

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 25-cv-1976-KMM-JFD

ADITYA HARSONO,

Petitioner,

v.

**RESPONSE**

DONALD J. TRUMP, *et al.*,

Respondents.

**INTRODUCTION**

Respondents respectfully submit this Response to the Petition filed in this case. ECF No. 1. The Department of State (DOS) revoked Harsono's student visa under 8 U.S.C. § 221(i) based on public safety concerns raised by his conduct. ICE arrested Harsono on March 27, 2025 pursuant to an administrative warrant and personally served and filed a Notice to Appear (NTA), thereby initiating removal proceedings. His arrest and detention under 8 U.S.C. § 1226(a) during his removal proceedings is constitutional.

Harsono's Petitioner suffers from multiple jurisdictional defects: 1) this Court cannot review the decision of the Secretary of State to revoke his visa; 2) the Immigration and Nationality Act prohibits district courts from entertaining challenges to removability, including the decision to commence removal proceedings; and 3) district courts lack jurisdiction to review the decision to detain, which is currently being litigated in immigration court, other than for constitutionality.

Even if these jurisdictional hurdles could be overcome, this Court should still deny the Petition on the merits. Neither Harsono's First Amendment nor Fifth Amendment

Due Process rights have been violated. The charges against Harsono were based on the revocation of his visa resulting from his criminal plea and public safety considerations, not his speech. Harsono has had substantial due process in the immigration court proceedings both on the substance of the charges against him and whether he is entitled to bond, and those proceedings are moving quickly. His detention as those proceedings occur is constitutional. The Government respectfully requests that the Court deny the habeas petition.

## **FACTUAL BACKGROUND**

### **I. Removal Proceedings and Judicial Oversight**

Under the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, removal proceedings generally provide the exclusive means for determining whether an alien is both removable from the United States and eligible for any relief or protection from removal. *See* 8 U.S.C. § 1229a. Section 1229, which is entitled “[i]nitiation of removal proceedings,” explains that an alien must be given written notice of the initiation of removal proceedings through a charging document called a “Notice to Appear.” 8 U.S.C. § 1229. To commence removal proceedings, the U.S. Department of Homeland Security (“DHS”) files the Notice to Appear, the charging document, with the immigration court.

Removal proceedings are conducted before an immigration judge. *Id.* § 1229a(a)(1). “At the conclusion of [a removal] proceeding the immigration judge shall decide whether an alien is removable from the United States.” *Id.* § 1229a(c)(1)(A). An immigration judge, however, does not have the last word in an alien’s immigration

proceedings. An alien can (and must, to preserve a claim) appeal an immigration judge's decisions to the BIA. 8 C.F.R. § 1003.1 (setting out the organization, jurisdiction, and powers of the BIA). An alien's order of removal does not become final until the BIA affirms such an order, or the time permitted the alien to appeal to the BIA runs. 8 U.S.C. § 1101(a)(47)(B).

An alien may seek judicial review of the BIA's decision by filing a petition for review in the appropriate court of appeals. Congress has repeatedly legislated to ensure that a court of appeals is the exclusive Article III forum for an alien to challenge his immigration proceedings. Specifically, in 1996, Congress "comprehensive[ly]" amended the INA through passage of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). *INS v. St. Cyr*, 533 U.S. 289, 291 (2001). Among other reforms, IIRIRA eliminated district court jurisdiction to oversee the removal of aliens and provided that the courts of appeals oversee the immigration system exclusively through petitions for review. *See* 8 U.S.C. § 1252 (codifying IIRIRA's judicial review provisions, including later revisions discussed *infra*). Following the Supreme Court's ruling in *St. Cyr*, Congress again amended the INA through the REAL ID Act of 2005. *Xiao Ji Chen v. U.S. DOJ*, 471 F.3d 315, 326 (2d Cir. 2006). The REAL ID Act repeatedly inserted language into the relevant provisions of 8 U.S.C. § 1252, clarifying that their jurisdiction-stripping effects apply notwithstanding any other provision of law, whether "statutory or nonstatutory." REAL ID Act, Pub. L. No. 109-13, § 106, 119 Stat. 231 (2005) (quoted language codified at 8 U.S.C. § 1252(a)(2)(A), (B), (C), (a)(4), (a)(5), (b)(9)). Thus, Congress has repeatedly legislated to design, implement, and refine a three-tier administrative and judicial system—

namely, the immigration court, the BIA, and the court of appeals—to determine if and when an alien is removable from the United States. And Congress expressly excluded the district courts from playing a role in this review process.

## **II. Harsono’s Immigration Status and Removal Proceedings**

Harsono is a citizen and national of Indonesia. Harsono was first admitted to the United States on January 7, 2015 on an F-1 student, nonimmigrant visa. Declaration of William J. Robinson (“Robinson Decl.”) ¶ 4; ECF 7-3 at 4. Harsono’s most recent entry to the United States was on August 7, 2024. Robinson Decl. ¶ 4.

On or about July 10 2022, Harsono vandalized a number of commercial vehicles causing damage in the amount of approximately \$5,000. ECF No. 7-3 at 4; ECF No. 7-4. He was charged by Complaint with felony 1<sup>st</sup> Degree Damage to Property in Lyon County, Minnesota. ECF 7-6 at 38. Harsono pled guilty and was convicted of 4<sup>th</sup> Degree Damage to Property and was sentenced to 90 days, stayed for one year. Robinson Decl. ¶ 6; ECF 7-3 at 5; ECF 7-4.

On Saturday, March 22, 2025, the U.S. Department of Homeland Security U.S. Immigration and Customs Enforcement (DHS ICE) transmitted written communication to the Department of State (the Department) seeking the Department’s determination as to whether Harsono’s nonimmigrant visa should be revoked pursuant to Section 221(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1201(i). DHS/ICE conveyed that Harsono had been charged with Criminal Damage to Property – First Degree and requested the Department’s assessment as to whether Harsono’s conduct represented a threat to public safety. Declaration of John Armstrong (“Armstrong Decl.”) ¶ 4.

On Sunday, March 23, 2025, the State Department revoked Harsono's visa pursuant to Section 221(i) of the INA relying upon the underlying information and assessment provided by DHS/ICE that Harsono posed a threat to U.S. public safety, thereby implicating the Department's discretionary authority to determine whether to revoke that visa under Section 221(i) of the INA. Armstrong Decl. ¶ 5.<sup>1</sup> On March 23, 2025, the State Department advised DHS ICE that the revocation of Harsono's visa was "effective immediately." Armstrong Decl. ¶ 6; Robinson Decl. ¶ 7; ECF 7-4 at 4.

On March 27, 2025, a Group Supervisor for ICE issued a Warrant for his Arrest that day. Robinson Decl. ¶ 7, Ex. 1. US Immigration and Customs Enforcement (ICE) officials arrested Harsono, pursuant to that warrant, at his place of employment Marshall, Minnesota. Robinson Decl. ¶ 7; Petition ¶ 67. The arresting officers informed Harsono of the need to interview him regarding the revocation of his visa and placed him under administrative arrest. Robinson Decl. ¶ 7. The warrant was served on Harsono. Robinson Decl., Ex. 1. Harsono was booked into Kandiyohi County jail in Willmar, Minnesota, where he remains detained. ECF 7-4 at 4; Robinson Decl. ¶ 18.

On March 28, 2025, ICE officials processed Harsono at Fort Snelling and personally served him a Notice to Appear (Form I-862) charging him under 237(a)(1)(B) of the Immigration and Nationality Act, as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, he had remained in the United States for a time longer than permitted (i.e., the time after his visa was revoked on March 23, 2025). Robinson

---

<sup>1</sup> Harsono's visa was not revoked by a consular officer, but rather by the Bureau of Consular Affairs. Declaration of John Armstrong. As such, the Foreign Affairs Manual § 403.11-3(B) does not apply. See Petition ¶ 78.

Decl. ¶ 9; ECF 7-2. Harsono signed for the NTA and requested a prompt hearing before an immigration judge. Robinson Decl. ¶ 9; ECF 7-2 at 2.

As of March 28, 2025, there is a mention in Harsono's immigration proceedings of Harsono's arrest for riot (and that the charge was dismissed) at a protest following the murder of George Floyd. *See* ECF 7-4 at 2; Robinson Decl. ¶ 5. The ICE officials who executed the warrant and arrested Harsono were not aware of any statements or pronouncements by Harsono, whether on social media or elsewhere. Robinson Decl. ¶ 10. The State Department did not make any determination under Section 237(a)(4)(C) of the INA (8 U.S.C. § 1227(a)(4)(C)) with respect to Harsono. Armstrong Decl. ¶ 5.

On April 10, 2025, an immigration judge held a hearing on Harsono's request for bond. Petition ¶ 85; Robinson Decl. ¶ 11. The Immigration Judge issued a bond redetermination decision under 8 C.F.R. § 1003.19. Petition ¶ 86; Robinson Decl. ¶ 11; ECF 7-7.<sup>2</sup> The IJ determined that Respondent was not a danger to persons or property. ECF 7-7. The IJ set bond at \$5,000. *Id.*

On April 10, 2025, DHS filed a Notice of Intent to Appeal Custody Determination under 8 C.F.R. § 1003.19(i)(2), which has the effect of automatically staying the bond decision of the IJ. Robinson Decl. ¶ 11; ECF 7-8. That same day, DHS filed a Notice of Appeal of the IJ's bond decision to the BIA, arguing that under BIA precedent, Harsono is a danger to property, given his convictions. ECF 7-8 at 4. The automatic stay expires 90 days from the date of DHS's appeal. 8 C.F.R. § 1003.6(c)(3).

---

<sup>2</sup> The IJ only issues a written decision when the bond decision is appealed to the BIA. ECF 7-7 at 1. Therefore, the written bond decision is dated April 21, 2025, though the decision was made on April 10, 2025. ECF 7-7 at 6.

On April 16, 2025, Harsono filed a Motion to Terminate Removal Proceedings. Robinson Decl. ¶ 12, Ex. 2; Petition ¶ 88. On April 17, 2025, the immigration court held a hearing on Harsono's removability and orally denied the Motion to Terminate. Robinson Decl. ¶ 13; Petition ¶ 90.

On May 1, 2025, Harsono again appeared in immigration court. Harsono again moved the immigration court to terminate the removal proceedings. ECF 7-9. On May 1, 2025, ICE Officials filed Additional Charges of Inadmissibility/Deportability, Form I-261, adding a charge under 8 U.S.C. § 1227(a)(1)(B), "in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, your nonimmigrant visa was revoked under 221(i) of the Act." An additional allegation that "[o]n March 23, 2025, the United States Department of State revoked your F-1 student visa, effective immediately, pursuant to authority in section 221(i) of the Immigration and Nationality Act, 8 U.S.C. 1201(i)" was also added. Robinson Decl. ¶ 14, Ex. 3.

The Immigration Judge accepted the substitute charge. ECF 7-10 at 3. The Immigration Judge denied Harsonos' motion to terminate the proceedings, stating, "The Department of Homeland Security met its burden of proving by clear and convincing evidence that Respondents is removable as charged." ECF 7-10 at 2; *see generally* ECF 7-10 (explaining the factual and legal basis for the denial); *see* ECF 7-10 at 9 ("On balance, the Court finds Respondent has not established that discretionary termination is warranted in this case. . . .").

On May 7, 2025, the State Department transmitted notification to Harsono (at the email address he provided) that his visa had been revoked pursuant to Section 221(i) of the

INA. The March 23, 2025, revocation action described above predated the filing of this lawsuit. At the request of interagency partners and for operational security reasons, the Department did not immediately send notification of the revocation to Harsono. Armstrong Decl. ¶ 7, Ex. 1; ECF 7-4 at 4.

The BIA briefing schedule for the bond appeal required briefs to be submitted simultaneously by May 19, 2025. Robinson Decl. ¶ 18. DHS filed its brief on May 8, 2025. *Id.*

On May 29, 2025, a hearing is scheduled in immigration court on Harsono's removal. Robinson Decl. ¶ 17.

Harsono is currently in ICE's detention in Kandiyohi County Jail in Willmar, Minnesota, pursuant to 8 U.S.C. § 1226(a). Robinson Decl. ¶ 19.

### **III. Harsono's Application for Adjustment of Status**

On June 19, 2024, Harsonos' wife, Peyton Harsono, filed an I-130, Petition for Alien Relative on behalf of Harsono. ECF 7-1 at 3. "Filing and approval of a Form I-130 Petition for Alien Relative is only the first step in helping a relative immigrate to the United States." *Id.*<sup>3</sup> Mr. Harsono filed on March 31, 2025 a form I-485, Application to Register Permanent Residence or Adjust Status. ECF 7-1 at 1; 7-6 at 12.

---

<sup>3</sup> General information concerning the process to allow the relative of a U.S. citizen to get a Green Card (i.e., adjust status to lawful permanent resident) is available on USCIS's website. <https://www.uscis.gov/i-130#:~:text=Filing%20Your%20Form%20I%2D130%20Online,130%20that%20was%20filed%20online> (last visited May 6, 2025).

On April 30, 2025, USCIS sent Harsono a request for scheduling biometrics, a requirement for his pending adjustment of status application. Petition ¶ 91. Harsono's fingerprints were taken in connection with his detention. Robinson Decl. ¶ 9. The I-130 for Harsono was filed less than one year ago, and the application's age is well within normal processing times. See <https://egov.uscis.gov/processing-times/> (last visited May 6, 2025, showing processing times between 17 months and 66 months for 80% of I-130 applications depending on where they are being adjudicated).

#### **IV. The Student and Exchange Visitor Information System (SEVIS)**

To facilitate oversight of nonimmigrant student admissions and status eligibility, Congress required that “[t]he [Secretary of Homeland Security], in consultation with the Secretary of State and the Secretary of Education, . . . develop and conduct a program to collect from approved institutions of higher education, other approved educational institutions, and designated exchange visitor programs in the United States [certain information] with respect to aliens who have the status, or are applying for the status, of nonimmigrants under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.” 8 U.S.C. § 1372(a)(1). This includes collecting the following information: (a) identity and current address in the United States; (b) nonimmigrant classification; (c) current academic status; (d) disciplinary action taken by the institution as the result of a criminal conviction or change in participation as a result of a criminal conviction; (e) the date of entry and port of entry; (f) enrollment date at an approved institution or program; (g) the degree program, if applicable, and field of study; and (h) the date of termination of enrollment and the reason for such termination. 8 U.S.C. § 1372(c).

Pursuant to this statutory mandate, DHS created SEVIS, a web-based system used “to maintain information on Student and Exchange Visitor Program sponsors and J-1 visa Exchange Visitor Program participants.” See “ICE, Student and Exchange Visitor Information System,” available at: <https://www.ice.gov/sevis/overview> (last visited May 8, 2025). Inherent in DHS’ broad authority to develop and conduct the oversight program is SEVP’s ability to maintain, update and change SEVIS records as needed (e.g., from “active to “terminated”). Based on Harsono’s criminal history and visa revocation, on March 28, 2025, SEVP amended Harsono’s SEVIS record to reflect this information by setting the record designation as “terminated.” ECF 7-5 at 7.

Petitioner notes that the SEVIS termination originally noted that it was based on Sections 237(a)(1)(C)(i) and 237(a)(4)(C) of the INA. ECF 7-5 at 7; Petition ¶¶ 65-67. The second statutory citation is inconsistent with the State Department’s records related to the visa revocation. Armstrong Decl. ¶ 5; ECF 7-4 at 4. This information was corrected – well before this lawsuit was filed-- in SEVIS on April 8, 2025 to reflect that the termination was because “Individual identified in criminal records check and/or has had their VISA revoked.” ECF 7-5 at 2 (showing termination), 7 (showing manual correction on April 8, 2025).

SEVP’s termination of a SEVIS record does not terminate a person’s nonimmigrant status in the United States. Indeed, 8 U.S.C. § 1372 does not provide SEVP the authority to terminate nonimmigrant status by terminating a SEVIS record. The SEVIS termination has no practical effect here and is irrelevant to his removal proceedings and detention. The cases Petitioner cites from this district in which the court recently enjoined SEVIS

termination (Petition ¶ 53) pertain to individuals who were not put into removal proceedings. In Harsono's case, his nonimmigrant status could be terminated through the entry of a final order of removal at the conclusion of his removal proceedings.<sup>4</sup> This case is entirely different.

## V. Procedural History

Harsono filed his Petition for writ of habeas corpus on May 2, 2025. ECF No 1. In the Petition, he asserts four claims. First, he asserts that Respondents retaliated against him for exercise of his First Amendment rights to free speech, specifically his "support of Palestinian rights and racial justice in policing." ECF 1 ¶ 113-115. Second, he alleges that his Fifth Amendment rights to due process were violated when an alleged "policy" was applied against him, when his SEVIS record was terminated, and when he was detained. ECF 1 ¶ 119-125. He asserts his detention "bears no reasonable relationship to any legitimate government purpose and is therefore punitive." ECF 1 ¶ 123. Third, he alleges a violation of the Administrative Procedures Act (APA) when his SEVIS record was terminated; in support of this claim, he asserts that he was detained because of his SEVIS record termination and/or that the revocation of his visa under 8 U.S.C. § 1201(i) was improper. ECF 1 ¶¶ 126-132. Finally, he asserts a claim requesting this Court use its "inherent" and "equitable" authority to authorize his release pending adjudication of the Petition. ECF 1 ¶¶ 133-137.

---

<sup>4</sup> Petitioner's claims and citations related to the grounds under which a student's status may be revoked (Petition ¶ 50, n.22) are simply not relevant to Harsono, who is in removal proceedings during which it will be determined whether he will lose his nonimmigrant status.

Harsono requests sweeping relief in his Petition. He requests that this Court assume jurisdiction, enjoin Petitioner's transfer outside of the district, grant release pending adjudication of the habeas petition, grant the habeas petition, and award costs and EAJA fees. ECF No. 1 at 40-41.

Harsono also filed his Motion for a Temporary Restraining Order on May 2, 2025. ECF 2. This Court granted the motion in part by ordering Respondents not to transfer Harsono outside the district during these proceedings. ECF 11.

### ARGUMENT

**I. Harsono is legally detained for the purpose of completing his removal proceedings, and his detention is an exercise of discretion expressly delegated by Congress.**

Habeas is at its core a remedy for unlawful executive detention.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Therefore, the traditional function of the writ is to seek one's release from unlawful detention. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)). While Harsono does seek release, he focuses almost entirely on questions related to the decision to initiate removal proceedings or choose which charges are brought, rather than the legality of his current detention. Respondents ask this Court to focus on the core habeas function and review Harsono's detention, which has gone on for just over one month as his removal proceedings go forward quickly. To the extent there has been any delay in the proceedings, that is because Harsono has twice sought termination “or alternatively, continuances” of the proceedings to pursue an I-485 application. Petition ¶ 92. Harsono's detention is

consistent with the Supreme Court and the Eighth Circuit's longstanding precedent. This Court should deny the Petition.

**a. Legal Authority for Detention**

For more than a century, the immigration laws have authorized immigration officials to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during their removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. “The rule has been clear for decades: “[d]etention during deportation proceedings [i]s ... constitutionally valid.” *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) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)); *see Demore*, 538 U.S. at 523 n.7 (“In fact, prior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”). Indeed, removal proceedings “‘would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.’” *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

Section 1226 “generally governs the process of arresting and detaining . . . aliens pending their removal.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). Section 1226(a) provides that “an alien may be arrested and detained pending a decision on whether

the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). The Attorney General and the Department of Homeland Security (“DHS”) thus have broad discretionary authority to detain a noncitizen during removal proceedings.<sup>5</sup> See 8 U.S.C. § 1226(a)(1) (DHS “may continue to detain the arrested alien” during the pendency of removal proceedings); *Nielsen v. Preap*, 139 S. Ct. 954, 966 (2019) (highlighting that “subsection (a) creates authority for *anyone*’s arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions”).

When a noncitizen is apprehended, a DHS officer makes an initial custody determination. See 8 C.F.R. § 236.1(c)(8). DHS “may continue to detain the arrested alien.” 8 U.S.C. § 1226(a)(1). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2280–81 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

If DHS decides to release the noncitizen, it may set a bond or place other conditions on release. See 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during the pendency of his removal proceedings, the

---

<sup>5</sup> Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General’s authority—delegated to immigration judges, see 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is “one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings.” *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

noncitizen may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the noncitizen, based on a variety of factors that account for the noncitizen's ties to the United States and evaluate whether the noncitizen poses a flight risk or danger to the community. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006);<sup>6</sup> *see also* 8 C.F.R. § 1003.19(d) (“The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].”).

Section 1226(a) does not provide a noncitizen with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does § 1226(a) explicitly address the burden of proof that should apply or any particular factor that must be considered in bond hearings. Rather, it grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release a noncitizen during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

---

<sup>6</sup> The BIA has identified the following non-exhaustive list of factors the immigration judge may consider: “(1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States.” *Guerra*, 24 I. & N. Dec. at 40.

Included within the Attorney General and DHS's discretionary authority is a provision that allows DHS to invoke an automatic stay of any decision by an immigration judge to release an individual on bond when DHS files an appeal of the custody redetermination. 8 C.F.R. § 1003.19(i)(2) ("The decision whether or not to file [an automatic stay] is subject to the discretion of the Secretary."). If an automatic stay is invoked, regulations require the BIA to track the progress of the custody appeal "to avoid unnecessary delays in completing the record for decision." 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days, unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R. § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R. § 1003.6(c)(5).

If the noncitizen's circumstances change following his initial bond hearing, he may request a subsequent hearing, *see* 8 C.F.R. § 1003.19(e), and the outcome of that hearing is also appealable to the BIA, *see Matter of Uluocha*, 20 I. & N. Dec. 133, 134 (BIA 1989).

**b. Harsono's detention during the pendency of his removal proceedings is constitutional.**

In his Petition, Harsono asserts claims that his detention violates the First Amendment and the Fifth Amendment as well as the Administrative Procedures Act. ECF 1 at 37-40. Harsono's claims fail as a matter of law because his removal proceedings and detention follow from the revocation of his visa by the Secretary of State based upon his criminal record. He is receiving all the process that is due to him under the statutory and regulatory scheme set out by Congress in 8 U.S.C. § 1226(a). Harsono is not in prolonged detention. He has been in detention for less than one month and during that time he has had hearings on both his custody and the underlying merits of the charges of removability

brought against him. To the extent there has been a delay in the proceedings, it is based upon Petitioner's requests. Petition ¶ 92.

Harsono has no right to be released during the pendency of his immigration proceedings. *See Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General."). Importantly, "when the Government deals with deportable [noncitizens], the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." *Demore*, 538 U.S. at 528. And as the Supreme Court has ruled, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citation and quotation marks omitted). Due process demands only that the government provide "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (quoting *Zadvydas v. Davis*, 533 U.S. 679, 690-91 (2001)).

During their removal proceedings, noncitizens like Harsono who are detained under § 1226(a) receive numerous procedural safeguards. See, *supra*, Factual Background, § II. Harsono is next scheduled to appear before an immigration judge on May 29, 2025. He will have the opportunity to present the merit-based arguments he has to contest his removability. He has not been denied due process, and his Petition should be dismissed.

“Detention of aliens pending their removal in accordance with the INA is constitutional and is supported by legitimate governmental objectives.” *Hope*, 972 F.3d at 328–29 (citing *Demore*, 538 U.S. at 531, and *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). Indeed, the Supreme Court “has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Demore*, 538 U.S. at 522. Because “any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government.” *Id.* at 522–23. Accordingly, the Supreme Court has long held that “detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process.” *Id.* at 522–23. This has resulted in the Supreme Court ruling that individuals held during the pendency of removal proceedings may be detained even without an individualized determination as to flight risk or dangerousness. *See, e.g., Carlson v. Landon*, 342 U.S. 524, 528–34, 538 (1952); *Wong Wing*, 163 U.S. at 235 (holding deportation proceedings “would be vain if those accused could not be held in custody pending the inquiry into their true character.”).

Instead of addressing this line of cases, Harsono argues that his detention must be punitive. Petition ¶ 123. That is incorrect. “The enforcement of our immigration laws is the government’s sovereign prerogative, and detention is *necessarily* a part of the removal procedure.” *Miranda v. Garland*, 34 F.4th 338, 366 (4th Cir. 2022) (emphasis added). *Carlson* is particularly instructive here. There, four petitioners had been arrested and charged with being members of the Communist Party of the United States. *Id.* at 529. The petitioners challenged their detention without bond while in custody during the pendency

of consideration of their deportability. *Id.* The Supreme Court upheld their detention without bond, recognizing that “evidence of membership plus personal activity in supporting and extending the Party's philosophy concerning violence gives adequate ground for detention.” *Id.* at 535. Even if Harsono were correct that his First Amendment rights are implicated by these proceedings, his detention is authorized.

The United States disputes, and Harsono has not shown, that his detention is based upon his speech. Harsono is charged as removable because the Secretary of State revoked his visa on public safety grounds. Because DHS instituted removal proceedings, Harsono has a forum to argue that he is not subject to removal on the charges, with review up through the Eighth Circuit.

Harsono’s case is distinguishable in many ways from the high-profile student cases he cites. In each of those cases, the United States invoked foreign policy as a basis for visa revocation and/or removability. ECF 1 ¶ 38.<sup>7</sup> The rationale for Harsono’s arrest and detention has not changed; it has always been the visa revocation on public safety grounds. ECF 7-2; 7-4 at 4; Robinson Decl., Ex. 3. Harsono has not shown that his speech was known or considered in the decisions to revoke his visa, initiate removal proceedings, or detain him. Petitioner does not plead any facts to show that DHS has ever mentioned his speech or even that they were aware of his alleged speech. *See generally* ECF 5 ¶¶ 17-9

---

<sup>7</sup> Moreover, the speech of the plaintiffs in those cases has received extensive media coverage and was renown. Petitioner cites extensive media coverage related to Mahmoud Khalil and Ozturk, for example. The news reports on which Petitioner relies to argue this alleged “policy,” do not contain citations for the broader application of it, and there is no factual allegation other than speculation that ties it to the Petitioner here. *E.g.*, ECF 4 at 7 n.15.

(outlining that the majority of the speech was on an account under a business name); Robinson Decl. ¶ 10. To the extent his “speech” is in the record of proceedings in the immigration court, his arrest for riot is always accompanied by the corresponding dismissal of those charges, and it is mentioned only as part of his complete criminal history. ECF 7-4. The alleged “policy” Petitioner cites related to scouring social media post-dates the visa revocation in this case and is issued by USCIS, who is not party to the removal proceedings and was not involved in the decision to revoke Harsono’s visa. ECF 4 at 8 n.16.

*Zadvydas v. Davis*, 533 U.S. 679 (2001), is not controlling here. Petition ¶¶ 46, 119, 122. In *Zadvydas*, the detention statute at issue, § 1231, concerns post-removal hearing detention where indefinite detention without the possibility of removal posed a “serious constitutional problem.” 533 U.S. 678, 690 (2001). But § 1226 does not pose those same problems. The statute authorizes detention until the end of one’s removal proceedings.

In *Faras Ali v. Brott, et al.*, No. 19-1244, 2019 WL 1748712 (8th Cir. Apr. 16, 2019), the Court held that the language of 1226(a), which allows for detention during removal proceedings, was clear. Farass Ali had been taken into ICE custody in May 2017 and charged with removability based on fraud or misrepresentation at the time of his entry. *Id.* at \*1. Because he was detained under § 1226(a), Ali received a bond hearing, which the IJ denied. In September 2018, after over a year in detention, Ali filed a habeas petition arguing his detention was unconstitutional. *Id.* The district court granted Ali’s petition and ordered him released, reasoning the Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001) (which governs § 1231 post-removal order detention), and the doctrine

of constitutional avoidance required the Court to read a “reasonableness limitation” into the time an alien could be detained during removal proceedings. *Id.* at \*2.

The Eighth Circuit reversed and remanded. The court reasoned, citing *Jennings*, that § 1226 is not susceptible to more than one construction as to the length of detention.

In contrast to the statute analyzed in *Zadvydas*, § 1226(a) limits the period of detention to the period “pending a decision on whether the alien is to be removed from the United States.” While this is not subject to precise calculation, it is, nonetheless, a defined period that does have an end.

*Id.* at \*3. With respect to § 1226(c), the *Ali* court continued:

It is significant the Supreme Court has found unambiguous the language of § 1226(c), which requires mandatory detention until a decision regarding removal is reached, and therefore has refused to use constitutional avoidance to read an extra-textual “reasonableness” limitation into the statute. We see no principled basis for viewing § 1226(a)’s text regarding the length of detention any differently.

*Id.* at \*4. Even if this Court were to consider the merits of the detention question here, there is no question that this short period of detention, coupled with the process afforded Petitioner is valid.

The fact that ICE has invoked the automatic stay provision to keep Harsono detained during his bond appeal does not change the constitutionality of his detention. Judge Davis recently rejected a constitutional challenge to another provision of the regulations implementing the exercise of the Secretary’s discretion under § 1226(a). Order, *Ernesto Ruben Barajas Farias v. Garland, et al.*, No. 24-cv04366 (MJD/LIB) (Dec. 6, 2024) (ECF No. 18, hereinafter Order Denying Petition). There, Judge Davis was considering a challenge 8 C.F.R. § 1003.19(h)(2)(i)(C), which allowed DHS to exempt a category of individuals from receiving any bond hearing under 1226(a).

Judge Davis explained the statutory structure of immigration detention as set out in Section 1226 and the accompanying DOJ regulations. Order to Show Cause, 24-cv-4366 (MJD/LIB) (Dec. 4, 2024) (ECF No. 14, hereinafter “Order to Show Cause”). Congress’s scheme in 1226 clearly gave discretion to the Attorney General under 1226(a) to make detention decisions for the individuals in removal proceedings. Judge Davis wrote:

In exercising that discretion, the Attorney General has decided that some detainees . . . will not be released on bond, while other detainees will be given a more granular determination. This appears entirely consistent with the delegation of authority to the Attorney General effected by 1226(a).

Order to Show Cause at 3. Judge Davis recognized that this statutory structure was like one Congress set up for the Bureau of Prisons that the Supreme Court upheld in *Lopez v. Davis*, 531 U.S. 230 (2001). Order to Show Cause at 3-4. There, the Supreme Court upheld a BOP regulation categorically denying a sentence reduction provision to a category of inmates, as an exercise of discretion given to it by Congress. Order to Show Cause at 4 (citing *Lopez*, 531 U.S. at 233, 244).

In his Order Denying the Petition, Judge Davis carefully considered and rejected several arguments made by the petitioner. Judge Davis’s reasoning focused on the text of section 1226, “which expressly commits” detention authority to the Attorney General’s discretion. Order Denying Petition at 4. The Attorney General’s further delegation, via regulation, to immigration judges is constrained by the Attorney General’s finding that for individuals charged under section 1227(a)(4), no IJ review is allowed. *Id.* at 5. Judge Davis rejected an argument that *Lopez* was not applicable because this detention is in the civil context. *Id.* at 6-7.

Finally, Judge Davis highlighted the Eighth Circuit's very recent precedent in *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). The *Banyee* decision rejects a constitutional challenge to mandatory detention under 1226(c) for the length of an individual's removal proceedings. 115 F. 4th at 931 ("The rule has been clear for decades: '[d]etention during deportation proceedings [i]s ... constitutionally valid.'") (citing *Demore*, 538 U.S. at 523). *Banyee* and *Farass Ali* make clear that the Eighth Circuit reads section 1226 to allow for constitutional detention during removal proceedings, and this Court's review of the detention is constrained. Judge Davis distinguished and disagreed with out-of-district authority to the contrary. *Id.* at 7.

This Court should adopt the Eighth Circuit and Judge Davis's reasoning and find that Harsono's detention is constitutional as his removal proceedings progress. His Petition should be denied.

**c. Harsono should not be released pending adjudication of this Petition.**

For the reasons stated above, Harsono should not be released pending adjudication of this Petition. His detention is consistent with statute, regulation, and precedent. Release on bail during review of a petition for habeas is extremely rare and requires a significant showing from the Petitioner:

Release on bail pending disposition of the habeas petition, or pending appeal, requires the habeas petitioner to show not only a substantial federal constitutional claim that presents not merely a clear case on the law, but a clear, and readily evident, case on the facts, but also the existence of some circumstance making the request exceptional and deserving of special treatment in the interests of justice.

*Martin v. Solem*, 801 F.2d 324, 329 (8th Cir. 1986) (cleaned up); *see also Blanks v. United States*, No. 4:22-CV-1257 RLW, 2023 WL 3568649, at \*3 (E.D. Mo. May 19, 2023) (collecting cases that describe the “formidable barrier” to pre-decision release, and the “reasons for parsimonious exercise of the power”).

The United States disagrees that Petitioner in this case has met the high burden necessary to secure release on bail pending adjudication of his Petition. Here, the United States has presented evidence that its actions were based upon Harsono’s property-damage related conviction. The contemporaneous records from DHS and the Department of State are consistent in reference to this conviction. Petitioner has presented nothing more than speculation and reference to dissimilar cases to support his theory that he was targeted for speech – most of which occurred on a business account. With regard to his Fifth Amendment claims, Petitioner’s detention is short and the immigration proceedings underlying it have moved incredibly quickly. Petitioner’s First Amendment concerns and Fifth Amendment concerns are not “clear on the law” and “clear, and readily evident” on the facts.

Petitioner submitted as supplemental authority a recent decision by Judge Blackwell in a similar case. Order, *Mohammed H. v. Trump, et al.*, No. 25-cv-1576 (JMB/DTS) (D. Minn. May 6, 2025).<sup>8</sup> One of the concerns highlighted by the court in *Mohammed H.* regarding the prospective impact on the petitioner’s right to free speech (Order at 8) is not

---

<sup>8</sup> The United States also notes that this Order is immediately appealable, *Solem*, 801 F.3d at 328, and that because the decision is so new, the period for appeal has not run.

unique; it would be present for anyone detained. There is nothing unique to Petitioner here that would warrant this extraordinary relief.

Judge Blackwell also identifies “shifting” reasons for removal, a characterization that the Respondents in that case and here dispute. The relevant facts here all start with the visa revocation based on the property damage conviction. The charges DHS filed, ECF 7-2 and Robinson Decl., Ex. 3, were based on the revocation of the visa and post-dated it. The immigration judge has reviewed multiple motions to terminate proceedings due to alleged failures regarding the charges and rejected those. The erroneous SEVIS notation, ECF 7-5, is not relevant in the removal proceedings and was corrected voluntarily without court intervention.<sup>9</sup> Petitioner’s SEVIS record is and has been correct for more than a month. The Order in *Mohammed H.* gives undue weight to events occurring in short order and overlooks the ultimate consistency in the Respondents’ position.

Respectfully, this Court should follow the Eighth Circuit’s decision in *Solem* itself, which overturned the decision to release the petitioner on bail because “no extraordinary circumstances were shown in the present case.” 801 F.2d at 330.

**II. This Court should dismiss the Petition to the extent it goes well beyond questions relevant to Harsono’s current detention.**

Harsono’s claims, regardless of how they are styled, challenge the United States decision to remove him. It is indisputable that revocation of a visa is grounds for removal under 8 U.S.C. § 1227. It is also indisputable that this Court has no jurisdiction to review

---

<sup>9</sup> Removal proceedings are not instituted because of a SEVIS termination. There must be a basis in 8 U.S.C. § 1227, which here there is based upon the visa revocation as identified in the NTA and amended charges.

the revocation of a visa under 8 U.S.C. § 1221(i) or the initiation of removal proceedings based upon that revocation. 8 U.S.C. § 1252(a)(5), (b)(9), (g). As discussed more fully below, Congress has withdrawn district court jurisdiction over the challenges presented in this action. Notwithstanding the lack of district court jurisdiction, Petitioner is not without an Article III forum to challenge any eventual removal order that may issue: after exhausting administrative remedies in the immigration court and at the BIA, he may file a petition for review of a final removal order with the appropriate court of appeals, in which he may assert legal and constitutional challenges to his removal order and removal proceedings. He may not shortcut that process, and certainly may not do it through habeas.

**III. This Court does not have jurisdiction to review the Secretary of State's discretionary decision to revoke Harsono's student visa.**

This Court is not permitted to review the Secretary of State's decision to revoke his visa, which is the basis for his arrest, detention, and the initiation of removal proceedings against him. Though Petitioner creatively describes his claims and asserts that this Court should review a broader "policy," his claims, at their root, focus on whether the Secretary of State had the authority to revoke his visa. Petitioner's visa was revoked under the discretionary authority lodged in the Department of State by statute pursuant to public safety concerns. Under 8 U.S.C. § 1201(i),

After the issuance of a visa or other documentation to any alien, the consular officer or the Secretary of State may at any time, in his discretion, revoke such visa or other documentation. Notice of such revocation shall be communicated to the Attorney General, and such revocation shall invalidate the visa or other documentation from the date of issuance....

That same section explicitly states that there “shall be no means of judicial review” including habeas review, mandamus review, and all writs act review, “except in the context of removal proceedings if such revocation provides the sole ground for removal.” 8 U.S.C. § 1201(i).

Here, ICE issued Petitioner a NTA initiating removal proceedings on account of the revocation of his visa, and therefore, Harsono can seek judicial review before the court of appeals if he is ordered removed.<sup>10</sup> As explained by another district court when dismissing a habeas petition which challenged the revocation of a visa: “Congress has taken it out of my hands. ... I cannot address this argument because I lack subject matter jurisdiction over the case. The legality of petitioner’s detention depends on the resolution of such issues as whether the government lawfully revoked his visa and whether he is removable from the United States and, as indicated above, I am precluded from reviewing those issues.” *Bolante v. Achim*, 457 F. Supp. 2d 898, 902 (E.D. Wis. 2006). The *Bolante* court also found that the Suspension Clause was not implicated because “the government has initiated removal proceedings” and a circuit court could review a challenge to the visa revocation upon a petition for review. *Id.* at 902-03, n.6.<sup>11</sup>

---

<sup>10</sup> At a high level, Respondents agree with Harsono that “visa revocations do not automatically lead to termination of status or removal proceedings.” Petition ¶ 43. However, here, Petitioner’s visa was revoked, “effective immediately” by the Bureau of Consular Affairs. *See generally* Armstrong Declaration; ECF 7-5 at 4. This is not a prudential revocation and the FAM does not apply. Petition ¶¶ 43; 78-79. Furthermore, DHS initiated removal proceedings because of the visa revocation, effective on March 23, 2025. An immigration judge will determine whether Harsono has a legal right to remain in the United States.

<sup>11</sup> 8 U.S.C. § 1252 (b)(9).

Other courts also routinely find themselves without jurisdiction to consider the merits of a visa revocation upon operation of 8 U.S.C. § 1201(i)'s language. *See e.g., Aldabbagh v. Sec'y of State*, No. 6:21-CV-532-GAP-EJK, 2021 WL 6298664, at \*2 (M.D. Fla. Oct. 5, 2021) (Finding no jurisdiction over complaint that asked court to declare revocation of visa to be arbitrary and capricious, an abuse of discretion, and not in accordance of law.); *Tarlinsky v. Pompeo*, No. 3:19-CV-659 (VLB), 2019 WL 2231908, at \*5 (D. Conn. May 23, 2019) (“As the basis for [the visa] revocation is expressly non-reviewability by statute, the [c]ourt lacks subject matter jurisdiction over” the complaint.). Petitioner’s claims are a direct request for this court to review the State Department’s revocation of his visa through this Petition. This Court lacks jurisdiction to consider his claims, which must be presented instead in the context of his removal proceedings through the petition for review process.

**IV. This Court does not have jurisdiction to review ICE’s decision to detain.**

Section 1226(e) serves as yet another jurisdictional bar that precludes district court review of Harsono’s claims. The decision to detain Harsono is governed by 8 U.S.C. § 1226(a), which is the discretionary detention statute that authorizes detention pending a final decision in removal proceedings. *See* 8 U.S.C. § 1226(a) (authorizing ICE to arrest and detain an alien “pending a decision on whether the alien is to be removed from the United States”). The INA explicitly bars judicial review of the discretionary decision over whether to detain someone placed in removal proceedings. Section 1226(e) provides that: “The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney

General under this section regarding the detention of any alien or the revocation or denial of bond or parole.” 8 U.S.C. § 1226(e).

Section 1226(e) covers the initial decision to detain Harsono. *See Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that § 1226(e) did not bar review because the petitioner did not challenge “his initial detention”); *see also Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (not applying § 1226(e) because the petitioner did not challenge the “*initial detention* or bond decision”) (emphasis added); *Mayorga v. Meade*, No. 24-CV-22131, 2024 WL 4298815, at \*7 (S.D. Fla. Sept. 26, 2024) (applying § 1226(e) to hold that a § 1226(a) detainee “failed to establish that his detention is subject to review”); *Saadulloev*, 2024 WL 1076106, at \*3 (recognizing that there is no judicial review of the threshold detention decision).

**V. 8 U.S.C. § 1252(g) Bars Judicial Review of ICE’s Decision to Commence Removal Proceedings Against Petitioner.**

The proper path for reviewing the propriety of a removal order—including whether the application of immigration law to the petitioner—is through the petition for review process set out in 8 U.S.C. § 1252. Despite this statute, Harsono presses forward in a habeas action that his removability charge is a result of alleged First Amendment discrimination and that his detention violates due process. He must bring those challenges through a petition for review. *E.g., Jama v. I.N.S.*, 329 F.3d 630, 632 (8th Cir. 2003), *aff’d sub nom. Jama v. ICE*, 543 U.S. 335, 125 S. Ct. 694, 160 L. Ed. 2d 708 (2005) (Eighth Circuit retains jurisdiction to review “consider substantial constitutional challenges to the Immigration and Nationality Act.”). This Court lacks jurisdiction over the matter and therefore should not deny the petition.

By its plain terms, 8 U.S.C. § 1252(g) eliminates district court jurisdiction over challenges to commencing removal proceedings. Petitioner seeks to challenge the government's decisions to charge him with removability and detain him, which arise "from the decision [and] action" to "commence proceedings." 8 U.S.C. § 1252(g). Regardless of the framing of the claims, this Court does not have jurisdiction over such challenges.

Section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or action by [the Secretary of Homeland Security] to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." *Id.* (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."<sup>12</sup> Though this section "does not sweep broadly," *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 296 (3d Cir. 2020), its "narrow sweep is firm," *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021). Except as provided in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *Id.*

Section 1252(g) is "directed against a particular evil: attempts to impose judicial constraints upon [certain categories of] prosecutorial discretion." *Reno v. American-Arab*

---

<sup>12</sup> Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

*Anti-Discrimination Comm.*, 525 U.S. 471, 485 n.9 (1999) (“*AADC*”). Indeed, Section 1252(g) was designed to protect the Executive’s discretion and avoid the “deconstruction, fragmentation, and hence prolongation of removal proceedings.” *Id.* at 487; *see, e.g., Rauda v. Jennings*, 55 F.4th 773, 777-78 (9th Cir. 2022) (“Limiting federal jurisdiction in this way is understandable because Congress wanted to streamline immigration proceedings by limiting judicial review to final orders, litigated in the context of petitions for review.”). Indeed, Section 1252(g)’s language protects the government’s authority to make “discretionary determinations” over whether and when to commence removal proceedings against an alien, “providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress has designed.” *AADC*, 525 U.S. at 485.

In *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017), the Eighth Circuit recently affirmed the district court’s holding that it lacked jurisdiction over a challenge to a final order of removal under 8 U.S.C. § 1252(g). This District has routinely rejected challenges seeking to review removal orders; Harsono’s challenge to whether the charges brought make him removable is analogous. *See, e.g., Adan v. Sessions*, 17-cv-5328 (MJD/BRT), Docket No. 13; *Mohamed v. Sessions*, 17-cv-5331 (DSD/BRT), Docket No 19; *Ibrahim v. Sessions*, 17-cv-5333 (DSD/TNL), Docket No. 16; *Sheikh v. Sessions*, 17-cv-5330 (JNE/HB); *Gopar v. Dep’t of Homeland Security*, 17-cv-356 (PJS/TNL), 2017 WL 2222409, \*2 (D. Minn. Apr. 19, 2017), Report and Recommendation adopted, 2017 WL 2222913 (D. Minn. May 19, 2017); *Ruiz v. Johnson*, 14-cv-1721 (MJD/TNL), 2014 WL 2511094, \*3 (D. Minn. June 4, 2014) (“Fundamentally, Petitioner is challenging the

validity of the immigration judge's removal order. This Court lacks subject matter jurisdiction to consider her claims, which must be raised in the appropriate circuit court of appeals.”); *Alonso v. Office of Counsel/Immigration and Customs Enforcement*, 13-cv-2514 (MJD/JJK), 2013 WL 5999485, \*4 (D. Minn. Nov. 12, 2013) (“[T]he REAL ID Act prohibits a federal district court from entertaining such claims in a habeas corpus proceeding, and mandates that such claims must be brought in the apposite federal circuit court.”); *Mehighlovesky v U.S. Dept. of Homeland Security*, 12-cv-902 (RHK/JJG), 2012 WL 6878901, \*4 (D. Minn. Dec. 7, 2012) (same); *Buezo v. Banieke*, 08-cv-206 (DWF/RLE), 2008 WL 312808, \*3 (D. Minn. Feb. 1, 2008) (same); *Ukofia v. Mukasey*, 2008 WL 5432254, \*1 (D. Minn. Dec. 5, 2008).

Section 1252(g) prohibits district courts from hearing challenges to decisions and actions about *whether* and *when* to commence removal proceedings. *See, e.g., Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) (“We construe § 1252(g) . . . to include not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding.”); *see also, e.g., Sissoko v. Rocha*, 509 F.3d 947, 950-51 (9th Cir. 2007) (holding that § 1252(g) barred review of a Fourth Amendment false arrest claim that “directly challenge[d] [the] decision to commence expedited removal proceedings.”); *Obado v. Superior Ct. of New Jersey Middlesex Cnty.*, No. 21-cv-10420 (FLW), 2022 WL 283133, at \*3 (D.N.J. Jan. 31, 2022) (“Because [p]etitioner challenges the decision to commence and adjudicate removal proceedings against him, the [c]ourt lacks jurisdiction to direct [respondents] to terminate [p]etitioner’s NTA and/or halt his removal proceedings.”).

The scope of § 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security chooses to commence removal proceedings. *See, e.g., Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision to take him into custody and to detain him during removal proceedings”); *Saadulloev v. Garland*, No. 3:23-cv-106, 2024 WL 1076106, at \*3 (W.D. Pa. Mar. 12, 2024) (“The Government’s decision to arrest [petitioner], clearly is a decision to ‘commence proceedings’ that squarely falls within the jurisdictional bar of § 1252(g).”). The act of arresting an alien to serve a charging document and initiate removal proceedings is an “action . . . to commence proceedings” that this Court lacks jurisdiction to review. *See, e.g., id.; Tazu*, 975 F.3d at 298-99 (“Tazu also challenges the Government’s re-detaining him for prompt removal. . . . While this claim does not challenge the Attorney General’s *decision* to execute his removal order, it does attack the *action* taken to execute that order. So under § 1252(g) and (b)(9), the District Court lacked jurisdiction to review it.”).

As Section 1252(g) prohibits judicial review of “any cause or claim” that arises from the commencement of removal proceedings, this provision applies to constitutional as well as statutory claims. *See, e.g., Tazu*, 975 F.3d at 296-98 (holding that any constitutional claims must be brought in a petition for review, not a separate district court action); *Elgharib v. Napolitano*, 600 F.3d 597, 602–04 (6th Cir. 2010) (noting that “a natural reading of ‘any other provision of law (statutory or nonstatutory)’ includes the U.S. Constitution” and finding additional support for the court’s interpretation from the

remainder of the statute). Indeed, the Second Circuit explained, “[w]hile the statute creates an exception for ‘constitutional claim or questions of law,’ jurisdiction to review such claims is vested exclusively in the courts of appeals and can be exercised only after the alien has exhausted administrative remedies.” *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (internal citations omitted); *see also id.* (“Accordingly, the district court lacked jurisdiction to review Ajlani’s constitutional challenges to his removal proceedings, and it would be premature for this court to do so now.”); 8 U.S.C. § 1252(a)(2)(D).

Moreover, the Supreme Court held that a prior version of § 1252(g) barred claims similar to those brought here. *See AADC*, 525 U.S. at 487-92. In *AADC*, the respondents had alleged that the “INS was selectively enforcing the immigration laws against them in violation of their First and Fifth Amendment rights.” *Id.* at 473-74. The Supreme Court noted “an admission by the Government that the alleged First Amendment activity was the basis for selecting the individuals for adverse action.” *Id.* at 488 n.10. The respondents argued to the Supreme Court that a lack of immediate review would have a “chilling effect” on their First Amendment rights. *Id.* at 488. Nonetheless, the Supreme Court held that the “challenge to the Attorney General’s decision to ‘commence proceedings’ against them falls squarely within § 1252(g).” *Id.* at 487; *see also Cooper Butt ex rel Q.T.R. v. Barr*, 954 F.3d 901, 908–09 (6th Cir. 2020) (holding that the district court did not have jurisdiction to review a claim that the plaintiffs’ father “was removed ‘based upon ethnic, religious and racial bias’ in violation of the Equal Protection Clause of the Fifth Amendment”).

Petitioner alleges that the government arrested and commenced removal

proceedings against him in retaliation for his exercise of the First Amendment, but that does not remove the claims from Section 1252(g)'s reach. *See, e.g., AADC*, 525 U.S. at 487-92 (holding that Section 1252(g) deprived district court of jurisdiction over claim that certain aliens were targeted for deportation in violation of the First Amendment.); *Zundel v. Gonzales*, 230 F. App'x 468, 475 (6th Cir. 2007) (explaining that First Amendment challenge related to immigration enforcement action "is properly characterized as a challenge to a discretionary decision to 'commence proceedings' . . . [and] is insulated from judicial review"); *Humphries v. Various Fed. U.S. INS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999) (ruling that § 1252(g) prohibited review of an alien's First Amendment claim based on decision to put him into exclusion proceedings); *Vargas v. United States Dep't of Homeland Sec.*, No. 1:17-cv-356, 2017 WL 962420, at \*3 (W.D. La. Mar. 10, 2017) (Claim that ICE "violated her First Amendment right to free speech by arresting her and initiating her removal after she made statements to the media . . . is barred by 8 U.S.C. § 1252(g)."); *Kumar v. Holder*, No. 12-cv-5261 (SJF), 2013 WL 6092707, at \*6 (E.D.N.Y. Nov. 18, 2013) (Claim of initiation of proceedings in retaliatory manner "falls squarely within Section 1252(g) . . . [and] [t]he pending immigration proceedings are the appropriate forum for addressing petitioner's retaliation claim in the first instance."). As such, judicial review of Petitioner's claims that the commencement of removal proceedings against him is unconstitutional is barred by Section 1252(g).

**VI. 8 U.S.C. §§ 1252(a)(5) and (b)(9) channel all of Petitioner's challenges to the Courts of Appeals.**

Under the INA, removal proceedings generally provide the exclusive means for determining whether an alien is both removable from the United States and eligible for any

relief or protection from removal. *See* 8 U.S.C. § 1229a. In 8 U.S.C. § 1252, Congress channeled into the statutorily prescribed removal process all legal and factual questions—including constitutional issues—that may arise from the removal of an alien, with judicial review of those decisions vested exclusively in the courts of appeals. *See AADC*, 525 at 483. District courts play no role in that process. Consequently, this Court lacks jurisdiction over Petitioner’s claims, which are all, at bottom, challenges to removal proceedings. Petitioner must first raise his challenges through the administrative removal proceedings, and then, if necessary, in the appropriate court of appeals.

To start, 8 U.S.C. § 1252(b)(9) eliminates this Court’s jurisdiction over Petitioner’s claims by channeling all challenges to immigration proceedings (and removal orders) to the courts of appeals:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien* from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction . . . by any . . . provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of *all* [claims arising from deportation proceedings]” to a court of appeals in the first instance. *AADC*, 525 U.S. at 483. As the Second Circuit explained, § 1252(b)(9) requires claims like Petitioner’s to be consolidated in one proceeding before the Court of Appeals:

Congress enacted [8 U.S.C. § 1252(b)(9)] for the important purpose of consolidating all claims that may be brought in removal proceedings into one final petition for review of a final order in the court of appeals. . . . Before [8 U.S.C. § 1252(b)(9)], only actions attacking the deportation order itself

were brought in a petition for review while other challenges could be brought pursuant to a federal court's federal question subject matter jurisdiction under 28 U.S.C. § 1331. Now, by establishing "exclusive appellate court" jurisdiction over claims "arising from any action taken or proceeding brought to remove an alien," all challenges are channeled into one petition.

*Calcano-Martinez v. INS*, 232 F.3d 328, 340 (2d Cir. 2000). By law, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2).

Moreover, Section 1252(a)(5) reiterates that a petition for review is the exclusive means for judicial review of immigration proceedings:

Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the

apple” (internal quotation marks omitted)).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” *See also Ajlani*, 545 F.3d at 235 (“jurisdiction to review such claims is vested exclusively in the courts of appeals”). The petition-for-review process before the court of appeals thus ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their ‘day in court.’” *J.E.F.M.*, 837 F.3d at 1031-32; *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all constitutional claims or questions of law.”).

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has explained that “whether the district court has jurisdiction will turn on the substance of the relief that a plaintiff is seeking.” *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, which includes any challenge that is inextricably intertwined with the final order of removal that precedes issuance of any removal order, *id.*, as well as decisions to detain for purposes of removal or for proceedings, *Jennings v. Rodriguez*, 538 U.S. 281, 294-95 (§ 1252(b)(9) includes challenges to “decision to detain [alien] in the first

place or to seek removal,” which precedes any issuance of an NTA). Here, Petitioner’s claims challenge the government’s ability to arrest and detain him in the first place and to place him in removal proceedings, which all arise from the government’s efforts to remove him. *See, e.g., Jennings*, 538 U.S. at 294-95 (§ 1252(b)(9) includes challenges to “decision to detain [alien] in the first place or to seek removal,” which precedes any issuance of an NTA); *see also Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge “his initial detention”); *Saadulloev*, 2024 WL 1076106, at \*3 (recognizing that there is no judicial review of the threshold detention decision). As such, the Court lacks jurisdiction over this action. *See, e.g., Ali v. Barr*, 464 F. Supp. 3d 549, 557-58 (S.D.N.Y. 2020) (Buchwald, J.) (lack of jurisdiction over issues arising from removal proceedings); *Nikolic v. Decker*, No. 19 Civ. 6047 (LTS), 2019 WL 5887500, at \*3 (S.D.N.Y. Nov. 12, 2019) (same); *P.L. v. ICE*, No. 19 Civ. 1336 (ALC), 2019 WL 2568648, at \*2 (S.D.N.Y. June 21, 2019) (collecting cases) (“Where immigrants in removal proceedings directly or indirectly challenge removal orders or proceedings, the Second Circuit and district courts within the circuit have held district courts do not have jurisdiction.”); *Selvarajah v. U.S. Dep’t of Homeland Security*, No. 10 Civ. 4580 (JGK), 2010 WL 4861347, at \*4 (S.D.N.Y. Nov. 30, 2010) (“challenges to actions that are part of [an ongoing] removal proceeding have been treated in the same manner as challenges to removal orders, for jurisdictional purposes”); *see also Taal v. Trump*, No. 3:25-cv-335 (ECC), 2025 WL 926207, at \*2 (N.D.N.Y. Mar. 27, 2025) (“Plaintiffs have not established that the Court has subject matter jurisdiction over Taal’s claim for a temporary restraining order enjoining his removal proceedings.”);

*Sophia v. Decker*, No. 19 Civ. 9599 (LGS), 2020 WL 764279, at \*2 (S.D.N.Y. Feb. 14, 2020) (applying § 1252(b)(9) to strip district court of jurisdiction over challenge to whether the petitioner was legally in removal proceedings); *cf. Qiao v. Lynch*, 672 F. App'x 134, 135 (2d Cir. 2017) (“Like the district court, we conclude that the IJ’s challenged order reopening removal proceedings against Qiao is inextricably linked to the removal proceedings, as well as any removal order that may ultimately result from reopening those proceedings.”).

The Third Circuit’s decision in *Massieu v. Reno*, 91 F.3d 416 (3d Cir. 1996) (Alito, J.), is instructive. There, in a case concerning the same charge of removability (under the predecessor statute, 8 U.S.C. § 1251(a)(4)(C)(i)), the Third Circuit reversed a district court’s order declaring the statute unconstitutional and enjoining deportation proceedings, because the petitioner was required to first exhaust administrative remedies through the immigration court and then file a petition for review. *Massieu*, 91 F.3d at 417. The court specifically noted that for “an alien attempting to prevent an exclusion or deportation proceeding from taking place in the first instance,” he must avail himself of the administrative procedures. *Id.* at 421. This case was decided prior to IIRIRA and the REAL ID Act, but as discussed above, those laws withdrew district court jurisdiction and made the courts of appeals the exclusive forum to hear such challenges. Thus, this Court should reach the same result as *Massieu*: Petitioner’s claims should be dismissed for lack of jurisdiction; he must present his challenges in the administrative removal process, and then, if necessary, to the appropriate court of appeals.

**VII. This Court likewise has no jurisdiction to order Harsono be detained at any location.**

This Court also lacks jurisdiction over ICE's discretionary decision concerning where to detain aliens in immigration detention, and thus the Court lacks authority to enjoin Harsono's potential transfer to a different location. This argument amounts to a challenge to the commencement of removal proceedings over which this Court lacks jurisdiction under 8 U.S.C. § 1252(g) because decisions relating to commencement of proceedings necessarily includes the method by which they are commenced. *See Alvarez v. ICE*, 818 F.3d 1194, 1202 (11th Cir. 2016) (recognizing that the three actions listed Section 1252(g)—commence proceedings, adjudicate cases, and execute removal orders—“represent the initiation or prosecution of various stages in the deportation process,” and “[a]t each stage the Executive has discretion to abandon the endeavor” for any number of reasons) (citing *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999)).

The commencement of proceedings requires ICE to determine whether, when, and where to commence such proceedings, meaning that Section 1252(g) bars this Court's review of ICE's decision where to initiate removal proceedings. *See, e.g., Alvarez*, 818 F.3d at 1203 (“The challenge to ICE's decision, made by its counsel, Defendant Emery, essentially asks this Court to find that the agency should have chosen a different method of commencing proceedings. The district court was correct to find that Section 1252(g) strips us of the power to entertain such a claim.”); *Arostegui v. Holder*, 368 F. App'x 169, 171 (2d Cir. 2010) (holding, upon a petition for review of a final removal order: “Whether and when to commence removal proceedings is within the discretion of DHS, and we do

not have jurisdiction to review such decisions, unless petitioner raises constitutional claims or questions of law.”) (citing 8 U.S.C. § 1252(g)).

Additionally, the Executive’s authority under 8 U.S.C. § 1231(g) to decide the location of detention for individuals detained pending removal proceedings falls within the review bar in 8 U.S.C. § 1252(a)(2)(B)(ii). That is because, under Section 1231(g), ICE “necessarily has the authority to determine the location of detention of an alien in deportation proceedings,” including whether to change that location during the pendency of proceedings. *Gandarillas-Zambrana v. Bd. Immigration Appeals*, 44 F.3d 1251, 1256 (4th Cir. 1995); *see, e.g., Wood v. United States*, 175 F. App’x 419, 420 (2d Cir. 2006) (holding that the Secretary “was not required to detain [Plaintiff] in a particular state” given the Secretary’s “statutory discretion” under Section 1231(g)).

A district court may not exercise jurisdiction over ICE’s decision to detain an alien in a given location and may not order ICE to transfer an alien from one location to another. *See, e.g., Salazar v. Dubois*, No. 17-cv-2186 (RLE), 2017 WL 4045304, at \*1 (S.D.N.Y. Sept. 11, 2017) (concluding that the district court “does not have authority to issue an order to change or keep [an alien] at any particular location”); *Zheng v. Decker*, No. 14-cv-4663 (MHD), 2014 WL 7190993, at \*15-16 (S.D.N.Y. Dec. 12, 2014) (denying petitioner’s request that the Court order ICE not to transfer him to another jurisdiction, holding that Section 1231(g) transfer authority “is among the [Secretary of Homeland Security’s] discretionary powers. The INA precludes judicial review over such discretionary decisions. *See* 8 U.S.C. § 1252(a)(2)(B)(ii) (barring district courts from exercising subject matter jurisdiction over “any . . . decision or action of the Attorney General . . . the authority

for which is specified under this subchapter [8 U.S.C. §§ 1151-1381] to be in the discretion of the Attorney General . . .”).

Notwithstanding the above, Harsono’s removal proceedings are taking place within Minnesota. Counsel represented to the Court that there is no immediate plan to transfer Harsono outside of the district and to inform the Court if those facts change. There is no legal or factual basis for the Court to consider this argument. To the extent the Court reaches the issue, it should deny habeas relief.

**VIII. Harsono’s Administrative Procedures Act claim is ill-suited to habeas and should be dismissed.**

**a. Harsono’s habeas claim goes well beyond the bounds of habeas.**

The writ of habeas corpus and its protections are “strongest” when reviewing “the legality of Executive detention.” *INS v. St. Cyr.*, 533 U.S. 289, 301 (2001). Harsono may seek “simple release”. *See Thuraissigiam*, 591 U.S. at 119 (“Claims so far outside the core of habeas may not be pursued through habeas.”) (internal quotations and citations omitted). Petitioner cannot invoke the APA because he has an adequate remedy at law: the petition for review process.

The APA permits judicial review of agency action only when, *inter alia*, statutes do not “preclude judicial review,” 5 U.S.C. § 701(a)(1), and “there is no other adequate remedy in a court.” 5 U.S.C. § 704. Here, Congress barred district court review of Petitioner’s claims in Section 1252. Accordingly, no claim may lie under the APA. *See, e.g., Delgado*, 643 F.3d at 55 (no APA claim because § 1252 barred judicial review). Moreover, Congress channeled into the statutorily prescribed administrative removal procedure review of all legal, constitutional, and factual questions that may arise from the

removal of an alien, with judicial review of those decisions vested exclusively in the courts of appeals. As a petition for review provides an adequate remedy at law for Petitioner's claims, as set out in 8 U.S.C. § 1252, an APA may not be asserted in this Court for that reason as well. *See Aguilar*, 510 F.3d at 11 (“[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one”).

As described above, Petitioner is factually mistaken as to the underlying basis for instituting removal proceedings and the impact of the SEVIS termination. Petition ¶¶ 128-130. DHS arrested Petitioner after his visa was revoked, “effective immediately,” and put him in removal proceedings based upon that revocation. The amended charges are specific to that basis. Even if Petitioner could raise a challenge to the initial charge, it would need to be done in immigration court. *Reiter v. Cooper*, 507 U.S. 258, 269 (1993) (“Where relief is available from an administrative agency, the plaintiff is ordinarily required to pursue that avenue of redress before proceeding to the courts; and until that recourse is exhausted, suit is premature and must be dismissed.”); *Mathena v. United States*, 577 F.3d 943, 946 (8th Cir. 2009); *Arroyo v. Fikes*, No. 21-CV-2489 (KMM/BRT), 2022 WL 2820405, at \*2 (D. Minn. May 5, 2022). While “[t]here is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention [in federal court],” *Araujo- Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014), exhaustion should be required as a prudential matter, *accord Paz Nativi v. Shanahan*, No. 16 Civ. 8496 (JPO), 2017 WL 281751, at \*1 (S.D.N.Y. Jan. 23, 2017) (“[B]efore immigration detention may be challenged in federal court. . . exhaustion is generally required as a prudential matter.” (collecting cases)).

**b. Harsono's APA claim fails on its merits.**

Petitioner fails to demonstrate any merit to his claims brought under the APA and *Accardi v. Shaughnessy*, 347 U.S. 260 (1954). The APA provides a right to judicial review of “final agency action for which there is no other adequate remedy.” *Bennett v. Spear*, 520 U.S. 154, 175 (1997). In short, the APA provides the cause of action for claimants to enforce an agency's duty, as set forth in the *Accardi* doctrine, to adhere to its own rules. *E.g.*, *Biron v. Carvajal*, No. 20-CV-2110 (WMW/ECW), 2021 WL 3047250, at \*29 (D. Minn. July 20, 2021), *report and recommendation adopted*, No. 20-CV-2110 (WMW/ECW), 2021 WL 4206302 (D. Minn. Sept. 16, 2021), *aff'd*, No. 21-3615, 2022 WL 2288534 (8th Cir. June 24, 2022). An *Accardi* claim requires an actual injury and the alleged policy at issue must involve substantive, not procedural rights. *Id.* Petitioner must show, which he cannot based on the facts of this case, that the alleged policy exists and applied to him.

Section 701(a)(2) of the APA precludes judicial review where agency action is committed to agency discretion by law. As such, judicial review of the State Department's revocation of Petitioner's visa is precluded since 8 U.S.C. § 1201(i) vests such revocation in the Secretary of State and precludes judicial review aside from in removal proceedings. *See Mansur v. Albright*, 130 F. Supp. 2d 59, 61 (D.D.C. 2001) (“Without such statutory or regulatory limitation, there is no law to apply to the Secretary's discretionary revocation, and this court lacks jurisdiction to review the revocation ...”). Similarly, ICE's decisions to commence removal proceedings and arrest and detain Petitioner were all discretionary decisions not subject to APA review by this Court. *See Gicharu v. Carr*, 983 F.3d 13, 20

(1st Cir. 2020) (“Having concluded that Gicharu’s APA claim and habeas claim both arise from his removal proceedings, we hold that the district court lacked subject matter jurisdiction over those claims under section 1252(b)(9).”).

But, even if considered on their merits, under long-standing principles limiting APA claims, Petitioner’s *Accardi* claim, must fail because it fails to challenge any agency action cognizable under the APA, let alone the “final” agency action required for APA review. Where “no other statute provides a private right of action, the ‘agency action’ complained of must be ‘final agency action.’” *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 61–62 (2004) (citing 5 U.S.C. § 704). Petitioner fails to identify a final agency action on which to base his APA claim. *See Bennett*, 520 U.S. at 177–78 (requiring a final agency action to “mark the consummation of the agency’s decisionmaking process” and “the action must be one by which “rights or obligations have been determined,” or from which “legal consequences will flow”).

Even if Petitioner could identify a final agency action, that agency action would be directly tied to the ICE’s decision to initiate removal proceedings against him and the validity of those charges, which must be brought in removal proceedings. *See* 8 U.S.C. § 1252(b)(9). Judge Tunheim rejected a similar claim in *Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at \*3 (D. Minn. Jan. 20, 2021), stating, “The purpose of this provision is to protect particular administrative determinations . . . from judicial review until after a final order has issued.” The *Lopez* case also concerned the exercise of prosecutorial discretion to commence immigration proceedings. Petitioner’s *Accardi* claim fails for because, at bottom, Petitioner challenges the Government’s decision to initiate

removal proceeding against him. To the extent that the claim is not barred by §§ 1202(i) and 1252(g), it must be brought through Petitioner's removal proceedings and raised in a petition for review of a final order of removal if entered.

Petitioner also complains that DHS terminated his SEVIS record improperly. Petitioner notes that the SEVIS termination originally noted that it was based on Sections 237(a)(1)(C)(i) and 237(a)(4)(C) of the INA. This information was corrected on April 8, 2025 to reflect the termination was because "Individual identified in criminal records check and/or has had their VISA revoked." ECF 7-5 at 2 (showing termination), 7 (showing manual correction on April 8, 2025).

This claim is without merit. Respondents have not alleged that Harsono is subject to removal under INA Section 237(a)(4)(C)(i). The SEVIS record was corrected to conform with the charges brought against Harsono and the basis for the revocation of his visa, as stated originally in the Secretary of State's March 23, 2025 memorandum. ECF 7-4 at 4. The SEVIS termination has no independent collateral consequences. And SEVIS does not create a property interest that is enforceable here. *Bakhtiari v. Beyer*, No. 4:06-CV-01489(CEJ), 2008 WL 3200820, at \*3 (E.D. Mo. Aug. 6, 2008) ("The Court finds that neither the SEVIS regulations nor the enabling legislation on which they are based demonstrate that Congress intended to create a private right of action or intended to benefit a class of which plaintiff is a member."). In rejecting a section 1983 claim against a school official based upon an inaccurate SEVIS record, the Minnesota Court of appeals said, "We acknowledge that *Bakhtiari* is not binding upon this court, but its reasoning is persuasive . . . The regulations do not provide to any clear right of enforcement to a nonimmigrant

student . . .”. *Hollingsworth v. State*, No. A14-1874, 2015 WL 4877725, at \*4 (Minn. Ct. App. Aug. 17, 2015).

**IX. Petitioner’s First Amendment claim fails.**

Harsono spends most of his efforts trying to fit his case into a box not applicable to him. His case is legally distinguishable from *Khalil* and *Ozturk* and the other cases he cites. His focus on undermining some undefined policy, arguing that it is retaliatory and viewpoint discrimination, is not relevant. His contentions on this point only further confirm why the challenge must first be exhausted through the congressionally created scheme, ultimately culminating in a petition for review before the appropriate court of appeals. But even if the Court were to consider the merits of Harsono’s First Amendment challenge, his claim fails.

Contrary to his assertion that the Government’s arrest and detention of him are retaliatory, the Government initiated removal proceedings against Harsono based on the Respondents’ determination that Harsono’s criminal activities create a public safety risk, and therefore his visa was revoked under 8 U.S.C. § 221(g). The revocation of his visa is a facially valid reason to initiate removal proceedings and preclude Harsono from demonstrating that his arrest and detention violate his rights under the First Amendment. *See, e.g., Nieves v. Bartlett*, 587 U.S. 391, 402 (2019) (explaining that the presence of “probable cause” will overcome the allegation that an officer’s arrest of a suspect was retaliatory); *Nieters v. Holtan*, 83 F.4th 1099, 1110 (8th Cir. 2023), *cert. denied*, 144 S. Ct. 1349, 218 L. Ed. 2d 424 (2024); *Just v. City of St. Louis, Missouri*, 7 F.4th 761, 769 (8th

Cir. 2021); *Williams v. City of Carl Junction, Missouri*, 480 F.3d 871, 876–77 (8th Cir. 2007).

Harsono makes no attempt to show that similarly situated individuals were not detained and did not have removal proceedings initiated against them. As explained above, Harsono compares himself to a class of students whose visa revocations were factually distinct. ECF 8 at 4-8.<sup>13</sup> In each of those cases, the United States invoked foreign policy as a basis for visa revocation and/or removability. *E.g.*, ECF 8 n.6, n.8, n.10, n.11, n.14. This Court cannot draw any inference to support Petitioner’s prima facie case of First Amendment retaliation based on these alleged comparator cases. *Gonzalez v. Trevino*, 602 U.S. 653, 658, 144 S. Ct. 1663, 1667, 219 L. Ed. 2d 332 (2024) (comparator evidence does not have to be exact to support a First Amendment retaliation claim, but there must be some objective, not subjective evidence). Petitioner’s supposition that he was targeted for his speech is not objective and certainly not enough to overcome the record set forth above.

Harsono fundamentally misapprehends how the First Amendment applies in this context. Although “[f]reedom of speech and of press is accorded aliens residing in this country,” *Bridges v. Wixon*, 326 U.S. 135, 148 (1945), these rights are “less robust than those of citizens in certain discrete areas,” *Bluman v. Fed. Election Comm’n*, 800 F. Supp. 2d 281, 287 (D.D.C. 2011) (three-judge panel) (Kavanaugh, J.) (citing *Harisiades*, 342

---

<sup>13</sup> The court in *Khalil* has not granted release. An April 20, 2025 docket entry reflects the denial of a motion by *Khalil* based on the grounds that “Among other things, the second Lucas/Landano factor is not satisfied.” *Landano v. Rafferty*, 970 F.2d 1230 (3d Cir.1992) is “the leading case in this Circuit regarding the standards for the grant of bail for petitioners seeking a Writ of Habeas Corpus.” *Vega v. United States*, 514 F. Supp. 2d 767, 769 (W.D. Pa. 2007). Docket, *Khalil v. Joyce, et al.*, No. 25-cv-1963.

U.S. at 591–92), *aff'd*, 565 U.S. 1104 (2012). *Harisiades* is instructive. There, the Supreme Court reviewed a First Amendment challenge to removal. The petitioners were ordered deported because they associated with or were members of the Communist Party. *Harisiades*, 342 U.S. at 582-83. Specifically, each petitioner was found deportable because of membership in an organization which advocates overthrow of the Government by force and violence. *Id.* at 582-83. The petitioners all raised in part that their deportation abridged the freedom of speech and assembly protected by the First Amendment. *Id.* at 584. The Supreme Court ruled that the First Amendment did not “prevent the deportation of these aliens” just on membership alone. *Id.* at 582-83, 592.

The Supreme Court has explained that a removal proceeding “is a purely civil action to determine eligibility to remain in the country,” and is not meant to punish for past conduct. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984). With respect to the Government’s charges of removability against him, Harsono’s “[p]ast conduct is relevant only insofar as it may shed light on . . . [his] right to remain [in the United States].” *Id.* Harsono’s First Amendment allegations are rebutted, and there is an independent basis to justify the initiation and prosecution of removal proceedings sufficient to foreclose his constitutional claim here.<sup>14</sup>

---

<sup>14</sup> First Amendment claims alleging retaliatory arrest and detention are most frequently brought via a standalone section 1983 claim, not in habeas. That is the proper way to raise the claim. The United States is aware that the Eighth Circuit’s decision in *Sheldon v. Hundley*, 83 F.3d 231, 232 (8th Cir. 1996) has been interpreted to stand for the proposition that a first amendment violation that results in the extension of detention (in the context of a disciplinary proceeding) can state a claim in habeas. But that does not apply here. Harsono’s First Amendment claim is defeated by the presence of probable cause to arrest him, the fact that the decision was based on public safety, not his speech, the lack of factual support for his claim, and the long-recognized discretion of the executive to detain

That Harsono also challenges an alleged broader policy does not change the analysis. He does not point to any consummated decision that itself affects rights and obligations. *See Lujan v. Nat'l Wildlife Federation*, 497 U.S. 870, 890 (1990) (“The term ‘land withdrawal review program’ (which as far as we know is not derived from any authoritative text) does not refer to a single [Bureau of Land Management] order or regulation, or even to a completed universe of particular BLM orders and regulations. It is simply the name by which petitioners have occasionally referred to the continuing (and thus constantly changing) operations of the BLM in reviewing withdrawal revocation applications and the classifications of public lands and developing land use plans as required by the FLPMA. It is no more an identifiable ‘agency action’—much less a ‘final agency action’—than a ‘weapons procurement program’ of the Department of Defense or a ‘drug interdiction program’ of the Drug Enforcement Administration.”); *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (requiring a final agency action to “mark the consummation of the agency's decisionmaking process” and “the action must be one by which “rights or obligations have been determined,” or from which “legal consequences will flow”).

---

someone during their removal proceedings. His First Amendment claim should not result in his release from detention.

## CONCLUSION

For all of the forgoing reasons, the Federal Respondents respectfully request that the Petition be dismissed.<sup>15</sup>

Dated: May 8, 2025

LISA D. KIRKPATRICK  
Acting United States Attorney

*s/ Ana H. Voss*

BY: ANA H. VOSS

Assistant U.S. Attorney

Attorney ID Number 483656DC

600 United States Courthouse

300 South Fourth Street

Minneapolis, MN 55415

Telephone: 612-664-5600

Email: [ana.voss@usdoj.gov](mailto:ana.voss@usdoj.gov)

---

<sup>15</sup> The Federal Respondents do not believe an evidentiary hearing is necessary in this matter, as the submissions, including the declaration and exhibits, of the Federal Respondents provide the Court with a sufficient record upon which to adjudicate Harsono's Petition.