alien Registration Act due to their former association with the Communist Party at a time in which it “advocate[d] overthrow of the [United States] Government by force and violence.” *Id.* at 582. In drafting the Act, “Congress received evidence that the Communist movement here has been heavily laden with aliens and that Soviet control of the American Communist Party has been largely through alien

A. Mr. Hoque Made a Prima Facie Case of First Amendment Retaliation.

A habeas petitioner makes a prima facie case of First Amendment retaliation by establishing that “(1) [the petitioner] engaged in [constitutionally] protected activity; (2) [the respondents] caused an injury to [petitioner] 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) (stating elements of First-Amendment retaliation claim); *Sheldon v. Hundley*, 83 F.3d 231, 232–33 (8th Cir. 1996) (recognizing First Amendment retaliation claim may be asserted in habeas action); *Bello-Reyes*, 985 at 699–700 (setting forth the elements of a First Amendment retaliation claim in a habeas action).²¹

Respondents do not dispute that Mr. Hoque made a prima facie case for the first two elements of First Amendment retaliation.²² He engaged in constitutionally-protected speech—his public expression of support for Palestinians. (*See* Dkt. 8, Pet. Mem. Supp. TRO at 19-20; Dkt. 15, TRO Order at 5.) And, detention or other loss of liberty would chill the speech of persons of ordinary firmness. (*See* Dkt. 8 at 20-21; TRO Order at 5.)

Communists.” *See id.* at 590. None of those factors are present here. Rather, Mr. Hoque was retaliated against because of his political speech in support of Palestinians, which is squarely protected by the First Amendment.

²¹ Respondent’s attempt to limit *Sheldon* to the specific scenario at issue in that case—extension of detention—is inconsistent with decisions of other circuit courts, including the seminal decision by the Ninth Circuit in *Bello-Reyes*. Respondents do not address, or even cite, *Bello-Reyes*.

²² Respondents also do not disclaim that the Policy is viewpoint discrimination, or that Mr. Hoque’s detention is not viewpoint discriminatory.

Although Respondents contest the third element, Mr. Hoque has demonstrated that his protected speech was a substantial or motivating factor in his detention. (*See* Dkt. 8 at 20-21; TRO Order at 5-6.) As the Court recognized:

The record supports a plausible inference that DHS targeted Petitioner based on his public expression of support for Palestinian human rights and his criticism of violence in Gaza. This aligns with a broader pattern of surveillance and punitive immigration enforcement against similarly situated students, as documented by DHS policy memoranda and public statements by federal officials.

(TRO Order at 5.)

This third element is established in multiple ways. First, there is the the timing between President Trump's Executive Orders targeting protected speech at college campuses and retaliatory actions against those who engaged in protected speech such as Ms. Ozturk.²³ *See Hossaini v. W. Mo. Med. Ctr.*, 97 F.3d 1085, 1089 (8th Cir. 1996) (holding that a reasonable factfinder could infer that defendant's explanation for plaintiff's discharge was pretextual where defendant launched investigation into allegedly improper conduct by plaintiff shortly after she engaged in protected activity); *Gutierrez-Soto*, 317 F. Supp. at 934 (noting that temporal proximity between criticism and revocation of parole, combined with comment from officials, and pattern of conduct regarding targeting of other activists, was sufficient to create genuine issue of material fact regarding retaliatory conduct).

²³ *See* Pet. ¶¶ 17-37.

Second, Respondents' past and recent public statements continue to demonstrate Respondents' retaliation against speech with which the Executive Branch disagrees,²⁴ in the absence of any connection to terrorist groups.²⁵ *See Abella v. Simon*, 522 F. App'x 872, 874 (11th Cir. 2013) (explaining that pattern of abuse weighed in favor of showing causal nexus in First Amendment retaliation claim). For example, after the filing of this and other actions by the ACLU and others, DHS Assistant Secretary Tricia McLaughlin stated:

The American Civil Liberties Union appears far more interested in protecting foreign students than the civil liberties and safety of Americans. They should consider changing their name. It is a privilege to be granted a visa to live & study in the United States of America . . . When you break our laws and advocate for violence and terrorism, that privilege should be revoked, and you should not be in this country.

(Second Sreekanth Decl. Ex. 26.)

Third, there is evidence that social media has been and will continue to be used by Respondents in identifying individuals who speak on issues with which Respondents disagree, and will continue to be used in the immigration context.²⁶

Although Respondents rely on the singular statement that “there is no mention in the record of Hoque’s removal proceedings or DHS’s submission of Hoque’s prior speech”

²⁴ *See* Pet. ¶¶ 17-37.

²⁵ There is no evidence that Ms. Ozturk supported Hamas or terrorist organizations. (Dkt. 8 at 22.)

²⁶ Pet. ¶ 33; Healy, et al., *supra* n. 3 (First Sreekanth Decl. Ex. 9); U.S. CITIZENSHIP AND IMMIGR. SERVS., *DHS to Begin Screening Aliens’ Social Media Activity for Antisemitism* (Apr. 9, 2025), <https://www.uscis.gov/newsroom/newsreleases/dhs-to-begin-screening-aliens-social-media-activity-for-antisemitism>. (First Sreekanth Decl. Ex. 11.)

(Resp. at 4),²⁷ the information they did provide—and what they did not—further demonstrate that Mr. Hoque’s protected speech was a substantial or motivating factor in his detention.

As discussed above, DHS made the determination to detain Mr. Hoque on or before March 22, 2025, and communicated that decision to DOS, who then purportedly “silently” revoked Mr. Hoque’s visa so that DHS could follow-through on its original decision to detain him. The March 22 communication from DHS to DOS, DOS’s assessment of the purported grounds for revocation, and the actual visa revocation by DOS are not in the record. Respondents conspicuously *do not* offer sworn testimony regarding whether any of the individuals at DHS or DOS who were purportedly involved in the March 22 and March 23 decisions were aware of or motivated by Mr. Hoque’s protected speech. Respondents also do not deny that Mr. Hoque’s social media was examined in connection with the March 22 or 23 decisions made by DHS or DOS, or address the timing of Mr. Hoque’s detention in proximity to Respondents’ use of social media to identify instances of protected speech.²⁸ Moreover, Respondents do not explain why Mr. Hoque’s SEVIS record was terminated as a result of a visa revocation, or why a “DHS Official” cited the Foreign Policy Grounds, which was used by Respondents in other cases involving free-speech retaliation, and later removed from Mr. Hoque’s SEVIS record without explanation.

²⁷ Respondents’ position appears to be that the absence of formal documentation of their violation of the First Amendment is dispositive as to any claim for retaliation. If that is to be taken seriously, then no claim of retaliation would succeed unless and until the government admitted to it.

²⁸ Healy, et al., *supra* n. 3 (First Sreekanth Decl. Ex. 9).

Respondents also do not justify why Mr. Hoque should continue to be detained, or that their decision to invoke the automatic stay provision was made by individuals who were not aware of or motivated by his protected speech.

Mr. Hoque’s affirmative evidence—combined with Respondents’ telling omissions—make a prima facie case of First Amendment retaliation.

B. Respondents Have Not Shown By Preponderance of the Evidence that They Would Have Detained Mr. Hoque in the Absence of His Protected Speech.

Because the elements of a First-Amendment retaliation claim are undisputed or satisfied, the burden now shifts to Respondents 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 and citations 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*, 985 F.3d at 702 (internal quotation marks and citation omitted).

Respondents have not met this burden. There is nothing about Mr. Hoque’s case warranting detention, other than Respondents’ disagreement with his protected speech. Respondents have not provided any alternative reason for his detention.

Their assertion that “the Government *initiated removal* proceedings against Hoque based on . . . ‘criminal activities [that] create a public safety risk’” does not hold water. (Resp. at 38 (emphasis added).) The only apparent facts upon which it is based are a

dismissed fifth degree assault charge, and a disorderly conduct conviction for which Mr. Hoque was never arrested, detained, or jailed—based on events that occurred two years before DHS’s decision to detain him, and after which Mr. Hoque completed probation and had no further interactions with law enforcement. Indeed, the immigration judge—using the same information—reached the opposite conclusion. (Pet. Ex. B.) Similarly, when Mr. Hoque was questioned about the assault and disorderly conduct charges upon re-entering the country while his charges were pending, he was not detained. (First Hoque Decl. ¶¶ 33-34.) As noted above, public records demonstrate that international students with similar charges and convictions were *not detained*.²⁹ Further, Respondents’ use of the automatic stay of the immigration judge’s grant of bond is unusual and a departure from past practice both generally, and in Mr. Hoque’s case. (Doyle Decl. ¶¶ 7, 9, 12.) This demonstrates that Mr. Hoque’s detention would not have occurred but for something else—namely, his protected speech.

C. **Respondents’ Argument that their Unconstitutional Conduct is Excused Because They Purportedly Had “Probable Cause” for Arresting Mr. Hoque Should be Rejected.**

Respondents argue that even if Mr. Hoque’s detention was based in whole or in part on the exercise of his constitutional rights, it is not subject to judicial review because they have—weeks after he was detained—finally settled on a “facially valid reason” to initiate removal proceedings: his purported visa revocation. (Resp. at 38.) This argument fails.

²⁹ See *supra*, Background Section VIII.

First, Respondents cannot overcome a retaliation claim based solely on probable cause in the immigration context. *See Bello-Reyes*, 985 F.3d at 701 (holding that *Nieves v. Bartlett*, 587 U.S. 391 (2019) did not apply to revocation of immigration court bond by ICE because that determination did not require probable cause); *Ozturk*, 2025 WL 1145250 at *19 (“[G]iven the different nature of criminal detention and immigration detention, as discussed above, it is not altogether clear that [*Nieves*] controls the habeas inquiry) (citing *Gonzalez v. Trevino* 602 U.S. 653, 658 (2024) (rejecting an “overly cramped” reading of the *Nieves* standard)). As the Court recognized in *Bello-Reyes*, extending the probable-cause requirement to this situation would “effectively eliminate almost any prospect of obtaining release on habeas for actually retaliatory, unconstitutional” conduct after the initial detention. 985 F.3d at 701.

Probable cause is also inapposite in a situation, like here, where detention was based not on the conduct of Mr. Hoque, but rather on that of Respondents. *See Bello-Reyes*, 985 F.3d at 701. In other words, when the government is responsible for creating the circumstances it claims constitute probable cause, that determination should not be the basis to avoid a claim for retaliation. *Ozturk*, 2025 WL 1145250 at *19 (“*Nieves* serves to highlight the importance of identifying the motive for detention.”).

Second, reliance on probable cause fails when discretion is used to decline the same action against others who are similarly situated.³⁰ *See Nieves*, 587 U.S. at 406 (“Although

³⁰ Respondents’ argument that Mr. Hoque “makes no attempt to show that similarly situated individuals were not detained” ignores that Respondents are in the best position to

probable cause should generally defeat a retaliatory arrest claim, a narrow qualification is warranted for circumstances where officers have probable cause to make arrests, but typically exercise their discretion not to do so.”). As noted above, other students with similar criminal histories do not appear to have been detained, even though their SEVIS records were terminated. That Mr. Hoque would not have been detained based on his 2023 charges is also evidenced by the fact that he was permitted to enter the United States while the charges were pending. Respondents’ use of the “extraordinarily rare” automatic stay, particularly for someone with Mr. Hoque’s background, is a departure from the government’s typical practice. (Doyle Decl. ¶¶ 7, 12.) This is sufficient to demonstrate that Mr. Hoque was detained not for his purported danger to the public, but in retaliation for his protected speech. *See, e.g., Gonzalez*, 602 U.S. at 658 (noting that the burden is not to provide “virtually identical and identifiable comparators” but rather objective evidence that the arrest occurred in circumstances where officers typically exercise their discretion not to do so).

Third, whether the specific officer who made the arrest was acting in good faith, or had knowledge of the protected speech being retaliated against, is not relevant because there was an official policy of retaliation and intimidation of Mr. Hoque and others who engage in protected speech. *See Lozman v. Riviera Beach*, 585 U.S. 87, 100 (2018) (knowledge or good faith of arresting officer does not defeat claim when retaliation against

make this individual comparison, because they are in exclusive possession of facts regarding other similarly-situated events.

protected speech involves more government action than mere arrest, but is pursuant to an official government policy of intimidation). As such, Ms. Minner's assertion that the arresting officers were not aware of Mr. Hoque's protected speech is not relevant. (Minner Decl. ¶ 8.)

Finally, it is unclear whether there was, in fact, probable cause for Mr. Hoque's arrest and detention. The Warrant merely cites to the Notice to Appear, which is in turn based on loss of status under Section 237(a)(1)(C). There are no facts in the Notice to Appear that Mr. Hoque stopped going to school, had a qualifying criminal conviction, or did anything to cause a loss of status. Respondents never presented any argument or evidence in immigration court to defend the initial charge, and did not advise this Court that it was, in fact, withdrawn on April 23, 2025. Today, Respondents' assert that his detention was based exclusively on their action of revoking his visa.

D. Because Respondents Detained Mr. Hoque in Retaliation for His Protected Speech, He Must Be Released.

In sum, Mr. Hoque has established that he was arrested and detained in retaliation for political speech protected by the First Amendment. Respondents failed to meet their burden that he would have been arrested and detained without such protected speech. And, their reliance on purported probable cause for Mr. Hoque's arrest cannot be sustained. Accordingly, Mr. Hoque's writ should be granted and he should be released.

III. MR. HOQUE SHOULD BE RELEASED BECAUSE RESPONDENTS' DETENTION IS RETALIATORY AND PUNITIVE IN VIOLATION OF THE FIFTH AMENDMENT.

The Court should order Mr. Hoque released for the independent reason that Respondents arrested and are detaining him for punitive purposes that have no basis in

statute and violate his fundamental rights to liberty and due process. Specifically, Respondents are detaining Mr. Hoque in order to retaliate against his exercise of constitutionally-protected speech as a Muslim who supports Palestinian rights and to intimidate other international students into self-deporting for fear of a similar fate. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (noting that immigration detention must “bear a reasonable relation to the purpose for which the individual [is detained]” so that it is “nonpunitive in purpose and effect” (cleaned up)). In addition, Mr. Hoque’s detention is being unconstitutionally prolonged by DHS’ targeted use of an automatic stay of Mr. Hoque’s bond order in the absence of any individualized justification or additional showing of danger or flight risk.

Respondents misconstrue Mr. Hoque’s due process claim as one challenging the constitutionality of the general processes governing immigration detention and argue that immigration detention as a concept is “constitutional and is supported by legitimate governmental objectives.” (Resp. at 32.) Mr. Hoque, however, contends that his arrest and continued detention serve no legitimate purpose so as to deprive Mr. Hoque of his right to due process.

A. Removal Proceedings Do Not Immunize Respondents from All Constitutional Challenges.

Respondents maintain that Mr. Hoque’s arrest and detention are legal because they have commenced removal proceedings and detention during removal proceedings is permissible. (*See* Resp. at 31–33.) However, the Court has authority to review challenges to the constitutionality of an arrest and detention, even in the immigration setting. *See*

Carlson v. Landon, 342 U.S. 524, 532–33 (1952) (acknowledging that authority to “expel aliens” is, “of course, subject to judicial intervention under the ‘paramount law of the constitution.’” (citations omitted)); *Deng Chol A. v. Barr*, 455 F. Supp. 3d 896, 901 (D. Minn. 2020) (noting that the court “may review immigration-related detentions to determine if they comport with the demands of the Constitution”). Indeed, Respondents concede that “the Eighth Circuit reads section 1226 to allow for *constitutional* detention during removal proceedings[.]” (Resp. at 37 (emphasis added).) Mr. Hoque has a right to be released where, as here, his arrest and detention run afoul of the Constitution, are unjustified under immigration law, and bare no reasonable relation to any legitimate government purpose. See *Zadvydas*, 533 U.S. at 690 (noting that the Fifth Amendment prohibits immigration detention that is punitive in purpose or effect).

Respondents’ argument that they may detain Mr. Hoque for unidentified reasons other than mitigating flight risk and preventing danger to the community even if they run afoul of the constitution, citing *Wing*, *Carlson*, and *Miranda*, is similarly not supported. (Resp. at 32-33.) In *Wing*, the Supreme Court held that the Chinese Exclusion Act’s provision imposing hard labor as imprisonment without affording the right to a trial violated due process. *Wing v. United States*, 163 U.S. 228, 235–37 (1896). *Wing* did not address whether it is possible for detention during removal proceedings to violate the Constitution, and it plainly does not apply here.

Respondents argue *Carlson* is “particularly instructive,” but the Red Scare detentions in *Carlson* were predicated on a specific legislative enactment—the Internal Security Act—which was intended to “deport all alien Communists as a menace to the

security of the United States” based on specific Congressional findings that the “Communist organization in the United States . . . present[s] a clear and present danger to the security of the United States.” *Hernandez-Lara v. Lyons*, 10 F.4th 19, 36 (1st Cir. 2021); *see also Carlson*, 342 U.S. at 542; *Harisiades v. Shaughnessy*, 342 U.S. 580, 590 (1952). Unlike the noncitizen in *Carlson*, Mr. Hoque was not detained for these reasons.

In *Miranda*, the petitioners challenged “the government’s procedures for conducting § 1226(a) bond hearings” and requested, among other things, relief “that prohibits further detention without a constitutionally adequate bond hearing[.]” *Miranda v. Garland*, 34 F.4th 338, 347 (4th Cir. 2022). *Miranda* held that the noncitizen’s “three opportunities” to seek bail did not deny due process simply because the statutory scheme “places the burden of proof on him, adopts the preponderance of evidence standard and fails to require every immigration judge to consider either the [noncitizen’s] ability to pay any amount of bond assessed or alternatives to detention.” *Id.* at 358. The Fourth Circuit *did not* hold that an individual may be detained for reasons other than flight risk and danger to the community. Moreover, unlike *Miranda*, Mr. Hoque challenges the grounds for his arrest and detention based on a violation of the First and Fifth Amendments. Thus, *Miranda*’s conclusion regarding “what process the Constitution requires the government to provide in a § 1226(a) bond hearing” is not relevant. *Id.* at 358.

Respondents also argue that Mr. Hoque has not been deprived of process because he allegedly has had a “short period of detention” and “process afforded.” But Mr. Hoque does not challenge the length of his detention—he asserts his detention violated the Constitution the moment it began and every moment since. Moreover, Respondents’

contention that Mr. Hoque is not being denied due process because he has appeared in front of an immigration judge ignores the Constitution and mischaracterizes Mr. Hoque's habeas claims as challenging the procedural framework of removal proceedings rather than the legality of his particular arrest and detention. Indeed, Respondents ignore their own position that the immigration judge lacks authority to review the constitutionality of a noncitizen's arrest, detention, and visa revocation. (*See Resp.* at 36.)

Contrary to Respondents' suggestion, *Ali* did not decide, let alone address, the due process concerns underlying the discretionary authority to authorize pre-removal detention. *Ali v. Brott, et al.*, No. 19-1244, 2019 WL 1748712 (8th Cir. Apr. 16, 2019). Rather, the Eighth Circuit reversed the district court's determination that, as a *statutory* matter, Section 1226(a) required a reasonableness limitation to be read into the discretion to impose pre-removal detention under the doctrine of constitutional avoidance.³¹ *Id.* at *4. On remand, the district court held that pre-removal detention *did* violate the Due Process Clause. *Ali v. Sessions*, No. CV 18-2617 (DSD/LIB), 2019 WL 13216940, at *3 (D. Minn. July 30, 2019) (granting writ where the petitioner's "current immigration detention is based entirely on the attorney general's exercise of discretionary authority, an authority subject to the constitutional requirement of due process"). *Ali* supports Mr. Hoque, not Respondents.³²

³¹ To the extent the Eighth Circuit's statutory interpretation of § 1226(a) is relevant at all, *Ali* is an unpublished decision and is not precedential. 8th Cir. R. 32.1A.

³² This case does not implicate the mandatory detention provisions of 8 U.S.C. § 1226(c), so Respondents' reliance on *Demore* is similarly misplaced. 538 U.S. at 513; *see* 8 U.S.C. § 1226(c)(1)(B) (requiring pre-removal detention for anyone convicted of an aggravated felony or a crime involving moral turpitude). Further, the Eighth Circuit's mandatory detention precedent, *Banyee*, 115 F.4th 928, is incorrect, and the positions of

B. Mr. Hoque's Detention is Unconstitutional Because It is Not for Legitimate Purposes.

Mr. Hoque has established that his arrest and continued detention lacks lawful purpose and is punitive in both purpose and in effect. (*See* Pet. ¶¶ 51–79.) Respondents fail to respond to the majority of this evidence. For example, Respondents do not address the chilling effect Mr. Hoque's detention has on other international students.

The portions of Mr. Hoque's evidence that Respondents *do* address are unpersuasive. First, Respondents make the bald assertion that Mr. Hoque has not shown that his detention was based upon his speech. (Resp. at 33.) Yet, Respondents conspicuously failed to present key evidence, or deny that key decision makers were not aware of his protected speech.

Second, Respondents argue that Mr. Hoque is distinguishable from other cases (presumably Oztek and Khalil) because “[i]n each of those cases, the United States invoked foreign policy as a basis for revocation and/or removability.” (Resp. at 33.) Respondents ignore that on March 28, 2025, Mr. Hoque's SEVIS record was terminated based on the Foreign Policy Grounds.³³ (Dkt. 1-5, Petition Ex. D.)

Third, Respondents state that the “rationale for [Mr. Hoque's] arrest and detention has not changed.” (Resp. at 33–34.) This is not true. DHS's initial determination that Mr. Hoque should be detained was not based on a visa revocation, but rather *predated* the

the Third Circuit in *German Santos v. Warden Pike Cnty, Correctional Facility*, 965 F.3d 203 (3rd Cir. 2020) and the Second Circuit in *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024), place proper due process limitations on 1226(c) mandatory detention.

³³ Again, Mr. Hoque remained in valid student status up to and until he was detained. (Pet. ¶¶ 49-51.)

DOS's purported revocation. The Warrant and Notice to Appear used to detain him on March 28, 2025 cited "failure to maintain status" as the grounds for removability—not the visa revocation. (Minner Decl. Exs. 4, 5.) Further, the termination of Mr. Hoque's SEVIS status could not have been based on a visa revocation per DHS policy, and cited Foreign Policy Grounds. (Pet. Ex. D.) It was not until April 18, 2025, that Respondents sought to add a charge for removal based on a purported visa revocation. (First Sreekanth Decl. Ex. 15.) Days later, they sent an email to Mr. Hoque (who was then in detention) purportedly informing him of the visa revocation. (Armstrong Decl. Ex. 1.) A day after that, Respondents withdrew the original charge for removability. (Second Roth Decl. ¶¶ 8-10.) Thus, it was not until April 23, 2025 that Respondents settled on the purported reason for Mr. Hoque's detention and removal. Rather than explain the shift in rationale, Respondents ignore it all together. (*See* TRO Order at 7 (noting the "inconsistent and unexplained shift in rationale raises serious concerns about pretextual enforcement").)

Fourth, Respondents ask the Court to infer that Mr. Hoque's protected speech was not the basis for his detention from the fact that Mr. Hoque's "speech is not mentioned in the record of proceedings in the immigration court." (Resp. at 34.) Respondents' position seems to be that the government only violates the First and Fifth Amendment when it explicitly admits as much on the record in immigration court. This cannot be.

Fifth, Respondents state that the policy of scouring social media post-dates the revocation of Mr. Hoque's visa. (Resp. at 34.) The Executive Orders evidencing an intent to use the immigration system unlawfully against noncitizens who have engaged in constitutionally protected speech were issued in January 2025. (Pet. ¶¶ 17-20.) The Policy

was in effect in early March 2025.³⁴ By the end of March, the New York Times was already reporting on Respondents' use of social media to target protected speech "for weeks[.]"³⁵ The fact that DHS did not publicly announce that it was screening social media until April 2025³⁶ does not, as Respondents suggest, prove they were not engaging in the same activity weeks before that.

Rather than rebutting Mr. Hoque's evidence, Respondents cite generally to "public safety" as the grounds for the purported visa revocation, with no explanation or evidence supporting this assertion. (*See generally* Resp. at 1, 3.) Nor do Respondents provide a reason why Mr. Hoque is being detained when other international students with similar criminal histories are not and have not been. (*See, supra* Background Section VII.) Respondents also ignore that Mr. Hoque's criminal record alone is not grounds for visa revocation or termination. (Pet. ¶ 51; First Hoque Decl. ¶¶ 26-32.)

Respondents also mischaracterize Mr. Hoque's claim when they argue that DHS's automatic stay of an immigration judge's bond order does not violate Mr. Hoque's right to due process. Mr. Hoque claims that Respondents' extraordinary invocation of the automatic stay regulation is additional evidence that Respondents targeted him for arrest and detention with the unconstitutional purposes of retaliating against him for protected

³⁴ Dkt. 1-9, Pet. Ex. I.

³⁵ Healy, et al., *supra* n. 3 (First Sreekanth Decl. Ex. 9)

³⁶ 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>.

speech and compelling other international students to abandon their status and self-deport. He asserts that the automatic stay regulation *as applied* to him by Respondents violates his constitutional rights under the First and Fifth Amendment.³⁷

Further, Respondents claim that *Farias v. Garland, et al.*, No. 24-cv-04366 (MJD/LIB) (D. Minn.) (Dec. 6, 2024) supports what the Court characterized as “prolonged detention [of Mr. Hoque] without an individualized justification” (TRO Order at 7). (Resp. at 35–37.) It does not. *Farias* is an unpublished nonprecedential decision concerning a DHS regulation requiring Immigration Judges to categorically deny release to any detainee subject to removal under a provision of § 1227 (related to espionage, terrorism, foreign policy, and national security). *See* 8 C.F.R. § 1003(h)(1)(i)(C). Beyond a rudimentary analogy between non-convicted, pre-removal noncitizens challenging their deportation and incarcerated individuals seeking “good time credit” from the Bureau of Prisons, *Farias* did not consider a due process challenge—only a challenge to the validity of the regulation issued by DHS under the statute passed by Congress. *See* TRO Order at 5–7, *Farias v. Garland*, No. 0:24-cv-04366-MJD-LIB (D. Minn. Dec. 6, 2024), ECF No. 18.

C. Respondents Do Not Address the Correct Duration of his Detention.

Respondents did not provide a response to the Court’s request to “establish the . . . correct duration of [Mr. Hoque’s] detention[.]” (Order at 2.) It may be inferred that they seek to detain him for the duration of his removal proceedings.

³⁷ In this respect, Mr. Hoque’s constitutional claim differs from those addressed in *Gunaydin v. Trump, et al.* No. 25-CV-01151 (JMB/DLM), 2025 WL 1218301, at *3 (D. Minn. Apr. 28, 2025).

IV. MR. HOQUE'S DETENTION IS UNLAWFUL UNDER THE *ACCARDI* DOCTRINE.

Respondent's retaliatory and punitive arrest and detention falls under the *Accardi* doctrine because it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); *see also United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265-68 (1954) (noting that agencies must adhere to their own binding regulations, both substantively and procedurally).

First, DHS memoranda prohibit enforcement based on exercise of First Amendment rights. (Dkt. 8 at 30.) Respondents' Policy of targeting students—such as Mr. Hoque—for protected speech violates these memoranda. (*Id.*) Respondents do not deny the prohibitions in DHS guidance, or that retaliation against protected speech violates them.

Second, as the Court recognized, the fact that DHS terminated Mr. Hoque's SEVIS record "without invoking one of the permissible bases points to a departure from agency rules," because under DHS policy, visa revocation does not justify SEVIS termination. (TRO Order at 6.) Numerous courts have already concluded that termination of SEVIS records based on unexplained and improper grounds states a colorable APA claim.³⁸

³⁸ *See, e.g., Doe v. Trump, et al.*, No. CV-25-00174-TUC-JGZ, 2025 WL 1192826, at *7 (D. Ariz. Apr. 24, 2025) (finding that the government's unexplained reason for SEVIS termination is "unlikely to be satisfactory and runs counter to the evidence before the agency"); *Doe v. Noem*, No. 2:25-CV-00633-DGE, 2025 WL 1141279, at *6–7 (W.D. Wash., Apr. 17, 2025) (finding that the plaintiff was likely to prevail on claim that SEVIS revocation was in violation of agency policy and arbitrary and capricious under the APA); *Doe v. Noem, et al.*, 2025 WL 1203472 at *5 ("In the absence of a qualifying basis for termination of status, Defendants' actions, as a preliminary matter, appear to be 'arbitrary, capricious, an abuse of discretion, [and] otherwise not in accordance with the law.');" *Doe v. Noem*, No. 25-CV-926-RSH-BLM, 2025 WL 1194080, at *4 (S.D. Cal. Apr. 24, 2025) (same).

Third, Respondents’ “inconsistent and unexplained shift in rationale” regarding Mr. Hoque’s arrest and detention—from Section 237(a)(1)(C) (failure to maintain status), to 237(a)(1)(B) (visa revocation), or other grounds (e.g., Foreign Policy)—“raises serious concerns about pretextual enforcement in violation of the APA.” (TRO Order at 7.) As discussed above, Respondents have not explained their shifting and contradictory documents and theories, but have used them as pretext to keep Mr. Hoque in detention.

Instead of addressing these issues, Respondents improperly recast Mr. Hoque’s Petition as “seeking vacatur of the Secretary of State’s determination and an end to his removal proceedings” when, as set forth above, that is not the relief he seeks. Similarly, they suggest that Section 701(a)(2) of the APA precludes judicial review because agency action is “committed to agency discretion by law” and other statutes vest the decision to revoke Hoque’s visa and commence removal proceedings in Respondents. Again, these jurisdictional roadblocks do not apply for the reasons set forth above.

Further, Respondents suggest in passing that Mr. Hoque has not experienced an actual injury and the administrative policies he cites are not substantive. Not so. Mr. Hoque’s continued detention is an actual injury, and his claims involve constitutional rights of the highest magnitude.

Moreover, Respondents’ argument that there is no “final” agency action upon which to base Mr. Hoque’s APA claim has been rejected by courts in this district and elsewhere. *See Arizona Student DOE #1 v. Trump, et al.*, No. CV-25-00174-TUC-JGZ, 2025 WL 1192826, at *6 (D. Ariz. Apr. 24, 2025) (“[I]t is likely that the termination of a SEVIS record is a final agency action because it either: (1) effectively terminates that

student's F-1 status; or (2) itself implicates rights and obligations and has legal consequences, such as preventing the student and their DSO from complying with reporting requirements or maintaining eligibility for employment authorization); *see also Shaik v. Noem*, No. CV 25-1584 (JRT/DJF), 2025 WL 1170447, at *1 (D. Minn. Apr. 22, 2025) (“The order terminating these students’ F-1 visas marked the consummation of the agency’s decision-making process, and is therefore a final order.” (quoting *Jie Fang v. Dir. U.S. Immigr. & Customs Enft.*, 935 F.3d 172, 182 (3d Cir. 2019)); *Sisseton-Wahpeton Oyate of Lake Traverse Rsrv. v. U.S. Corps of Eng’rs*, 888 F.3d 906, 915 (8th Cir. 2018) (holding final agency action must mark “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” (cleaned up))).

Finally, this case is not analogous to *Lopez*, in which noncitizens challenged their ability to file motions to administratively close their removal proceedings. *Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *1 (D. Minn. Jan. 20, 2021). Mr. Hoque does not challenge the adjudication of issues within his removal proceedings—but rather Respondents’ detention of him in violation of agency policies and his constitutional rights.

Mr. Hoque’s *Accardi* doctrine claim should be sustained.

CONCLUSION

Based on his Petition and the foregoing reasons, Mr. Hoque respectfully requests that the Court release him from his unconstitutional detention.

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s/ Anupama D. Sreekanth

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