

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

ADITYA WAHYU HARSONO,

Petitioner,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; PAMELA BONDI, in her official capacity as United States; DANIEL HARTOG, in his official capacity as the Kandiyohi County Sheriff; MATTHEW AKERSON, in his official capacity as Kandiyohi County Jail Administrator; PETER BERG, in his official capacity as the St. Paul Field Office Director for U.S. Immigration and Customs Enforcement; JAMIE HOLT, in her official capacity as Homeland Security Investigations St. Paul Special Agent in Charge, U.S. Immigration and Customs Enforcement; TODD LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; and MARCO RUBIO, in his official capacity as Secretary of State,

Respondents.

Case No. 25-cv-1976

**MEMORANDUM OF LAW IN
SUPPORT OF EX PARTE
TEMPORARY RESTRAINING
ORDER AND EMERGENCY
PRELIMINARY INJUNCTION**

**EXPEDITED HANDLING
REQUESTED**

INTRODUCTION

Petitioner Aditya Wahyu Harsono came to this country on a student visa, completed two degrees at Southwest Minnesota State University, and worked as a supply chain manager at a local hospital in Marshall, Minnesota. While in the United States, he fell in love and married Peyton, a United States citizen; the two are now parents to an eight-

month-old daughter with special medical needs. Mr. Harsono is eligible to adjust his status to that of lawful permanent resident, through his marriage to Peyton, and the couple have a pending petition and application pending to do just that. Yet despite his deep ties to the United States, his care for his family, and his hard work, Mr. Harsono was ambushed by Respondents at the hospital where he works, arrested without notice or cause, and is now detained in federal custody at the Kandiyohi County Jail.

Mr. Harsono's detention is the result of two Orwellian dragnets deployed by Respondents. The first retaliates against his speech on matters of public concern—namely, his expressive activity supporting Palestinian human rights and racial justice. The second seeks to coerce other lawfully present international students like Mr. Harsono to self-deport from the United States en masse for fear that they may be unlawfully detained next. Neither is a legitimate basis for immigration detention. With this motion, Mr. Harsono seeks emergency and temporary relief to halt his 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. Just this week, a district judge required a petitioner's release on similar facts, finding that these were extraordinary circumstances and that release was necessary “not only for him but for others who wish to speak freely without government retaliation.” *Mahdawi v. Trump*, No. 2:25-cv-389, 2025 WL 1243135, at *12–13 (D. Vt. Apr. 30, 2025). Because the four *Dataphase* factors each weigh in Mr. Harsono's favor, the Court should similarly order Mr. Harsono's release or, at minimum, enjoin Respondents from transferring Mr. Harsono out of this District during the pendency of this action.

Petitioner's attorneys certify that they sent a copy of the pleadings and motion papers to the U.S. Attorney's Office immediately before filing this motion but request that, to forestall the risk of immediate transfer, the Court enter an *ex parte* temporary restraining order to preserve the lawful status quo, followed by a preliminary injunction.

BACKGROUND

I. RESPONDENTS ARE ARRESTING AND DETAINING INTERNATIONAL STUDENTS FOR RETALIATORY AND PUNITIVE PURPOSES.

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

In furtherance of President Trump's Executive Orders, on or around March 5, 2025, Respondents began implementing the Policy. Pet. ¶¶ 29–32, ECF No. 1. Under the Policy, Respondents across multiple executive agencies coordinate to retaliate against and detain noncitizen students for their actual or perceived advocacy for Palestinian rights and for bearing “hostile attitudes” toward the “culture, government, institutions, and founding principles of the United States.” *Id.* ¶¶ 33–45.

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, 6794–95; *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

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).

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 **Gad Decl. Ex. 11**, Kevin K. McAleenan, *Information Regarding First Amendment Protected Activities*, DEP’T OF HOMELAND SEC. (May 17, 2019), https://www.dhs.gov/sites/default/files/publications/info_regarding_first_amendment_protected_activities_as1_signed_05.17.2019.pdf.

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 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

⁴ *Id.*

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>.

⁶ Michel Martin (Host), *DHS Official Defends Mahmoud Khalil Arrest, but Offers Few Details on Why It Happened*, NPR Morning Ed. (Mar. 13, 2025, 4:18 AM), <https://bit.ly/3Ych75C> (Transcript).

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 right 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

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>; Stephanie Saul, *Cornell Student Facing Deportation Felt Drawn to Protest*, N.Y. TIMES (Mar. 28, 2025), <https://bit.ly/4chXYVB>.

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>.

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>.

¹¹ Anemona Hartocollis, *Targeting of Tufts Student for Deportation Stuns Friends and Teachers*, N.Y. TIMES (Mar. 29, 2025), <https://bit.ly/4luOlay>.

¹² The Policy was in effect as early as March 6, 2025. Secretary Marco Rubio (@securbio), X (Mar. 6, 2025, 4:30 PM), <https://bit.ly/3EjdFzn>. By the end of March, more than 300 visas 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>.

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 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 target international students for deportation. 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

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>.

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>.

¹⁵ 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>.

Orders.¹⁶ DHS has established overlapping dragnets of social media surveillance that use artificial intelligence¹⁷ and data analytics to target international students both for protected pro-Palestinian speech and for any kind of contact with the criminal justice system.¹⁸ The *New York Times* reported yesterday that the Justice Department sought to investigate a Columbia University student group with the goal of intimidating and deporting the students—a request that threatened the jobs of prosecutors that opposed the policy and that was only halted by a federal magistrate judge repeatedly ruling that the investigation was unlawful.¹⁹

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.²⁰

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>.

¹⁷ Marc Caputo, *State Dept. to use AI to revoke visas of foreign students who appear 'pro-Hamas'*, AXIOS (Mar. 6, 2025), <https://www.axios.com/2025/03/06/state-department-ai-revoke-foreign-student-visas-hamas>.

¹⁸ Andrew Harrer, *Inside the DHS task force scouring foreign students' social media*, NBC NEWS (Apr. 9, 2025), <https://www.nbcnews.com/politics/national-security/dhs-task-force-scouring-foreign-students-social-media-rcna198532>.

¹⁹ Devlin Barrett, *Orders to Investigate Columbia Protesters Raised Alarms in Justice Dept.*, N.Y. Times (May 1, 2025), <https://www.nytimes.com/2025/05/01/us/politics/columbia-protests-justice-department.html>.

²⁰ Jaclyn Diaz & Adrian Florido, *Why Is Trump Sending Immigrant University Scholars to Louisiana and Texas?*, NPR (Apr. 8, 2025, 5:00 AM),

In some cases, including Mr. Harsono's, 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). But visa revocations do not automatically lead to termination of status or removal proceedings. *See Knoetze v. U.S. Dep't of State*, 634 F.2d 207, 212 (5th Cir. 1981) ("Revocation of an entry visa does not automatically lead to deportation of the [noncitizen]."); *Jane Doe #1 v. Bondi*, No. 25-cv-1998, 2025 WL 1188469, at *2 (N.D. Ga. Apr. 18, 2025) ("[T]he revocation of an F-1 visa does not constitute failure to maintain status pursuant to the relevant regulations and does not provide a basis to terminate F-1 student status under the SEVIS registration system."). Indeed, in litigation about student status terminations, DHS has attempted to assure courts that visa revocations do not pose grounds for immediate deportation. *See* Decl. of Andre Watson ¶ 21, *Deore v. Noem*, No. 2:25-cv-11038 (E.D. Mich. filed Apr. 14, 2025), ECF No. 14-3 ("Prudential visa revocation, absent other factors, does not make an individual amendable [sic] to removal."); Gov. Opp. at 3, *Deore*, ECF No. 14 ("[A] prudential revocation, or revocation upon departure, does not have a corresponding ground of removability."); *id.* at 10 (claiming that because the visa revocation was not immediate, it was prudential). The purported basis for revocation, such as Mr. Harsono's 2023 misdemeanor for nonviolent graffiti, 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

<https://www.npr.org/2025/04/08/nx-s1-5351645/ice-detention-louisiana-university-scholars>.

imposed”). This aspect of the Respondents’ dragnet has been especially wide-ranging and overbroad.²¹

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 a rarely used automatic stay regulation—which requires certification by a senior DHS legal officer—to block the immigration judge’s order while DHS appeals the bond decision to the Board of Immigration Appeals. *See* 8 C.F.R. § 1003.19(i)(2). An immigration expert stated that “it is highly unusual for the government to invoke an automatic stay to prevent an individual like Mr. Harsono from posting a bond,” and that, even for clients with “much more serious criminal convictions,” the government generally seeks an emergency stay which offers the noncitizen an opportunity to respond. Decl. of Kerry Doyle (“Doyle Decl.”) ¶¶ 12–13. Using this automatic stay regulation in this extraordinary way, DHS prevents the release of detained students by a period of up to 90 days, 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 are unlawful.

B. Respondents Are Arresting and Detaining Some International Students to Compel Thousands of Others to Self-Deport, Even Though They Are Still in Lawful Student Status.

²¹ Kyle Cheney and Josh Gerstein, *Feds reveal how immigration squad targeted thousands of foreign students*, POLITICO (Apr. 29, 2025), <https://www.politico.com/news/2025/04/29/immigration-foreign-students-00317437>.

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 terrify 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.

In the past two months, thousands of students have seen their student visa records terminated without notice, because their F-1 visas have purportedly been revoked and/or their student visa records have been terminated by DHS. In response to a data request, the Student and Exchange Visitor Program (SEVP) indicated to the Senate and House Committees on the Judiciary on April 10 that more than 4,736 SEVIS records had been terminated.²² After multiple courts of this district and across the country entered TROs enjoining this practice, Respondents announced on April 25, 2025, that the records of many of these students would be temporarily reinstated pending a more formal policy. Respondents are using the unlawful termination of SEVIS records²³ and/or purported revocation of F-1 visas to mislead and frighten students into believing that they have lost their status and must leave the country.

²² Joann Ng Hartmann, *New Insights into the Growing Number of Actions Against International Students and Scholars*, NAFSA (Apr. 25, 2025), <https://www.nafsa.org/blog/new-insights-growing-number-actions-against-international-students-and-scholars>.

²³ 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 SEC., <https://studyinthestates.dhs.gov/site/about-sevis>.

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; Srinivasan self-deported.²⁴ 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.”²⁵ Again, however, DHS did not provide any evidence for its allegation that she was supporting a terrorist organization.²⁶

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 terminated regarding the consequences of continuing to stay in the United States, despite the fact that they have lawful status. Three Courts of this District have already temporarily enjoined this practice. *See Ratsantiboon v. Noem*, No. 25-cv-1315 (JMB-JFD), 2025 WL 1118645 (D. Minn. Apr. 15, 2025); *Jin v. Noem*, No. 25-cv-1391-PJS-DLM (D. Minn. Apr. 17, 2025) (Schiltz, J.), ECF No. 13 (Order) (hereinafter, “*Jin* D. Minn. Order”); *Shaik v. Noem*, No. 25-cv-1584 (JRT/DJF), 2025 WL 1170447 (D. Minn. Apr. 22, 2025). However, others may not have access to the legal representation or information needed to challenge Respondents’ actions—and even as Respondents attempt to roll back these

²⁴ 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>.

²⁵ Kristi Noem (@KristiNoem), X (Mar. 14, 2025, 11:01 AM), https://x.com/Sec_Noem/status/1900562928849326488.

²⁶ 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>.

terminations in public, a court in this District found that they “were unable to provide the Court with information regarding the substance of the policy or its expected date of implementation.” *Jin v. Noem*, No. 25-cv-1315, 2025 WL 1235427, at *1 (D. Minn. Apr. 29, 2025).

II. MR. HARSONO WAS ARRESTED AND DETAINED PURSUANT TO RESPONDENTS’ RETALIATORY POLICY AND FOR UNLAWFUL PURPOSES.

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

Mr. Harsono’s life in the United States reflected the very ideals that the Constitution promises to protect. After arriving in 2021 on a valid F-1 student visa, he lawfully earned both a Bachelor of Science degree and an MBA with a concentration in Environmental Science from Southwest Minnesota State University. Decl. of Aditya Harsono (“Harsono Decl.”) ¶¶ 6–8. Upon graduation, he was approved for Optional Practical Training (OPT) and began working as a supply chain manager at a hospital in Marshall, Minnesota—where he contributed meaningfully to his community and upheld every legal obligation of his status. *Id.* ¶¶ 10–11. In October 2023, he married a United States citizen, Peyton, and the two are parents of an eight-month-old daughter with special medical needs. *Id.* ¶¶ 4, 12.

At the time of his arrest on March 27, 2025, Mr. Harsono was lawfully present in the United States in *two* separate ways: with a valid F-1 visa in Occupational Training Status (“OPT”), *and also* in a period of authorized stay pursuant to a pending petition and application that Mr. and Mrs. Harsono had submitted to DHS to adjust Mr. Harsono to lawful permanent resident (green-card) status, based on their bona fide marriage. *Id.* ¶¶ 8–

9, 13. In his decade studying and working in the United States, Mr. Harsono had never missed an immigration appointment, violated court orders, or failed to meet his visa-related obligations. *Id.* ¶ 11.

Mr. Harsono also has no criminal history that could warrant either the purported revocation of his student visa or his ongoing detention. Apart from a small number of driving and parking-related citations, Mr. Harsono's only conviction has been for a non-violent misdemeanor for property damage—stemming from his youthful misbehavior as a graffiti artist, in 2022, an incident for which he took full responsibility and that never presented any threat to public safety. *Id.* ¶ 33. He received a stayed sentence, completed a year of probation without incident, paid \$585 in fees, fines, and restitution, and he has had no subsequent contact with the criminal justice system. *Gad Decl. Ex. 4* at 8–25. This offense was not a crime of violence, and it could not render him removable or inadmissible under the Immigration and Nationality Act. *See* 8 C.F.R. § 214.1(g) (explaining that only a conviction for a “crime of violence for which a sentence of more than one year imprisonment may be imposed” triggers a failure to maintain status). Mr. Harsono was convicted under Minn. Stat. § 609.595, subd. 3—fourth-degree criminal damage to property, a misdemeanor, punishable by no more than 90 days in jail or a \$1,000 fine. *See* Minn. Stat. § 609.02, subd. 3.

After completing probation without incident, Mr. Harsono traveled to Indonesia in the spring of 2024 to visit family, and when returning to the United States on April 27, 2024, he passed through both primary and secondary inspection at Los Angeles International Airport and was lawfully readmitted. *Harsono Decl.* ¶ 34. DHS's decision to

admit him—after full inspection and post-conviction—affirmatively demonstrates that his 2023 misdemeanor conviction for graffiti damage in 2022 was neither disqualifying nor grounds for exclusion.

In 2021, Mr. Harsono was arrested while participating in a peaceful protest in Minnesota following the police killings of George Floyd and Daunte Wright. *Id.* ¶¶ 14–15. That arrest resulted in no charges and was formally dismissed “in the interests of justice.” *Gad Decl. Ex. 4 at 6.* Nonetheless, DHS appears to have later catalogued the incident and now is using it as part of its detention pretext.²⁷ Mr. Harsono has never endorsed or participated in political or racial violence. *Id.* ¶ 22. His involvement in these protests was peaceful and fell squarely within the protections of the First Amendment—particularly as speech on matters of public concern. *Id.* ¶ 23.

Following Mr. Harsono’s protest-related arrest in 2021, he returned to Indonesia after completing his undergraduate degree. *Id.* ¶ 7. He later reapplied for an F-1 student visa to pursue a Master’s Degree in Business Administration at Southwest Minnesota State University. *Id.* ¶¶ 8, 15. The visa was granted without issue—affirmative evidence that DHS and the Department of State did not view Mr. Harsono as a public safety risk at that time, despite the prior protest arrest. *Id.*

Mr. Harsono has attended fewer protests in more recent years, as he has turned to

²⁷ In DHS’s Evidence Packet Supporting Removal, *Gad Decl. Ex. 4*, the dismissal order for Mr. Harsono’s protest-related arrest was inexplicably prioritized as an exhibit over the sole conviction—misdemeanor damage to property—that purportedly formed the basis for his visa revocation. This ordering strongly suggests that DHS’s true focus was not on the conviction, but on penalizing Mr. Harsono for engaging in protected protest activity.

work, family and fatherhood, but over this period he has used his voice and platform online to speak out for Palestinian rights and against violence in Gaza. *Id.* ¶¶ 19–21. A social media account he has operated for a personal project of his—a small clothing line called “Butter Soup and Frozen Custard”—has a note on the biography page, in Arabic, saying “Free Palestine.” *Id.* ¶ 20; *see* Harsono Decl. Ex. 2. He donated his personal income to humanitarian aid organizations in Indonesia and Gaza and promoted messages of peace, solidarity, and human dignity. Harsono Decl. ¶¶ 17–18. These expressions, rooted in his deeply held religious and moral beliefs, were entirely lawful, nonviolent, and emblematic of the freedoms the First Amendment is designed to protect. *Id.* ¶¶ 22–23. They are also intimately tied to Mr. Harsono’s self-expression as an artist, as he explained in one social media post:

To me, making art or music are very enjoyable and liberating. It enables me to express and convey my feelings, experiences, messages and awareness about our world in subliminal, and metaphor manner. . . . I get ideas from places I go and what I look at. One way I get ideas is when I’m traveling. I get to see and experience new things and places. Another way that I get inspired is when I see the world or my life is in turmoil. For instance, in 2020, there were many momentous events that occurred and impacted our lives such as Covid-19 outbreaks, climate change, the killing of George Floyd, and many social injustice issues that are still happening around the world. Some of these events are the main factors that inspire and motivate me to make more arts and music.

Id. ¶ 19; *see* Harsono Decl. Ex. 1.

In short, Respondents now openly boast that they continue to use data analytics to scour social media for any mention of Palestine. Respondents targeted Mr. Harsono for detention because of the protected expression they monitored on his social media account, then pretextually justified that unlawful detention with his minor criminal history, despite

having previously inspected and admitted him back into the United States *after* his misdemeanor conviction for graffiti damage had been fully resolved (and *twice* after his dismissed unlawful assembly charge).

B. DHS Ambushed, Arrested, and Detained Mr. Harsono on March 27, 2025.

On the morning of March 27, 2025, two plainclothes Homeland Security Investigations (HSI) officers entered the hospital in Marshall, Minnesota, where Mr. Harsono worked lawfully as a supply chain manager. *Id.* ¶ 24. Without a warrant or court order, the agents instructed his coworkers to stage a fake meeting in the hospital basement to lure him into custody. *Id.* ¶¶ 24–25. They threatened legal consequences if hospital staff refused to cooperate; through tears, and under duress, Mr. Harsono’s employers, who viewed him as a model employee, complied and summoned him to the basement under false pretenses.²⁸

There, in the basement hallway, two ICE officers handcuffed and shackled Mr. Harsono without warning. Harsono Decl. ¶ 24. They placed him in an unmarked vehicle—refusing to tell him where he was being taken or why he was being detained. *Id.* ¶¶ 24–25. When Mr. Harsono repeatedly asked for an explanation, one officer told him only, “They will explain all that to you tomorrow,” but refused to clarify who “they” were. *Id.* ¶ 25. By the time they arrived at Kandiyohi County Jail, Mr. Harsono reasonably believed he had

²⁸ See Theo Keith, *ICE arrest of Marshall hospital employee condemned by Minnesota Nurses Association*, FOX 9 (Apr. 10, 2025), <https://www.fox9.com/news/ice-arrest-marshall-hospital-employee-condemned-mn-nurse-association> (reporting that ICE agents told hospital staff to “lure the worker into a fake meeting in the basement” and “threatened legal consequences if the staff didn’t comply”).

been formally charged with a crime, despite having received no warrant or *Miranda* warning. *Id.* ¶¶ 26–27.

ICE agents placed Mr. Harsono in federal custody at the Kandiyohi County Jail, without charges, without access to an attorney, and without informing him of the basis for his detention. *Id.* ¶ 26.

The following morning, March 28, ICE transported Mr. Harsono to their Field Office at Fort Snelling, where he was interrogated by federal agents for hours. *Id.* ¶ 28. They continued to refuse to disclose the legal basis for his arrest or detention. *Id.* When Mr. Harsono explained that he maintained valid F-1 status, agents vaguely responded that he had “no lawful status,” citing an inability to verify anything because the SEVIS system was supposedly “down.” *Id.* These explanations were not only inadequate—they were demonstrably false.

In truth, as of March 28, 2025, SEVIS records confirmed that Mr. Harsono’s F-1 status remained active and in good standing. *See* Gad Decl. Ex. 5 (showing termination on March 29, 2025). There had been no SEVIS termination, no revocation of status under 8 C.F.R. § 214.2(f), and no lawful basis to conclude that Mr. Harsono was unlawfully present. When Mr. Harsono’s SEVIS record was terminated, it stated that Mr. Harsono’s status had been terminated “pursuant to INA 237(a)(1)(C)(i) and 237(a)(4)(C)” —the latter being the Foreign Policy Ground, a tell as to Respondents’ true motivations for the revocation. Gad Decl. Ex. 5 at 7.

C. After His Arrest and Detention, Mr. Harsono’s Visa Was Purportedly Revoked, and His SEVIS Record Was Terminated.

On March 28, 2025—the day after his arrest—DHS issued Mr. Harsono a Notice to Appear (“NTA”), charging him as removable under INA § 237(a)(1)(B), 8 U.S.C. § 1227(a)(1)(B), for allegedly remaining in the United States beyond the expiration of his authorized stay or following revocation of his visa. Harsono Decl. ¶ 29; Gad Decl. Ex. 2.

The charge in the NTA did not reflect the legal reality at the time of his arrest; it was a retroactive rationalization—an apparent attempt to fabricate a lawful basis for a detention that had already occurred without one. Mr. Harsono was arrested *before* any such revocation was supposedly effectuated and while his SEVIS record confirmed that he remained in active status. The language of the NTA itself incoherent. It alleges: “You remained in the United States beyond your VISA [sic] revocation date of March 23, 2025, by the Department of State for convictions of prior crimes without authorization from Immigration and Naturalization Service or its’ successor the Department of Homeland Security.” Gad Decl. Ex. 2.

On April 7, 2025—eleven days after Mr. Harsono’s arrest—DHS produced three exhibits it claimed supported its removal action: (1) A memorandum from DOS official John Armstrong referencing the “silent” revocation of Mr. Harsono’s visa, citing his misdemeanor conviction; (2) A dismissal order from Mr. Harsono’s 2021 protest arrest, which states the charges were dropped “in the interests of justice”; and (3) A copy of his plea petition in the 2022 misdemeanor damage to property case. Gad Decl. Ex. 4. None of these documents provides a lawful basis for arrest, detention, or removal. Mr. Harsono’s sole conviction is more than two years old, non-violent, and does not make him either deportable or inadmissible. His protest arrest resulted in no conviction. And DHS had full

knowledge of this history when it lawfully admitted Mr. Harsono through inspection at LAX in April 2024.

The document DHS appears to rely on to justify its Mr. Harsono's detention is a memo, dated March 23, 2025, from a Department of State official to DHS. *Id.* at 2. This memo—never served on Mr. Harsono—claims that his F-1 visa was revoked due to a minor misdemeanor and states that the revocation would be “silent,” meaning that Mr. Harsono would receive no notice:

On March 23, 2025, in response to a request from DHS/ICE and the information from DHS/ICE that Aditya HARSONO has been convicted... and now poses a threat to U.S. public safety, the Bureau of Consular Affairs approved revocation, effective immediately, of the F-1 visa... We understand that DHS/ICE intends to immediately pursue removal... this revocation will therefore be silent; the Department of State will not notify the subject of the revocation.

Id. But as of March 27, 2025—the date of Mr. Harsono's arrest—there was no evidence that any revocation had been effectuated and no notice provided. His SEVIS record remained active, there was no pending violation, and he was in lawful F-1 status, further supported by a pending adjustment of status application placing him in a period of authorized stay. This was not an administrative misstep—it was a constitutional ambush. DHS detained him without a warrant, without probable cause, and without any legal authority, based upon fabricated, pretextual grounds.

The Foreign Affairs Manual (FAM) leaves no ambiguity: “Under no circumstances should you revoke a visa when the individual is in the United States... other than a revocation based on driving under the influence (DUI).” Gad Decl. Ex. 13, 9 FAM § 403.11-3(B). That exception is wholly inapplicable. Mr. Harsono's only cited conviction

was for misdemeanor property damage—a nonviolent offense punishable by no more than 90 days in jail. It is not a crime of violence, does not implicate public safety, and does not render him inadmissible or removable under the INA. It is categorically insufficient to justify a covert revocation. And even as DHS was promising courts that visa revocations could not lead to deportation, here they were—using a silent visa revocation as the sole basis for deportation proceedings.

D. Respondents Continue to Detain Mr. Harsono.

On April 10, 2025—nearly two weeks after his arrest—Mr. Harsono appeared for a bond hearing in immigration court. Harsono Decl. ¶ 36. He submitted over 70 pages of evidence demonstrating no danger to the community and no risk of flight, including proof of full compliance with probation, evidence of stable housing and employment, and letters of support from professors, coworkers, and peers. *Id.*; *see* Gad Decl. Ex. 6.

The immigration judge found that Mr. Harsono was neither a danger nor a flight risk, citing his “prima facie eligibility” for adjustment of status and his deep family and community ties. Gad Decl. Ex. 7. The judge set a \$5,000 bond. *Id.* But DHS blocked it by filing a notice of appeal to the Board of Immigration Appeals and invoking a rarely used automatic stay provision to block his release and prolong his detention by up to ninety additional days. Gad Decl. Ex. 8; *see* Doyle Decl. ¶¶ 12–13.

Ahead of the master calendar hearing set for April 17, 2025, Mr. Harsono filed a motion to terminate removal proceedings, arguing that his pending adjustment of status based on a bona fide marriage to a U.S. citizen placed him in a period of authorized stay, even absent an active student visa. Gad Decl. ¶ 13. DHS opposed any discretionary

termination of removal proceedings that might end his detention and insisted on proceeding with the removal hearing; the immigration judge, while acknowledging the favorable equities and DHS's lack of evidence, stated that she lacked authority to terminate the proceedings while Mr. Harsono remained detained by DHS, and further stated she could not release Mr. Harsono from detention absent DHS consent. *Id.*

On April 30, 2025, USCIS sent Mr. Harsono an I-797 Notice of Action scheduling him to appear in person for a biometrics appointment on Monday, May 5, 2025, at 1:30 PM, in Sioux Falls, South Dakota, in connection with his pending adjustment of status application. *Id.* ¶ 14; Gad Decl. Ex. 15.

Mr. Harsono has twice sought termination, or alternatively, continuances in order to pursue his I-485 application for adjustment of status through his U.S. citizen spouse, Peyton. Gad Decl. ¶¶ 13, 15. Mr. Harsono made his most recent motion for this basic fairness on May 1, 2025, in advance of his continued removal hearing before the immigration court, noting that Mr. Harsono's student status was not terminated until two days after his arrest, that Mr. Harsono's visa revocation was procedurally defective, and that he remains eligible for adjustment of status. *Id.* ¶ 15; Gad Decl. Ex. 9. The immigration judge denied the motion to terminate, claiming—incorrectly—that she lacked the authority to evaluate the lawfulness of the visa revocation. Gad Decl. Ex. 10. The parties agreed that Mr. Harsono was prima facie eligible for adjustment of status and that his detention placed him on a fast track that may inhibit his ability to pursue his petition fully. The government counsel claimed that Mr. Harsono's biometrics appointment might be accommodated at the Kandiyohi County Jail, but there has been no guarantee that this will happen, the

appointment requires Mr. Harsono's appearance in Sioux Falls, South Dakota. Gad Decl. ¶ 18. Mr. Harsono has requested that the appointment be rescheduled for May 23, 2025, in St. Paul, Minnesota, hoping that he will be attend in person. Pet. ¶ 92. His non-appearance could result in premature denial of the application.

III. MR. HARSONO FACES ONGOING IRREPARABLE HARMS, INCLUDING DETENTION, FAMILY SEPARATION, AND BURDENS ON HIS SPEECH.

In short, Mr. Harsono remains detained—without a valid removal charge, without judicial finding of risk, and without legal justification. Harsono Decl. ¶ 39. Meanwhile, he is separated from his wife and their medically fragile eight-month-old daughter. *Id.* ¶ 40. His family in Indonesia, including his mother in poor health, is traumatized. *Id.* ¶¶ 41–42. He cannot care for his family, cannot support them financially, and cannot effectively pursue the permanent immigration status that he and his wife have applied for him to lawfully receive. *Id.* ¶¶ 43–44.

ARGUMENT

Mr. Harsono 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. Harsono 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. Harsono can establish each of these elements.

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

Mr. Harsono 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. Harsono’s Unlawful and Retaliatory Detention Pursuant to the Policy Violates the First Amendment As Viewpoint Discrimination and Retaliation.

Mr. Harsono 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 Is Retaliatory in Violation of the First Amendment.

To succeed on a First Amendment retaliation claim, Mr. Harsono must show: “(1) [he] engaged in [constitutionally] protected activity; (2) [Respondents] caused an injury to [Mr. Harsono] 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).²⁹ Mr. Harsono’s arrest and

²⁹ Once a petitioner has made a showing of a First Amendment retaliation claim, the burden

detention meets all of these criteria.

First, Mr. Harsono engaged in constitutionally protected speech. His speech in support of Palestinian rights—including through his Instagram bio which states “Free Palestine” in Arabic 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.³⁰ Harsono Decl. Exs. 1 & 2; *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 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. Harsono 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

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) (cleaned up). “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) (cleaned up); *cf. Osborne*, 477 F.3d at 1006 (the Respondent must show it would have made the same decision even absent protected conduct).

³⁰ Mr. Harsono 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. Harsono Decl. ¶ 22.

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).³¹ 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. McMenemy*, 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 chill a person of ordinary firmness from exercising that right in the future.” (cleaned up)); *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.’”

³¹ 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).

Bridges, 326 U.S. at 147. Indeed, the threat of retaliation has already intimidated ordinary persons, chilling exercise of their constitutionally protected speech rights.³² Mr. Harsono himself has stated, “Had I know in 2021 that my peaceful protest activities and social media posts would lead to my arrest in 2025, I would not have done this.” Harsono Decl. ¶ 47.

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

³² 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>; 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>; 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>; Max Matza, *University Student Targeted by Trump Leaves the US*, BBC (Mar. 31, 2025), <https://www.bbc.com/news/articles/c934y9kv07eo>.

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. 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. Others who were targeted merely attended pro-Palestinian demonstrations, "lik[ed] or shar[ed] posts that highlighted 'human rights violations' in the war in Gaza," or are related by marriage to Palestinians. And a federal court this week ordered Mohsen Mahdawi released on his own recognizance after determining DHS had likely monitored and targeted him for arrest and detention in unconstitutional retaliation for his protected pro-Palestinian advocacy. *Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *14 (D. Vt. Apr. 30, 2025). The Court determined Mahdawi's continued detention would likely have a chilling effect on protected speech. *Id.*

These examples reveal that disagreement with protected expressive activity is a substantial or motivating factor for Respondents' Policy. Respondents' admitted monitoring of noncitizen students' social media posts through brute data analytics tools, Mr. Harsono's public support of Palestinians on social media, the citation to the INA § 237(a)(4)(C) Foreign Policy Ground in Mr. Harsono's SEVIS record termination, and the absence of any evidence of another plausible reason for Mr. Harsono's detention lead to only one conclusion: Mr. Harsono's public expression of support for Palestinian rights played a motivating role in the government's decision to target Mr. Harsono for arrest and

civil incarceration. *See Mahdawi*, 2025 WL 1243135, at *10 (finding that the policy challenged in this case was retaliatory and releasing petitioner as a result); *Ragbir*, 923 F.3d at 71. This is enough to meet all three elements of a First Amendment retaliatory detention claim, but there is more.

When an immigration judge granted Mr. Harsono's bond, DHS appealed and used an automatic stay regulation to prevent the bond order from taking effect. Respondents' use of the "extraordinarily rare" automatic stay, particularly for someone with Mr. Harsono's background, is an irregular departure from the government's typical practices. Doyle Decl. ¶¶ 12–13. The extraordinary invocation of the automatic stay regulation against him is an additional piece of compelling evidence that DHS and all of the federal Respondents did indeed target him for arrest and detention, discriminately, and with the unconstitutional purposes of retaliating against him for his protected speech and terrorizing other international students to abandon their lawful status in this country and self-deport. In this respect, Mr. Harsono does also assert that the automatic stay regulation, 8 C.F.R. 1003.19(i)(2), *as DHS has applied it to him* violates his constitutional rights to liberty, due process, and freedom of expression.³³ Also, Respondents' retaliatory, discriminatory purpose is further evident in the fact that although Mr. Harsono is one among countless international students who Respondents are known to have targeted for SEVIS terminations and/or purported visa revocations due to minor criminal history hits in the

³³ In this respect, Mr. Harsono's constitutional claim differs from those addressed in *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1218301, at *3 (D. Minn. Apr. 28, 2025).

DHS dragnet, Mr. Harsono is one of just a handful of this larger group who DHS has *also* relentlessly targeted for detention. Doyle Decl. ¶¶ 9–11; *see* Decl. of Andre Watson ¶ 21, *Deore v. Noem*, No. 2:25-cv-11038 (E.D. Mich. filed Apr. 14, 2025), ECF No. 14-3 (“Prudential visa revocation, absent other factors, does not make an individual amendable [sic] to removal.”); *Isserdasani v. Noem*, No. 25-CV-283-WMC, 2025 WL 1118626, at *4 (W.D. Wis. Apr. 15, 2025) (noting that ICE had not yet pursued detention of a person with a misdemeanor for disorderly conduct);³⁴ *see also* *Gonzalez v. Trevino*, 602 U.S. 653, 658, 144 S. Ct. 1663, 1667, 219 L. Ed. 2d 332 (2024) (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). For this additional reason, it is even clearer that nothing about Mr. Harsono’s case remotely warrants detention, other than Respondents’ unconstitutional desire to suppress his protected speech, and their goal of terrifying other international students also targeted for visa record terminations.

2. The Policy Constitutes 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.*

³⁴ Kyle Cheney and Josh Gerstein, *Feds reveal how immigration squad targeted thousands of foreign students*, *Politico* (Apr. 29, 2025), <https://www.politico.com/news/2025/04/29/immigration-foreign-students-00317437>.

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).

B. The Policy Is Void for Vagueness Under the Fifth Amendment.

Further, Mr. Harsono 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 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,”³⁵ and DHS spokesperson Tricia McLaughlin has suggested Mr. Khalil was subjected to the Policy because he is “aligned to Hamas.”³⁶ 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

³⁵ Humeyra Pamuk, *Rubio Says US May Have Revoked More Than 300 Visas*, REUTERS (Mar. 27, 2025, 10:15 PM), <https://bit.ly/3EgLtG4>.

³⁶ 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/departments-of-homeland-security-confirms-arrest-of-palestinian-activist-mahmoud-khalil-sipa-24>.

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. United States*, 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 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. Harsono's Retaliatory and Unlawful Detention Violates Due Process Under the Fifth Amendment Because it is Punitive in Intent and Effect.

Mr. Harsono 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). Foundational case law prohibits the use of immigration detention to punish. *Wong Wing v. United States*, 163 U.S. 228, 237–38 (1896). 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. Harsono for two independent, unconstitutional, and illegitimate reasons.

First, Respondents are using detention to punish Mr. Harsono 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 detention necessarily harms Mr. Harsono—even more so when unlawfully imposed. *See Barker v. Wingo*, 407 U.S. 514, 532 (1972) (detention has a “serious,” “detrimental impact on the individual”).

Second, Respondents are detaining Mr. Harsono 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); *Jane Doe #1 v. Bondi*, No. 25-cv-1998, 2025 WL 1188469, at *2 (N.D. Ga. Apr. 18, 2025) (“[T]he revocation of an F-1 visa does not constitute failure to maintain status pursuant to the relevant regulations and does not provide a basis to terminate F-1 student status under the SEVIS registration system.”). In short, if an F-1 visa is revoked, DHS is not authorized to terminate the student’s SEVIS record or status. Respondents have halted these terminations as of now promised to implement a nebulous new policy—with no “information regarding the substance of the policy or its expected date of implementation.” *Jin v. Noem*, No. 25-cv-1315, 2025 WL 1235427, at *1 (D. Minn. Apr. 29, 2025). Respondents have not abandoned their goal; instead, Respondents’ arrest and detention of international students such as Mr. Harsono 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.

Mr. Harsono’s detention is not in furtherance of the legitimate purposes of immigration detention, because Mr. Harsono is not a danger to the community or a flight risk. His only criminal history involves minor incidents that do not affect his status. *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. § 609.595, subd. 3 (fourth-degree misdemeanor punishable by no more than 90 days in jail or a \$1,000 fine. And he has strong ties to the Marshall community where he has lived and studied for several years and where he is building a family. *See* Gad Decl. Ex. 7 (IJ granting \$5,000 bond). As a result, Mr. Harsono’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. Harsono’s Unlawful Detention Violates the *Accardi* Doctrine.

Mr. Harsono is also likely to succeed on his *Accardi* 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 (8th Cir. 2001) (“[T]he *Accardi* doctrine bars administrative agencies from taking action inconsistent with their internal regulations when it would affect individual rights[.]” (cleaned up)).

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.” *See* Gad Decl.

Ex. 11. 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.” *See* Gad Decl. Ex. 12.

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 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. Harsono Presents At Minimum “Serious Questions” on the Merits, The Court Should Enter the TRO.

For the foregoing reasons, Mr. Harsono is likely to succeed on the merits of his claims. However, even if the Court disagrees, Mr. Harsono 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.” (cleaned up)). Indeed, the constitutional concerns herein are of the weightiest order and colorable.

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

As to the second *Dataphase* factor, Mr. Harsono will suffer irreparable injury absent a temporary restraining order for his release. “[A] loss of liberty . . . is perhaps the best example of irreparable harm.” *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018). Those injuries include disruption of his family, loss of his job and the resulting training that it was providing, potential delay in entry into the workforce, and emotional distress for himself and his family.³⁷ *Iowa Utilities Bd. v. FCC*, 109 F.3d 418, 426 (8th Cir. 1996) (“The threat of unrecoverable economic loss, however, does qualify as irreparable harm.”). Impeding or preventing a noncitizen from becoming a permanent resident has also been recognized as an irreparable harm in this District. *See Jin* D. Minn. Order at 5. These are on top of the harms from the ongoing deprivation of Mr. Harsono’s First and Fifth Amendment rights. *Ng v. Bd. of Regents of the 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.”)

³⁷ Transferring Mr. Harsono would also remove him from his family, friends, and counsel and deprive Mr. Harsono of the full and fair adjudication of his pending Petition.

(cleaned up)).

Further, Mr. Harsono 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 that “[a]ny amount of actual jail time is significant and has exceptionally severe consequences for the incarcerated individual” (cleaned up)). Indeed, the Eighth Circuit has held that harms such as “judges requiring noncitizens to return to countries where they might not be accepted or might face persecution or torture, in violation of federal laws and treaties” and “corresponding impacts on international relations and foreign affairs” are harms that “cannot be fully remedied by legal relief” and can support a finding of irreparable harm. *United States v. Iowa*, 126 F.4th 1334, 1352–53 (8th Cir. 2025).

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. Harsono, 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. Defendants also cannot have a legitimate interest in enforcing an

unconstitutional and unlawful action. *Jin* D. Minn. Order at 6 (“[T]he Court cannot imagine how the public interest might be served by permitting federal officials to flaunt the very laws that they have sworn to enforce.”); *see also Goyette v. City of Minneapolis*, 338 F.R.D. 109, 120 (D. Minn. 2021) (“When, as here, a plaintiff raises a legitimate constitutional question, the balance of hardships tips sharply in the plaintiff’s favor.”). Moreover, when “[f]aced with . . . preventable human suffering, . . . the balance of hardships tips decidedly in plaintiffs’ favor.” *Hernandez*, 872 F.3d at 996 (cleaned up); *see Phelps-Roper*, 545 F.3d at 690 (“The balance of equities . . . generally favors the constitutionally protected freedom of expression.”).

In releasing a similarly situated petitioner who was also targeted pursuant to the policy, a district judge in Vermont stated:

The court also considers the extraordinary setting of this case and others like it. Legal residents—not charged with crimes or misconduct—are being arrested and threatened with deportation for stating their views on the political issues of the day. Our nation has seen times like this before, especially during the Red Scare and Palmer Raids of 1919–1920 that led to the deportation of hundreds of people suspected of anarchist or communist views. . . . The wheel of history has come around again, but as before these times of excess will pass. In the meantime, this case . . . is extraordinary in the sense that it calls upon the ancient remedy of habeas to address a persistent modern wrong.

Mahdawi, 2025 WL 1243135, at *12–13. In short, 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. Cassidy, 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. Harsono's proposed TRO, and no security is necessary. *See Ratsantiboon*, 2025 WL 1118645, at *3; *Shaik v. Noem*, No. 25-cv-1584 (JRT/DJF), 2025 WL 1170447 (D. Minn. Apr. 22, 2025).

CONCLUSION

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

Dated: May 2, 2025

s/ Kshithij Shrinath

Sarah Gad, Reg. No. 0403328
GAD & GAD LAW OFFICES LLP
8 East 25th Street
Minneapolis, MN 55404
sarah@gadlawoffice.com
(612) 512-1870

Teresa Nelson, Reg. No. 0269736
Benjamin Casper, Reg. No. 0276145
**AMERICAN CIVIL LIBERTIES UNION OF
MINNESOTA**
P.O. Box. 14720
Minneapolis, MN 55414
tnelson@aclu-mn.org
bcasper@aclu-mn.org
(651) 645-4907

Linus Chan, Reg. No. 0403311
**JAMES H. BINGER CENTER FOR NEW
AMERICANS, UNIVERSITY OF
MINNESOTA LAW SCHOOL**
190 Mondale Hall
229 19th Street South
Minneapolis, MN 55455
rlchan@umn.edu
(612) 301-1156

Kshithij Shrinath, Reg. No. 0505164
GREENE ESPEL PLLP
222 S. Ninth Street, Suite 2200
Minneapolis, MN 55402
kshrinath@greeneespel.com
(612) 373-0830

Attorneys for Petitioner