

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

ADITYA WAHYU HARSONO,

Petitioner,

v.

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

Respondents.

Case No. 25-cv-1976-KMM-JFD

**PETITIONER'S REPLY TO
GOVERNMENT'S RESPONSE TO
HABEAS PETITION**

INTRODUCTION

Respondents targeted Petitioner Aditya Harsono, a 34-year-old husband and father from Marshall, Minnesota, because he spoke out in support of Palestinian rights and racial justice and because they wanted to terrorize international students into self-deporting. Now, they seek to hide their flagrant violation of the First and Fifth Amendments by

claiming that Mr. Harsono poses a public safety risk. The Court should not indulge the thinly veiled pretext. Respondents arrested Mr. Harsono without explanation, producing documentation justifying the arrest more than a week later. They claim that Mr. Harsono is deportable because of a visa revocation, but the record is clear: Respondents decided to detain him even before the visa was purportedly revoked. They hold him even after an immigration judge found him not to be a public safety or flight risk, invoking a rarely used automatic stay to prolong his detention despite his pending application to become a lawful permanent resident. And, in a classic indication of pretext, Respondents' story for why Mr. Harsono was identified constantly changes: they invoked a foreign policy ground in terminating Mr. Harsono's student status, now claim that this invocation was an error, and then gesture at a property damage misdemeanor from three years prior—an act that they knew about when they admitted him a year ago.

Unable to justify their decision to detain Mr. Harsono on the merits, Respondents invoke narrow jurisdiction-channeling statutes. But Mr. Harsono only challenges the constitutionality of his detention, which Respondents concede is not jurisdictionally barred. Respondents also claim that the specific ICE officers who arrested Mr. Harsono did not know about his speech. But that carefully worded assertion cannot overcome overwhelming proof of retaliatory intent: Respondents' executive orders targeting speech by noncitizen students, boasts of using social media surveillance and artificial intelligence to identify targets, and inability to explain why else they identified Mr. Harsono for his criminal history when similarly situated students did not face detention.

Respondents have separated Mr. Harsono from his wife and nine-month-old child

with serious medical needs, both United States citizens, for over six weeks. His continued detention is retaliatory, unconstitutional, and arbitrary. The Court should order his release.

BACKGROUND

I. Petitioner Harsono's Life, Arrest, and Detention

A. Mr. Harsono Pursues a Successful Academic Career in America.

Mr. Harsono was born in Indonesia. Harsono Decl. ¶ 1, ECF No. 5. At 23, in 2015, Mr. Harsono entered America on an F-1 visa. *Id.* ¶¶ 5–6. He attended Southwest Minnesota State University (SMSU) in Marshall, and earned a bachelor's degree in environmental science in 2017. *Id.* ¶ 6. After graduation, Mr. Harsono was authorized to work through Optional Practical Training (“OPT”), a statutory program that allows international students to—as part of their F-1 status—gain practical experience in their field of study. *Id.* ¶ 7.

Mr. Harsono cares deeply about justice, instructed by his Muslim faith to advocate for peace. *Id.* ¶¶ 14, 23. In April 2021, Mr. Harsono was at a protest against the shooting of Daunte Wright in Brooklyn Center. *Id.* ¶ 15. Mr. Harsono was there to protest peacefully and did so. *Id.* Still, he was arrested; the only charge he faced was presence at an unlawful assembly, and on January 26, 2022, it was dismissed in the interests of justice. *See* ECF No. 7-4.

Following OPT, in August 2021, Mr. Harsono re-applied for an F-1 visa to pursue a Master of Business Administration (MBA) degree at SMSU. Harsono Decl. ¶ 8. While the unlawful-assembly charge was pending, his visa application was approved. *Id.* ¶¶ 8, 15.

Mr. Harsono, an artist, sought to combine his environmental-science background with business skills and art. *Id.* ¶¶ 16–17. One of his personal projects was a small clothing line called “Butter Soup and Frozen Custard.” *Id.* ¶ 17. Mr. Harsono stated on his Instagram that he used his art to speak to “many social injustice issues that are still happening around the world.” *Id.* ¶ 19. He posted a picture of a Palestine flag and included the Arabic phrase “Free Palestine” in his Instagram biography, a reflection of his hope for peace and human rights—and never as support for violence, hate, or Hamas. *Id.* ¶¶ 20, 22–23.

Mr. Harsono’s artistic pursuits did lead to problems on one occasion, in 2022, when he spray-painted graffiti art on trailers that he thought were abandoned, not far from his Marshall home. *Id.* ¶ 33; *see* ECF No. 7-4. He pleaded guilty to a misdemeanor of fourth-degree damage to property. Harsono Decl. ¶ 33. As a result, he was sentenced to a misdemeanor jail term of ninety days, fully stayed for a year of probation; paid the \$100 in court-imposed restitution; and paid the \$485 in fines and fees. *Id.* Mr. Harsono took full responsibility for his actions, completed all conditions, and was discharged from probation a year later without incident or serving any days in jail. *Id.*

In the years since, Mr. Harsono has matured into a family-focused husband and father. While pursuing his MBA, Mr. Harsono fell in love with Peyton. *Id.* ¶ 12. In October 2023, the two married and “began planning a future rooted in shared values and mutual support.” *Id.* ¶ 12. And they welcomed a baby, who is now nine months old; Mr. Harsono cares deeply for the baby, whose serious medical needs require ongoing attention. *Id.* ¶¶ 4, 40.

Mr. Harsono completed his MBA in December 2023. Harsono Decl. ¶ 9. Pursuant to his F-1 status, he worked as a supply chain manager at Avera Regional Medical Center (“Avera”) in Marshall. *Id.*

In April 2024, Mr. Harsono visited family in Indonesia; on April 27, 2024, DHS readmitted him through Los Angeles International Airport (LAX), which knew about Mr. Harsono’s prior arrest and misdemeanor conviction. *Id.* ¶ 34; *see* ECF No. 7-5 at 7–8 (records showing departure and arrival).¹

In June 2024, Peyton filed an I-130 petition to confirm her marriage to Mr. Harsono. *Id.* ¶ 13. Mr. Harsono filed an I-485 application to adjust status. *Id.*; Gad Decl. ¶ 5.

B. The Government Announces and Implements Its Retaliatory and Punitive Policy.

Days after entering office, Respondent Trump issued two Executive Orders directing the pursuit of immigration sanctions against lawfully present noncitizens who engage in constitutionally protected speech.² Executive Order 14161, issued on January 30, 2025, ordered federal agencies to “ensure that admitted aliens and aliens otherwise already present in the United States do not bear hostile attitudes toward its citizens, culture, government institutions, or founding principles,” and ordered both the Department of State

¹ Respondents state that Mr. Harsono’s most recent entry was on August 7, 2024. *See* Resp. at 4; Robinson Decl. ¶ 4. This is incorrect. At minimum, the Government concedes that it admitted Mr. Harsono *after* it was aware of Mr. Harsono’s arrest and conviction.

² Respondent Trump said as a candidate: “[A]ny student that protests, I throw them out of the country. You know, there are a lot of foreign students. As soon as they hear that, they’re going to behave.” Josh Dawsey et al., *Trump told donors he will crush pro-Palestinian protests, deport demonstrators*, Wash. Post (May 27, 2024), <https://www.washingtonpost.com/politics/2024/05/27/trump-israel-gaza-policy-donors>.

(DOS) and the Department of Homeland Security (DHS) to “vet[] and screen[] to the maximum degree possible” noncitizens in the United States. Pet. ¶ 30 & n.5. Executive Order 14188, issued on January 29, 2025, ordered DOS and DHS to require institutions of higher education to “monitor for and report activities by alien students” and to pursue, “if warranted, actions to remove such aliens.” *Id.* ¶ 31 & nn.6–7. Respondents have implemented these Executive Orders systematically. *See infra* Section II.

C. Respondents Ambush, Arrest, and Detain Mr. Harsono.

On March 27, 2025, Mr. Harsono was called to a meeting in Avera’s basement by co-workers. Harsono Decl. ¶ 24. There, two plainclothes officers arrested him, placed him in handcuffs, and transported him in an unmarked vehicle to Kandiyohi County Jail. *Id.* Mr. Harsono was held there overnight without explanation, access to a lawyer, or documentation. *Id.* ¶ 26. The next day, Mr. Harsono was interrogated for hours at the Fort Snelling ICE Field Office. *Id.* ¶ 28.

Later that day, ICE served Mr. Harsono with a Notice to Appear, alleging that he was removable under INA § 237(a)(1)(B) for remaining in the United States after his visa was revoked. *Id.* ¶ 29. Mr. Harsono had not received indication that his visa had been revoked. *Id.* A screenshot of the Student and Exchange Visitor Information System (“SEVIS”)³ indicates that Mr. Harsono’s status still showed as valid on March 28, 2025. ECF No. 7-5 at 7.

On March 29, 2025, DHS terminated Mr. Harsono’s status in SEVIS. *See* ECF No.

³ SEVIS is a platform managed by DHS to monitor and track nonimmigrant students among others. *See* Resp. at 10.

7-5 at 7. The explanation said, “Student is terminated pursuant to INA 237(a)(1)(C)(i) and 237(a)(4)(C)”—the latter being the precise foreign policy ground that the Government invoked for other students targeted for speech supporting Palestine. *See infra* Section II.A. The Government claims that no DOS official made any determination under INA § 237(a)(4)(C). Resp. at 6, ECF No. 15. But the SEVIS record is maintained by DHS. *See id.* at 10. DHS’s intent in identifying Mr. Harsono is at issue. *See infra* Section I.D (DHS identified Mr. Harsono to DOS on March 22, 2025). DHS’s invocation of the foreign policy ground provides insight into its contemporaneous intent regarding Mr. Harsono’s termination; in other words, it perceived Mr. Harsono as part of the group of students targeted for pro-Palestinian speech.⁴

D. DHS Produces a Selective, Contradictory, and Carefully Worded Narrative Seeking to Obscure the True Purpose of Its Arrest and Detention of Mr. Harsono.

On April 7, 2025, DHS filed documents in Mr. Harsono’s immigration case that claimed to support his removal: a memorandum from DOS official John Armstrong; the *dismissal* of Mr. Harsono’s protest arrest; and Mr. Harsono’s plea to fourth-degree property damage. ECF No. 7-4. The memorandum from John Armstrong was purportedly dated Sunday, March 23, 2025. *Id.* It states:

⁴ The Government claims that this note was “corrected” on April 8, 2025, to reflect that Mr. Harsono was “identified in criminal records check and/or has had their VISA revoked.” Resp. at 10. The Government offers no evidence of DHS’s intent in modifying the note. The Court should not credit this modification, given that the updated reason is also insufficient to warrant SEVIS termination. *See Doe #1 v. Bondi*, No. 25-cv-1998, 2025 WL 1188469, at *2 (N.D. Ga. Apr. 18, 2025) (“[T]he revocation of an F-1 visa ... does not provide a basis to terminate F-1 student status under the SEVIS registration system.”).

On March 23, 2025, *in response to a request from DHS/ICE* and the information from DHS/ICE that Aditya Wahyu HARSONO has been charged by U.S. law enforcement officials with Damage to Prop-1st Deg-Value Reduced Over \$1000 and now poses a threat to U.S. public safety, the Bureau of Consular Affairs approved revocation, effective immediately, of the F-1 visa of HARSONO . . . pursuant to authority in section 221(i) of the Immigration and Nationality Act, 8 U.S.C. 1201(i). *We understand that DHS/ICE intends to immediately pursue removal of HARSONO*, and due to ongoing ICE operational security, this revocation will therefore be silent; the Department of State will not notify the subject of the revocation. . . . I am providing this notice to you with express authorization for use by DHS/ICE in immigration court, as needed.

Id. (emphasis added).

The Government claims that on Saturday, March 22, 2025, DHS “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.” Resp. at 4; *see* Armstrong Decl. ¶ 4, ECF No. 17. According to the Government, DHS “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.” Resp. at 4; *see* Armstrong Decl. ¶ 4.

The Government has not disclosed the DHS communication either in Mr. Harsono’s immigration proceedings or before this Court. This glaring omission highlights the inconsistencies and contradictions in the Government’s narrative.

First, DHS told DOS that it “intends to immediately pursue removal of HARSONO” *before* DOS issued the purported visa revocation that claimed to give DHS deportation authority. Respondents offer no explanation as to why DHS identified Mr. Harsono for

removal. The Government initiated a wave of SEVIS terminations at a similar time based on criminal history known for years and similarly minor.⁵ *See infra* Section II.C. But—unlike the vast majority of the persons subject to SEVIS termination—Mr. Harsono was arrested and detained based on a purported *immediate* visa revocation. *Id.*

The Government has not provided a non-speech-related reason why Mr. Harsono was identified or treated differently. It carefully says that “[t]he 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.” Resp. at. 6 (emphasis added); Robinson Decl. ¶ 10. The Government notably makes no such assertion about the DHS officials who apparently identified Mr. Harsono to DOS.⁶ Indeed, *NBC News* has reported that a central task force is ordering local ICE agents “whom to arrest without clear guidance about why they are being targeted.”⁷

Second, the Government’s recounting of the timing is inconsistent. The memorandum was not produced for the first time until April 7, 2025. The Government admits that it did not attempt to notify Mr. Harsono until May 8, 2025—after this petition and during detention. *See* Armstrong Decl. Ex. 1, ECF No. 17-1. Moreover, in a May 8, 2025 brief that DHS filed before the BIA, DHS claims that ICE “received information regarding the respondent’s criminal history” on March 24, 2025—the day *after* the

⁵ These terminations have resoundingly been held to be unlawful. *See, e.g.*, Pet. ¶ 53.

⁶ Indeed, the Government admits that Mr. Harsono’s arrest for protesting was part of the immigration proceedings. Resp. at 6; *see* Robinson Decl. ¶ 5.

⁷ Julia Ainsley, *Inside the DHS task force scouring foreign students’ social media*, NBC NEWS (Apr. 9, 2025), <https://www.nbcnews.com/politics/national-security/dhs-task-force-scouring-foreign-students-social-media-rcna198532>.

purported revocation. *See* Second Gad Decl. Ex. 17 at 2. DHS also claims that Mr. Harsono is removable because he “remained in the United States beyond his visa revocation date of March 25, 2025”—not March 23. *Id.* at 2–3. Respondents’ inability to get the facts straight after six weeks is evidence of serious procedural irregularities.

Third, the memorandum belies any suggestion that DOS exercised discretion in terminating Mr. Harsono’s visa. The Government admits that DOS merely “rel[ie]d upon the underlying information and assessment provided by DHS/ICE.” Resp. at 5; *see* Armstrong Decl. ¶ 5. Indeed, the DOS memorandum relies on the *dismissed* “charge” of “Damage to Prop-1st Deg,” not the misdemeanor of fourth-degree property damage to which he pleaded guilty.

DHS is driving the removal process: prior to the purported revocation, DHS already told DOS that it “intends to immediately pursue removal of HARSONO,” and DOS purportedly revoked Mr. Harsono’s visa on a Sunday after the Saturday request. ECF No. 7-4; Resp. at 4–5; *see* Armstrong Decl. ¶¶ 4–5. The Government’s Response recognizes this, carefully stating that the revocation “implicat[ed] the [State] Department’s discretionary authority”—and not stating that DOS *exercised* discretion. Resp. at 5.

E. Mr. Harsono Remains in Detention.

On April 10, 2025, the immigration judge found that Mr. Harsono was not a public safety or flight risk in light of his community ties and pending adjustment application, and set a \$5,000 bond. Harsono Decl. ¶¶ 36–37. The same day, DHS filed a notice of appeal and invoked a rare auto-stay regulation, 8 C.F.R. § 1003.19(i)(2). *Id.* ¶ 37; *see* ECF No. 7-8; Doyle Decl. ¶ 12, ECF No. 6.

On May 1, 2025, the immigration judge denied Mr. Harsono's second motion to terminate his proceedings. *See* ECF No. 7-9. Mr. Harsono's next hearing is set for May 29, 2025. Second Gad Decl. ¶ 8.

On May 9, 2025, Mr. Harsono received notice that the I-130 petition had been approved, and he intends to file the approval notice and push for adjudication of the I-485 petition. Second Gad Decl. ¶ 7 & Ex. 18.

Mr. Harsono remains detained and separated from his family, unable to care for his nine-month-old daughter and wife, both emotionally and financially. Harsono Decl. ¶¶ 43–44.

II. The Government's Systematic Implementation of the Executive Orders

Respondents have implemented the Executive Orders to target speech and terrorize international students, and their methods of implementation make clear that Mr. Harsono was caught in the dragnets of their retaliatory and fear-inducing policies.

A. Respondents Seek to Deport Noncitizens Engaged in Speech Supporting Palestinian Rights.

Respondents have sought to detain and deport noncitizens who have engaged in speech supporting Palestinian rights—ranging from being related by marriage to a Palestinian to attending pro-Palestinian demonstrations. *See* Pet. ¶ 40; Pet'r Mem at 6 & nn.8–11, ECF No. 4. DHS has signaled its adherence to the Executive Orders by seeking to invoke the “Foreign Policy Ground,” 8 U.S.C. § 1227(a)(4)(C)(i), when an individual's “presence or activities” is deemed to have “potentially serious adverse foreign policy consequences”—despite a statutory prohibition against punishing constitutionally

protected expression. Pet. ¶¶ 32, 34. For example, the Government invoked the ground against Mahmoud Khalil, vaguely stating that he “led activities *aligned* to Hamas.” *Id.* ¶ 40.⁸

Formal invocation is not the only tell. The *Washington Post* reported that DHS official Andre Watson asked DOS official Armstrong—the same person involved in Mr. Harsono’s case—to invoke the Foreign Policy Ground to deport Rumeysa Ozturk because she “engaged in anti-Israel activism in the wake of the Hamas terrorist attacks,” specifying that she “co-authored an Op-ed article” that “called for Tufts to ‘disclose its investments and divest from companies with direct or indirect ties to Israel.’”⁹ Because DHS did not provide specific evidence of “antisemitic activity” or “indicating support for a terrorist organization,” DOS—instead of shutting down DHS’s efforts—invoked the Secretary of State’s discretionary revocation authority under 8 U.S.C. § 1201(i) in a memo produced on March 21, 2025—a day before Mr. Harsono’s.

B. Respondents Surveil Social Media with AI Tools to Identify Targets.

Respondents are deploying social media surveillance and artificial intelligence to identify speech that they disagree with, including speech supportive of Palestinian rights.

Since at least 2019, DOS has required visa applicants to register social media handles that they have used over the past five years on any of twenty platforms, including

⁸ DHS (@DHSgov), X (Mar. 9, 2025, 6:29 PM), <https://x.com/DHSgov/status/1898908955675357314> (emphasis added).

⁹ John Hudson, *State Dept. office’s memo undercuts official claims about student’s arrest*, Wash. Post (Apr. 13, 2025), <https://www.washingtonpost.com/national-security/2025/04/13/tufts-student-rumeysa-ozturk-rubio-trump>.

Facebook and Instagram.¹⁰ The information is retained indefinitely.¹¹ On March 6, 2025, Respondent Rubio launched “an AI-fueled ‘Catch and Revoke’ effort to cancel the visas of foreign nationals who appear to support Hamas or other designated terror groups,” including “AI-assisted reviews of tens of thousands of student visa holders’ social media accounts.”¹² A leaked DOS directive, dated March 25, 2025 (two days before Mr. Harsono’s arrest), referenced Executive Orders 14161 and 14188 and required consular officers to refer “all new or returning F-1 . . . visa applications for social media vetting” if the applicant was in the United States between October 7, 2023 and August 31, 2024, or had their SEVIS record terminated.¹³ The officers were required to take screenshots of “potentially derogatory information.” *Id.*

On April 9, 2025, *NBC News* reported that a “recently created Department of Homeland Security task force is using data analytic tools to scour the social media histories of the estimated 1.5 million foreign students studying in the United States for potential grounds to revoke their visas,” and if any red flags are raised, the information will be shared

¹⁰ Faiza Patel, *U.S. AI-Driven ‘Catch and Revoke’ Initiative Threatens First Amendment Rights*, Brennan Center for Justice (Mar. 20, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/us-ai-driven-catch-and-revoke-initiative-threatens-first-amendment-rights>.

¹¹ Charlie Savage, *Visa Applicants’ Social Media Data Doesn’t Help Screen for Terrorism, Documents Show*, N.Y. Times (Oct. 5, 2023), <https://www.nytimes.com/2023/10/05/us/social-media-screening-visa-terrorism.html>.

¹² Marc Caputo, *State Dept. to use AI to revoke visas of foreign students who appear ‘pro-Hamas’*, Axios (Mar. 6, 2025), <https://www.axios.com/2025/03/06/state-department-ai-revoke-foreign-student-visas-hamas>.

¹³ Ken Klippenstein, *Trump Admin Spies on Social Media of Student Visa Holders*, Substack (Mar. 28, 2025), <https://www.kenklippenstein.com/p/exclusive-trump-admin-spies-on-social> (citing 25 State 26168, *Action Request: Enhanced Screening and Social Media Vetting for Visa Applicants*).

with DOS to seek a visa revocation that can then substantiate an arrest.¹⁴ The same day, DHS stated that it will consider social media in adjudicating immigration benefits.¹⁵

C. Respondents Target Thousands of International Students with Unlawful SEVIS Terminations to Exacerbate Fear.

Beginning in March of 2025 and in furtherance of the Executive Orders, DHS official Andre Watson led an effort called the “Student Criminal Alien Initiative.” Tr. 5:12–22, *Patel v. Lyons*, No. 25-cv-1096 (D.D.C. May 2, 2025), Dkt. No. 20-2 (“*Patel Tr.*”), attached as Second Gad Decl. Ex. 19. This initiative involved ten to twenty federal employees who—over the course of three weeks—ran approximately 1.3 million SEVIS records through the National Crime Information Center (NCIC). *Id.* at 7:19–22, 9:3–24. The NCIC is a database that contains records for crime victims, those arrested but not charged, those charged but not convicted, and those convicted of crimes. *Id.* at 5:23–6:24.

This initiative, which ran through mid-April, matched approximately 6,400 names of students with the NCIC. *Id.* at 12:15. These names were passed onto DOS in batches. *Id.* at 12:19–13:3. The main DOS contact was Armstrong. *Id.* at 13:10. DOS then returned all the names to DHS with two lists: (1) persons with valid visas, which DOS then revoked; and (2) persons whose visas were not current and did not require revocation. *Id.* at 14:10–16:13. DHS then terminated all the SEVIS records. *Id.* at 16:2–13; *see id.* at 19:11–27:7 (discussing an April 1, 2025 example).

¹⁴ Ainsley, *supra* n.7, <https://www.nbcnews.com/politics/national-security/dhs-task-force-scouring-foreign-students-social-media-rcna198532>.

¹⁵ U.S. Citizenship & Immigr. Servs., *DHS to Begin Screening Aliens’ Social Media Activity for Antisemitism* (Apr. 9, 2025), <https://www.uscis.gov/newsroom/news-releases/dhs-to-begin-screening-aliens-social-media-activity-for-antisemitism>.

In early April, students nationwide began discovering from their school officials (not DHS) that their SEVIS records had been abruptly terminated, causing mass chaos and confusion. *See* Pet. ¶ 48 & n.21. Some students had criminal hits similar to Mr. Harsono’s misdemeanor conviction and dismissed charge, while others had traffic violations or no discernable contact with law enforcement. *See, e.g., Doe 1 v. Bondi*, No. 25-cv-1998, 2025 WL 1188469, at *2 (N.D. Ga. Apr. 18, 2025) (116 plaintiffs whose SEVIS status was terminated between April 1 and 14, 2025); *Shaik v. Noem*, No. 25-cv-1584, 2025 WL 1170447, at *1 (D. Minn. Apr. 22, 2025).

Unlike Mr. Harsono, some students received emails informing them that their visas had been revoked. *E.g.*, Dkt. Nos. 11-2, 12-2, 13-2, *Shaik*, No. 25-cv-1584; *Bondi*, 2025 WL 1188469, at *2. The emails generally stated, “[Y]our F-1 visa with expiration date has been revoked under Section 221(i) of the United States Immigration and Nationality Act, as amended. The Bureau of Consular Affairs Visa Office has alerted the Department of Homeland Security’s Immigration and Customs Enforcement. . . . Remaining in the United States without lawful immigration status can result in fines, detention, and/or deportation.” Dkt. No. 12-2, *Shaik*, No. 25-cv-1584. The emails included an especially chilling line: “Persons being deported may be sent to countries other than their countries of origin.” *Id.*; *accord Yang v. Noem*, No. 25-cv-292, 2025 WL 1166521, at *2 (W.D. Wis. Apr. 22, 2025); *Doe 4 v. Lyons*, No. 2:25-cv-708, 2025 WL 1208072, at *3 (W.D. Wash. Apr. 25, 2025).

Courts granted temporary restraining orders against the terminations, including

several in this District.¹⁶ *See* Pet. ¶ 53. Front and center were students who expressed fear as to not just removal proceedings—but detention like Mr. Harsono and other students. For example, one student “has been “overwhelmed by fear and anxiety” and—despite medical issues—has not “dared to leave her home, constantly worrying that [she] may be detained by immigration authorities.” *Doe 4*, 2025 WL 1208072, at *3. A Georgia court described plaintiffs’ fear “that they will abruptly have to leave behind family, cancel marriage plans, and abandon their communities in order to avoid detention or being labeled a national security or foreign policy threat.” *Doe 1*, 2025 WL 1188469, at *4. In granting TROs, courts frequently ordered the Government not to detain. *See Chen v. Noem*, No. 1:25-CV-00733-TWP-MG, 2025 WL 1163653, at *10 (S.D. Ind. Apr. 21, 2025) (collecting cases explaining courts’ jurisdiction).

After these lawsuits, DHS began asserting that many of the revocations were “prudential,” effective on departure from the U.S. DHS official Watson asserted that, “Prudential visa revocation, absent other factors, does not make an individual amenable to removal.” *See, e.g.,* Watson Decl. ¶ 21, *Deore v. Noem*, No. 2:25-cv-11038 (E.D. Mich. filed Apr. 14, 2025), Dkt. No. 14-3 (“Prudential visa revocation, absent other factors, does not make an individual amendable [sic] to removal.”). Nothing on the face of the visa-revocation email refers to a “prudential” revocation; in *Deore*, the Government claimed that because the notification did not state that the revocation was immediate, it was

¹⁶ Kyle Cheney & Josh Gerstein, *How a Trump Administration Crackdown on Foreign Students Unraveled*, Politico (Apr. 25, 2025), <https://www.politico.com/news/2025/04/25/foreign-students-visas-donald-trump-00311600>.

prudential. Dkt. No. 14 at 10, *Deore*.

Here, the notification email that the Government sent on May 8, 2025, said nothing about whether the purported visa revocation was immediate. *See* ECF No. 17-1. Yet Respondents still claim that it was and that Mr. Harsono is deportable. Respondents provide no indication why Mr. Harsono is treated differently from the students whose revocations it claims were “prudential.”

The Government continues to leave the threat of potential removal proceedings open. *See Sultan v. Trump*, No. 25-CV-1121, 2025 WL 1207071, at *4 (D.D.C. Apr. 24, 2025) (“Defense counsel also stated that he could not say whether the government intends to initiate removal proceedings.”); *Vyas v. Noem*, No. 3:25-0261, 2025 WL 1351537, at *5 (S.D.W. Va. May 8, 2025) (rejecting Watson’s declaration as “generic”).¹⁷ Respondents jealously guard the ability to detain students who entered the United States lawfully, and are using this legal limbo to threaten students to self-deport.¹⁸

The targeting and detention of noncitizen students has caused students in Minnesota to question if studying in the United States is a good idea, whether they should leave their house, and whether they should speak up—even in classes—about issues “that could be construed as ‘political.’” Decl. of Adam Thompson ¶¶ 4–6.

¹⁷ Cheney & Gerstein, *supra* n.16, <https://www.politico.com/news/2025/04/25/foreign-students-visas-donald-trump-00311600> (featuring an exchange where the court asked: “You’re standing here today on behalf of the United States and you’re telling me that you do not know whether this plaintiff is legally in the United States? How is she supposed to know the answer to that question if you don’t?”).

¹⁸ Ted Hesson, *US Offers \$1,000 Stipend to Encourage Migrants to Self-Deport*, Reuters (May 5, 2025), <https://www.reuters.com/world/us/us-offers-1000-stipend-encourage-migrants-self-deport-2025-05-05>.

D. Respondents Have Exacerbated These Lawless Actions with Broad Threats to Instill Fear in Students.

Beyond these actions, Respondents have threatened individuals whose acts they do not like. A DHS official said that DHS would “never have let [Khalil] in the country” if they knew that he was going to engage in protest. Pet. ¶ 38. On March 27, 2025, Respondent Rubio said, “Every time I find one of these lunatics, I take away their visas,” targeting activities such as “creating a ruckus.” Pet. ¶ 39 n.11. Rubio said in a press conference on March 28, 2025: “[I]f they seek to self-deport they can do that, because that’s what we’ve done. We’re basically asking them to leave the country. *That’s why they’ve been detained.* They can do so tomorrow. Buy an airplane ticket and leave.”¹⁹ Rubio said that at risk were students who are “associated or aligned with organizations that seek to do damage in this country, and that, frankly, organizations that hate the United States Government and hate our way of life.”²⁰ Rubio said that the “State Department now reviews law-enforcement information about student visa holders and when we find those who have supported terrorists *or otherwise abused our hospitality*, their visas are instantly revoked.”²¹

E. Courts Have Required Immediate Release in Similar Circumstances.

Faced with similar evidence of Respondents’ policies and intent, courts have

¹⁹ U.S. Dep’t of State, *Secretary of State Marco Rubio Remarks to the Press* (Mar. 28, 2025), <https://www.state.gov/secretary-of-state-marco-rubio-remarks-to-the-press-3> (emphasis added).

²⁰ *Id.*

²¹ Marco Rubio, *100 Days of an America First State Department* (Apr. 30, 2025), <https://statedept.substack.com/p/100-days-of-an-america-first-state-department>.

inferred a retaliatory policy that violates the First Amendment. *Mohammed H. v. Trump*, No. 25-cv-1576, 2025 WL 1334847, at *3–5 (D. Minn. May 5, 2025); *Mahdawi v. Trump*, No. 2:25-cv-389, 2025 WL 1243135, at *10 (D. Vt. Apr. 30, 2025); *Am. Ass’n of Univ. Professors v. Rubio [AAUP]*, No. CV 25-10685-WGY, 2025 WL 1235084, at *18–20 (D. Mass. Apr. 29, 2025); *Ozturk v. Trump*, No. 2:25-cv-374, 2025 WL 1145250, at *18–20 (D. Vt. Apr. 18, 2025). Courts have ordered release of similarly targeted students on bail. *Mohammed H.*, 2025 WL 1334847, at *8; *Mahdawi*, 2025 WL 1243135, at *14; *Ozturk v. Trump*, No. 2:25-cv-374, 2025 WL 1355667, at *1 (D. Vt. May 9, 2025). And courts have rejected Respondents’ jurisdictional challenges. *Mohammed H.*, 2025 WL 1334847, at *3, *Mahdawi v. Trump*, No. 25-1113, 2025 WL 1353665, at *4–5 (2d Cir. May 9, 2025); *Ozturk v. Hyde*, No. 25-1019, 2025 WL 1318154, at *7–13 (2d Cir. May 7, 2025); *Khalil v. Joyce*, No. 25-cv-1963, 2025 WL 972959, at *6 n.12 (D.N.J. Apr. 1, 2025); *see also Suri v. Trump*, No. 1:25-cv-480, 2025 WL 1310745, at *13–14 (E.D. Va. May 6, 2025) (rejecting challenge to court’s jurisdiction over transfer).

ARGUMENT

The Government dedicates much of its response to attack the Court’s jurisdiction. But the Court undoubtedly can hear Mr. Harsono’s request for release. The Government concedes that the constitutionality of detention can be challenged in habeas. Mr. Harsono is not subject to mandatory detention, and Respondents’ continued detention is an unconstitutionally motivated choice. Moreover, although Mr. Harsono details the events surrounding the purported revocation of his visa, Mr. Harsono does not challenge this apparent decision through this petition. Instead, the severe procedural irregularities

surrounding that supposed revocation are evidence of Respondents’ unlawful intent in continuing to detain him.

The Government has little to say about the merits of the petition. Mr. Harsono’s ongoing detention by Respondents retaliates against his protected speech and incarcerates him for impermissible purposes in violation of the First and Fifth Amendments of the Constitution.

I. THE COURT HAS JURISDICTION TO REVIEW WHETHER MR. HARSONO’S DETENTION IS CONSTITUTIONAL.

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

Respondents argue that “Section 1252(b)(9) bars relief and review” when “read in conjunction with” Section 1252(a)(5). Resp. at 35–40. They do not.

Section 1252(a)(5) applies only to review of “an order of removal,” which has not been filed. By its plain language, this statute does not apply. *Ozturk*, 2025 WL 1145250, at *13 (“Subsection (a)(5) can be dispensed of quickly, as no ‘removal order’ has been issued here and Ms. Ozturk does not challenge one.”). Similarly, Section 1252(b)(9) is limited to review of an order of removal. *See, e.g., Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007) (“By virtue of their explicit language, both §§ 1252(a)(5) and 1252(b)(9) apply only to those claims seeking judicial review of orders of removal.”)

Even if Section 1252(b)(9) were somehow applicable beyond the context of final removal orders, it could not bar the core habeas challenge Mr. Harsono brings here to his unconstitutional detention. The Supreme Court squarely rejected Respondents’ interpretation that Section 1252(b)(9) precludes review of every issue even tangentially

connected to removal as “absurd.” *See Jennings v. Rodriguez*, 583 U.S. 281, 293–94 (2018) (rejecting broad construction of a question “arising from” an “action taken . . . to remove an alien” that would deprive the court of jurisdiction for any collateral issue to the removal proceedings). The Eighth Circuit has not questioned this Court’s jurisdiction over constitutional challenges to immigration detention either. *See Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024).²²

Accordingly, where a habeas petitioner challenges detention independent of a challenge to a removal order, Section 1252(b)(9) does not strip the Court of jurisdiction. *See Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020); *Gonzalez v. U.S. Immigr. & Customs Enf.*, 975 F.3d 788, 810–11 (9th Cir. 2020) (“[C]laims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process”); *Ozturk*, 2025 WL 1009445, at *4 n.1.

Here, Mr. Harsono’s detention does not “arise from” a removal order. He has no removal order, and his detention preceded the initiation of removal proceedings. *See Ozturk*, 2025 WL 1145250, at *13 (“While Ms. Ozturk’s detention may be related to her immigration status following the revocation of her visa, it does not ‘arise from’ her removal proceedings. Indeed, there is no causal relationship between the removal proceedings and her detention. . . . Ms. Ozturk was detained before the commencement of her removal

²² The Eighth Circuit’s view of due process regarding detention under 8 U.S.C. § 1226 is controversial. *See Banyee v. Bondi*, 131 F.4th 823, 827 (8th Cir. 2025) (Colloton, C.J., dissenting). But it has not questioned district-court jurisdiction to review constitutional challenges to detention raised in habeas parallel to ongoing removal proceedings.

proceedings.”). Mr. Harsono’s constitutional challenge to his detention falls outside Section 1252(b)(9).

Respondents’ cited cases do not require otherwise. Respondents rely on the Supreme Court’s characterization of Section 1252(b)(9) as a “zipper clause” in *Reno v. Am.-Arab Anti-Discrimination Comm.* (“AAADC”), 525 U.S. 471, 483 (1999), but that case was exclusively about removal, not detention. Later Supreme Court decisions have made clear that Section 1252(b)(9) does not encompass every claim related to removal. *See Jennings*, 583 U.S. at 294; *Regents*, 591 U.S. at 19. Respondents’ other cases stand for the unremarkable proposition that circuit courts can hear constitutional challenges to removal through petitions for review; none address habeas jurisdiction over detention. *See Resp.* at 39–40. To interpret the statute as broadly as Respondents seek would improperly gut habeas. *See Ozturk*, 2025 WL 1145250 at *15 (“[T]he government’s argument on this issue boils down to a bold statement that no matter how egregious the type or quantity of First Amendment or due process violations committed by the government in detaining an individual, an Article III court cannot consider any alleged constitutional violations until after Article II employees, with no power to consider or address those violations, have moved the case through their lengthy process.”); *cf. Khalil*, 2025 WL 972959, at *37 (“That is too far. Our tradition is that there is no gap in the fabric of habeas—no place, no moment, where a person held in custody in the United States cannot call on a court to hear his case and decide it.”). In sum, because Mr. Harsono challenges only his detention, Section 1252(b)(9) does not apply.

B. Section 1252(g) Does Not Preclude Review.

Section 1252(g) limits judicial review of three decisions by the Attorney General: (1) to commence removal proceedings, (2) to adjudicate cases, and (3) to execute removal orders. It does not cover “the universe of deportation claims” and is not a “shorthand way of referring to all claims arising from deportation proceedings.” *AAADC*, 525 U.S. at 482; *see Jennings*, 583 U.S. at 294 (“[W]e read the language to refer to just those three specific actions themselves.”).

Respondents cite inapposite cases in which courts were asked to either enjoin or overturn the commencement of removal proceedings²³ or the execution of final removal orders.²⁴ Mr. Harsono seeks neither. Mr. Harsono’s petition seeks an end to his current

²³ *AAADC*, 525 U.S. at 474 (suit “to prevent the initiation of deportation proceedings”); *Taal v. Trump*, No. 3:25-CV-335 (ECC/ML), 2025 WL 926207, at *1 (N.D.N.Y. Mar. 27, 2025) (plaintiffs sought to “enjoin the commencement of removal proceedings”); *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 598–99 (9th Cir. 2002) (petitioner argued the “the INS should have commenced deportation proceedings against her” sooner); *Alvarez v. U.S. Immigr. & Customs Enf.*, 818 F.3d 1194, 1203 (11th Cir. 2016) (petitioner “essentially asks this Court to find that the agency should have chosen a different method of commencing proceedings”); *Sissoko v. Rocha*, 509 F.3d 947, 950 (9th Cir. 2007) (plaintiff’s “Fourth Amendment-based damages claim” based on his arrest and detention “directly challenges Rocha’s decision to commence expedited removal proceedings”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (same).

²⁴ *Silva v. United States*, 866 F.3d 938, 939 (8th Cir. 2017) (seeking compensation for harms caused by execution of removal order after he was improperly deported); *Camarena v. Dir., Immigr. & Customs Enf’t*, 988 F.3d 1268, 1272 (11th Cir. 2021) (seeking to enjoin execution of a final removal order); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 294 (3d Cir. 2020) (same); *Elgharib v. Napolitano*, 600 F.3d 597, 605 (6th Cir. 2010) (same); *Cooper Butt ex rel Q.T.R. v. Barr*, 954 F.3d 901, 903 (6th Cir. 2020) (seeking declaratory judgment that execution of removal orders was unconstitutional); *Hamama v. Adducci*, 912 F.3d 869, 875 (6th Cir. 2018) (holding that the district court had jurisdiction over “detention-based claims” in the habeas petition but not “removal-based claims”); *Gopar v. Dep’t of Homeland Sec.*, No. 17-CV-356 (PJS/TNL), 2017 WL 2222409, at *1 (D. Minn. Apr. 19, 2017) (“Petitioner . . . seeks to challenge an Immigration Judge’s order that he be removed from the United States.”).

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

C. Section 1226(e) Does Not Bar Review.

The next statute Respondents point to is Section 1226(e), Resp. at 28–29, which permits the Attorney General to detain noncitizens or release them on bond (except for certain circumstances in which detention is mandatory). 8 U.S.C. § 1226(e). Although the statute states that the “Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review,” it does not bar this petition.

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

More importantly, Mr. Harsono does not challenge the “Attorney General’s discretionary judgment”; rather, he challenges whether Respondents can detain him as retaliation for political speech. Courts “have balked at applying the jurisdiction-stripping provision of Sections 1226(e) in cases”—like this one—“where habeas petitions assert constitutional claims challenging the extent of the Attorney General’s authority, rather than

his discretionary decisions.” *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 925 (W.D. Tex. 2018) (collecting cases). Government officials “do[] not have discretion to violate the Constitution,” so claims that noncitizen detention violates the Constitution properly “charge the Attorney General with exceeding his lawful authority.” *Id.*; *see also Wong v. United States*, 373 F.3d 952, 963 (9th Cir. 2004) (“[D]ecisions that violate the Constitution cannot be ‘discretionary[.]’”); *Myers & Myers, Inc. v. U.S. Postal Serv.*, 527 F.2d 1252, 1261 (2d Cir. 1975) (“It is, of course, a tautology that a federal official cannot have discretion to behave unconstitutionally[.]”); *Ozturk*, 2025 WL 1009445, at *4 n.1; *Ozturk*, 2025 WL 1145250, at *11.

Respondents’ own cases undercut their argument. In *Velasco Lopez v. Decker*, Section 1226(e) did not bar a habeas challenge because whether petitioner “received the due process to which he was entitled ‘is not a matter of discretion’ and is subject to judicial review.” 978 F.3d 842, 850 (2d Cir. 2020) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)). Similarly, *Ortega v. Bonnar* found habeas jurisdiction over a bond revocation because it did not challenge DHS’s “discretion”; “the government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process.” 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (cleaned up).

In short, Respondents’ discretion ends where the Constitution begins. Section 1226(e) does not strip jurisdiction to review constitutional violations.

D. Section 1201(i) Does Not Bar Jurisdiction

Finally, Section 1201(i) simply is not at play here. Mr. Harsono has *not* asked this Court to decide whether his F-1 visa was revoked by DOS, and he has *not* asked this Court

to address whether the purported revocation of his F-1 visa was legally valid as a basis for DHS's removal charge. Resp. at 5, 7. In his ongoing removal proceedings, Mr. Harsono is vigorously litigating whether DHS has shown by clear and convincing evidence that the Secretary of State lawfully revoked his F-1 visa pursuant to Section 1201(i). 8 U.S.C. § 1229a(c)(3)(A) (setting forth DHS's burden of proof to establish removal charges in immigration courts). The IJ can decide that in the first instance, with appellate review to follow before the BIA and the Eighth Circuit.

Mr. Harsono's First and Fifth Amendment claims reference the irregularity of agency action surrounding the purported visa revocation. But that record is just one of many pieces of his evidence demonstrating Respondents' unconstitutional purposes for detaining him. Indeed, the record reflects that DHS determined that it would detain Mr. Harsono on unconstitutional grounds *before* his visa was purportedly revoked, and then used that claimed visa revocation to advance their prior unconstitutional purpose. *See* ECF No. 7-4. The post hoc claim of purported visa revocation is not at issue; the detention is.

Because the Court need not rule on the legality of the claimed visa revocation to grant release to Mr. Harsono, and because he expressly does not seek a ruling regarding Section 1201(i), this statute cannot bar habeas review. *See Ozturk*, 2025 WL 1145250, at *15 (holding that Section 1201(i) did not strip jurisdiction because "the merits of a visa revocation are not before the Court. While Ms. Ozturk may plan to challenge the revocation of her visa in another forum, she does not do so in the instant Petition.").

Respondents' cited cases are inapposite and do not compel any different result. In two of them, noncitizens directly challenged the merits of visa revocations. *See Aldabbagh*

v. Sec’y of State, No. 6:21-CV-532-GAP-EJK, 2021 WL 6298664, at *2 (M.D. Fla. Oct. 5, 2021); *Tarlinsky v. Pompeo*, No. 3:19-CV-659 (VLB), 2019 WL 2231908, at *1 (D. Conn. May 23, 2019). In the third, the petitioner argued that his detention was unlawful *solely* because the government improperly revoked his visa—by contrast to the plethora of surrounding evidence supporting Mr. Harsono’s position. *See Bolante v. Achim*, 457 F. Supp. 2d 898, 902 (E.D. Wis. 2006).²⁵

E. The Court Can Prevent Transfer Out of This District.

“[H]abeas corpus is, at its core, an equitable remedy.” *Schlup v. Delo*, 513 U.S. 298, 319 (1995). The Supreme Court has held that the “exercise of a court’s equity powers . . . must be made on a case-by-case basis.” *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964). Transfer of Mr. Harsono out of this district would prevent him from fully and fairly adjudicating his petition. He would lose access to his family and legal counsel, and be forced to refile in a new jurisdiction. The Court must continue to retain jurisdiction over Mr. Harsono while his petition is pending.

II. THE GOVERNMENT’S DETENTION OF MR. HARSONO VIOLATES THE FIRST AMENDMENT.

The Government detained Mr. Harsono because he spoke out in support of

²⁵ If the Court determines that Mr. Harsono’s habeas petition required review of the purported visa revocation, it should order supplemental briefing on whether jurisdiction nevertheless exists, as this presents a novel question. Mr. Harsono would argue in the alternative that it does. First, Section 1201(i) only limits review of *discretionary* decisions, but discretion may not transgress constitutional limitations. Second, Mr. Harsono’s visa revocation “provides the sole [charged] ground for removal,” and the statutory text expressly authorizes “judicial review . . . of a revocation . . . in the context of a removal proceeding,” which cannot be read as narrowly as Respondents claim. 8 U.S.C. § 1201(i).

Palestinian rights and racial justice and, for the same reasons, chooses to continue incarcerating him. This is a blatant violation of his First Amendment rights.

Among Respondents' array of responses, its most nefarious is the claim that Mr. Harsono was detained because he poses a risk to public safety—not his speech and not its openly retaliatory policy. The Court should not be swayed. Respondents admit that they are targeting noncitizens because of what they say on social media. Mr. Harsono has been treated *unlike* students with similar criminal records who did not engage in such speech and who were not arrested or detained. *See Osborne v. Grussing*, 477 F.3d 1002, 1006 (8th Cir. 2007) (A plaintiff can show retaliation when “he has been singled out for prosecution while others similarly situated have not been prosecuted for conduct similar to that for which he was prosecuted.”). Instead, in terms of the timing and fact of his arrest, Mr. Harsono was treated *like* the students who spoke out in support of Palestine. DHS cited the foreign policy ground as the justification for his SEVIS termination. The Court can infer Respondents' retaliatory intent.

Furthermore, Respondents, which bear the burden of proving that they would have detained Mr. Harsono without his speech, has not provided a satisfactory alternate explanation. They have not demonstrated why they seek to deport Mr. Harsono now—namely, why they suddenly deemed him to be a safety risk. And they cannot explain the procedural irregularities in Mr. Harsono's case. In short, the Court should not turn a blind eye to what Respondents have publicly admitted: they targeted students because of their speech. Mr. Harsono is one of those students.

A. Prima Facie Case of Retaliation

A habeas petitioner makes a prima facie case of retaliation under the First Amendment by establishing that “(1) the petitioner engaged in [constitutionally] protected activity; (2) [the respondents] caused an injury to [petitioner] that would chill a person of ordinary firmness from continuing the activity; (3) and [there is] a causal connection between the retaliatory animus and injury.” *Quraishi v. St. Charles Cnty., Mo.*, 986 F.3d 831, 837 (8th Cir. 2021) (stating elements of First Amendment retaliation claim); *Sheldon v. Hundley*, 83 F.3d 231, 232 (8th Cir. 1996); Resp. at 50 n.14 (recognizing that, under *Sheldon*, a First Amendment violation that results in the extension of detention can state a claim in habeas).

Mr. Harsono states a prima facie case of retaliation under the First Amendment. First, he engaged in constitutionally protected speech—his public expression of support for Palestinians and racial justice.²⁶ Harsono Decl. ¶¶ 19–23 & Exs. 1–2. Second, detention would chill the speech of persons of ordinary firmness. See Harsono Decl. ¶ 47; *Thurairajah v. City of Fort Smith*, 925 F.3d 979, 985 (8th Cir. 2019) (little doubt that arrest “would chill a person of ordinary firmness from exercising that right in the future”).

²⁶ Respondents argue that a noncitizen’s First Amendment rights are “less robust” than those of citizens, relying on the Supreme Court’s McCarthy-era decision in *Harisiades v. Shaughnessy*, 342 U.S. 580, 591–92 (1952). Resp. at 49–50. Mr. Harsono is not alleged to maintain allegiance to an organization advocating for the violent overthrow of the government. *Id.* at 582. Besides, *Harisiades* “stands out” as “an extreme application of the expulsion power.” *Id.* at 588. The Supreme Court has become more protective of speech since *Harisiades* and has guaranteed at least “the right to speak on political subjects at least where such speech poses no immediate threat to others,” which precisely describes Mr. Harsono’s speech supporting Palestinians and racial justice. *AAUP*, 2025 WL 1235084, at *19.

Respondents dispute neither point. *See* Resp. at 19–20, 48–51.

Third, Mr. Harsono demonstrated that his protected speech was a “substantial factor” in his detention. *Baribeau v. City of Minneapolis*, 596 F.3d 465, 481 (8th Cir. 2010). Judge Blackwell recently held:

Petitioner’s arrest aligns with the publicly stated executive policy of targeting social media users who express support for Palestinian human rights and criticize violence in Gaza, as Petitioner had done. Critically, the Government has not supplied evidence of the reason why DHS/ICE contacted DOS about Petitioner on March 22, 2025. The Government readily explains the events after that initial communication, but not the events preceding it. Without rebuttal evidence, the record supports a finding that Petitioner’s speech—not his past misdemeanor—brought him to the Government’s attention for enforcement.

Mohammed H., 2025 WL 1334847, at *4.

As Judge Blackwell noted, this third element is established in multiple ways. Weeks before Mr. Harsono’s arrest and detention, Respondent Trump issued Executive Orders that targeted persons with student status who engaged in certain speech for deportation.²⁷ Pet. ¶¶ 30–31; *see St. Martin v. City of St. Paul*, 680 F.3d 1027, 1033 (8th Cir. 2012) (direct evidence showing “a specific link between the alleged discriminatory animus and the challenged decision” can satisfy causation); *Hossaini v. W. Mo. Med. Ctr.*, 97 F.3d 1085, 1089 (8th Cir. 1996) (holding that timing was relevant to causation).

The orders most notably targeted speech in support of Palestinian rights. Pet. ¶¶ 30–31. But they have been defined publicly by administration officials in broad and chilling ways: “hostile attitudes toward its citizens, culture, government institutions, or founding

²⁷ These specific policies defy Respondents’ characterization of Plaintiffs’ claim as based on “some undefined policy.” Resp. at 48.

principles,” Pet. ¶ 31; speech that is “aligned with” “organizations that hate the United States Government and hate our way of life”²⁸; “protest,” Pet. ¶ 38; “potentially derogatory information,”²⁹ and speech that “otherwise abused our hospitality.”³⁰ The vagueness is a fundamental component of the problem: “a speech code that is unwritten or vague but enforced with harsh penalties would seem more likely to chill broad swaths of speech than one that clearly defines what is forbidden.” *AAUP*, 2025 WL 1235084, at *19 (citing *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 68, 71 (1963)). What Respondents have put into place is:

a not-clearly-articulated policy against speech that could be construed as pro-Palestinian or anti-Israel, and that may be enforced by arrest, detainment, and deportation, including arrests at one's home or on the street by masked officers.

Id.

Mr. Harsono engaged in speech within the bounds of this harsh policy: his Instagram biography said “Free Palestine” in Arabic, *see* ECF No. 5-2; his social media included photographs of Breonna Taylor and Martin Luther King Jr., *see* ECF No. 5-1; and he was arrested for peacefully protesting the shooting of Daunte Wright, *see* Harsono Decl. ¶ 15.³¹

Respondents contend that Mr. Harsono’s speech is “distinguishable in many ways

²⁸ U.S. Dep’t of State, *supra* n.19.

²⁹ Klippenstein, *supra* n.13.

³⁰ Rubio, *supra* n.21.

³¹ Respondents claim that Mr. Harsono’s arrest for riot is “mentioned only as part of his complete criminal history.” Resp. at 20. That is a mischaracterization of the record. The Government cited the protest arrest as *support* for DHS’s Notice to Appear, *see* ECF No. 7-4, and its BIA bond appeal as evidence of Mr. Harsono’s dangerousness, *see* Second Gad Decl. Ex. 17. Both times, it mentioned the protest arrest before his misdemeanor.

from the high-profile student cases he cites.” Resp. at 19. Their attempts to draw dissimilarities actually show how Mr. Harsono was caught in a similar net.

First, Respondents argue that “the speech of the plaintiffs in those cases has received extensive media coverage and was renown.” *Id.* at 19 n.7. Respondents conflate the outrage and media *following* these students’ arrests with the knowledge of their speech *before* arrest.³² Mr. Khalil—perhaps the most prominent of the students targeted—was far from a household name before Respondents targeted him. Ms. Ozturk merely co-authored an opinion piece in a college newspaper about Palestine; Ranjani Srinivasan liked and shared posts on social media and signed an open letter regarding Palestine; Badar Khan Suri is an academic married to a Palestinian-American; and Yunseo Chung attended a protest but was not a leader in them. *See* Pet’r Mem. at 6 & nn.8–11, ECF No. 4.

Second, Respondents claim that they “invoked foreign policy as a basis for visa revocation and/or removability” in those other cases but have “always” used public safety as the rationale for Mr. Harsono’s arrest and detention. Resp. at 19. This is not true; in Ms. Ozturk’s case, Respondents invoked the same discretionary visa revocation ground used here.³³ In any case, DHS invoked the Foreign Policy Ground—the very ground that the Government says links these cases—in terminating Mr. Harsono’s SEVIS record before it was amended without notice or explanation.

Third, Respondents argue that the only “policy” related to “scouring social media” was USCIS’s April 9, 2025 press release, which post-dates Mr. Harsono’s visa revocation.

³² Similar outrage has followed Mr. Harsono’s arrest. *See* Pet. ¶ 1 n.1.

³³ Hudson, *supra* n.9.

Resp. at 20. Not so. DOS has been collecting social media handles of visa applicants like Mr. Harsono since 2019.³⁴ As early as March 6, 2025, DOS admitted to using artificial intelligence and social media surveillance.³⁵ An *NBC News* article, while dated April 9, 2025, reported on “a recently created” DHS task force that was scouring social media to find student targets.³⁶ In short, in executing the policy, both DHS and DOS have admitted to using artificial intelligence and social media surveillance to identify individuals who have engaged in speech. It is realistic that the Arabic phrase “Free Palestine” on Mr. Harsono’s Instagram triggered action.³⁷ See *Mohammed H.*, 2025 WL 1334847, at *3.

In their declarations submitted under oath, Respondents notably do not claim that they began reviewing social media *after* Mr. Harsono’s visa revocation. They also do not claim that they did not look at *Mr. Harsono’s* social media. As discussed above, DHS decided to detain Mr. Harsono on or before March 22, 2025, then communicated that decision to DOS, who then purportedly to “silently” revoke Mr. Harsono’s visa.

Missing from the record are the March 22 communication from DHS to DOS and DOS’s assessment of the purported grounds for revocation. Respondents conspicuously fail to offer sworn testimony regarding whether any DHS or DOS officials purportedly involved in the March 22 and 23 decisions were aware of or motivated by Mr. Harsono’s

³⁴ Patel, *supra* n.10.

³⁵ Caputo, *supra* n.12.

³⁶ Ainsley, *supra* n.7.

³⁷ The Government’s use of AI tools has led to the deletion of a Defense Department website referencing the “Enola Gay” aircraft. Tara Copp et al., *War heroes and military firsts are among 26,000 images flagged for removal in Pentagon’s DEI purge*, AP (Mar. 7, 2025), <https://apnews.com/article/dei-purge-images-pentagon-diversity-women-black-8efcfaec909954f4a24bad0d49c78074>.

speech. This omission is particularly notable by comparison to Ms. Ozturk's case, which was nearly contemporaneous with Mr. Harsono's; there, DHS official Watson pointed to Ms. Ozturk's op-ed in his demand that her visa be revoked, and DOS official Armstrong generated a memorandum supposedly justifying her visa revocation.³⁸ In other words, DHS invoked speech as the reason for revocation.

All Respondents say is that the ICE officers who arrested Mr. Harsono did not examine his social media—an averment consistent with the policy, where local ICE officials are ordered to arrest people “without clear guidance about why they are being targeted.”³⁹

In sum, Mr. Harsono's affirmative evidence—combined with Respondents' telling omissions—make a prima facie case of First Amendment retaliation.

B. The Government Cannot Show That They Would Have Detained Mr. Harsono Absent Retaliatory Intent.

The burden shifts to Respondents to show “by a preponderance of the evidence that [they] would have reached the same decision . . . even in the absence of the protected conduct.” *Osborne*, 477 F.3d at 1006. “The Government must show more than that they *could* have punished the plaintiffs in the absence of the protected speech; instead, the burden is on the defendants to show through evidence that they *would* have punished the plaintiffs under those circumstances.” *Bello-Reyes*, 985 F.3d at 702 (cleaned up); *cf. Laney*

³⁸ See Hudson, *supra* n.9.

³⁹ Ainsley, *supra* n.7.

v. City of St. Louis, 56 F.4th 1153, 1157 (8th Cir. 2023) (the respondent must show it would have made the same decision “absent the retaliatory motive”).

Respondents have not met this burden. The assertion that Mr. Harsono’s charges were based on “public safety considerations” does not hold water. Resp. at 2. At no point does the Government’s Response articulate the *actual* public safety risk posed by Mr. Harsono. Resp. at 5; *see generally* Resp. The only apparent basis is a three-year-old fourth-degree property-damage misdemeanor and a four-year-old dismissed arrest for presence at an unlawful assembly. *See* ECF No. 7-4. The immigration judge, using the same information, reached the opposite conclusion. ECF No. 7-7.

Furthermore, Respondents sanctioned Mr. Harsono’s continued presence in the country with knowledge of the arrest and conviction. Respondents approved Mr. Harsono’s F-1 visa while his 2021 arrest was pending. Harsono Decl. ¶¶ 8, 15. Mr. Harsono was permitted to re-enter the United States in April 2024 after disclosing both the arrest and conviction. *Id.* ¶ 34. The only intervening change is Respondents’ policy.

The procedural irregularities in Mr. Harsono’s case also suggest pretext. *Goff v. Burton*, 91 F.3d 1188, 1191 (8th Cir. 1996) (crediting evidence that Respondents “deviated from their normal procedure” as strengthening the inference of retaliation). The Armstrong memorandum discloses that DHS officials, rather than DOS officials with visa revocation authority, drove the deportation decision. Pet. ¶ 4. Respondents do not state when DHS learned of Mr. Harsono’s criminal history. *See* Second Gad Decl. Ex. 17 (BIA brief stating that DHS found out about Mr. Harsono’s criminal history on March 24, 2025). DHS did not terminate Mr. Harsono’s SEVIS status until after he was detained, initially invoked the

Foreign Policy Ground, and then reversed course without explanation. ECF No. 7-5. And Respondents' use of the automatic stay of the immigration judge's grant of bond is unusual and a departure from past practice. Doyle Decl. ¶¶ 7, 9, 12. The haphazard, shifting record implies a retaliatory motive. *See Mohammed H.*, 2025 WL 1334847, at *4–5.

Finally, Respondents cursorily state that Mr. Harsono “makes no attempt to show that similarly situated individuals were not detained and did not have removal proceedings initiated against them.” Resp. at 49. But Mr. Harsono points to students with similar misdemeanor convictions who, even with their SEVIS status unlawfully terminated, were not arrested or detained. *See* Doyle Decl. ¶¶ 9–11; Pet'r Mem. at 30 & n.34. Respondents do not dispute this. *See, e.g., Gonzalez*, 602 U.S. at 658 (noting that the burden is not to provide “virtually identical and identifiable comparators”). This comparison demonstrates that Mr. Harsono's detention would not have occurred but for something else—his speech.

C. No “Probable Cause” Exception

Unable to overcome the evidence of pretext, the Government attempts to sidestep the issue, arguing that retaliation is foreclosed by their assertion of a “facially valid reason” to initiate removal: his purported visa revocation. Resp. at 48. This argument fails.

First, Respondents invoke *Nieves v. Bartlett*, 587 U.S. 391 (2019), which requires an absence of probable cause for First Amendment retaliatory-arrest claims in the criminal context. *Nieves* is inapplicable. Respondents cannot overcome a claim for retaliation based on the mere invocation of a deportability ground in the context of discretionary immigration *detention*. *See Bello-Reyes*, 985 F.3d at 701 (holding that *Nieves* did not apply to revocation of immigration court bond by ICE because that determination did not require

probable cause); *Mohammed H.*, 2025 WL 1334847, at *5 (“The presence of a facial statutory ground does not preclude inquiry into retaliatory motive, particularly where—as here—there is evidence that the revocation was driven by political speech and followed by a detention unsupported by any individualized showing of danger to the public or flight risk”); *Ozturk*, 2025 WL 1145250, at *19; *Gearin v. City of Maplewood*, 780 F. Supp. 2d 843, 861 (D. Minn. 2011) (rejecting a probable-cause requirement for non-criminal regulatory decisions). Extending the probable-cause requirement to this situation would “effectively eliminate almost any prospect of retaining release on habeas for actually retaliatory, unconstitutional” conduct after the initial charge. *Bello-Reyes*, 985 F.3d at 701. The *Nieves* requirement is also inapposite when only the Government can take the regulatory action that it claims constitutes probable cause. *See id.*

Second, reliance on probable cause fails when discretion is used to decline the same action against others who are similarly situated. *See Nieves*, 587 U.S. at 406. As noted above, other students with similar criminal histories were not detained. Mr. Harsono has also shown that, in response to the conduct that it now tries to invoke, the Government granted him immigration benefits in 2021 and 2024. And Respondents’ use of the “extraordinarily rare” automatic stay is a departure from the government’s typical practice in similar situations. Doyle Decl. ¶¶ 7, 12.

Third, it is not clear that there was probable cause for Mr. Harsono’s arrest. The purported visa revocation was driven by DHS officials, not the DOS officials with actual visa revocation authority, and the communications between DHS and DOS that indicate why DHS identified Mr. Harsono are undisclosed. In short, as a court in this district ruled

in a First Amendment retaliation case: “How could this Court possibly find that there was probable cause for [Respondents]” to arrest Mr. Harsono when Respondents “cannot explain why they” did so? *Gearin*, 780 F. Supp. 2d at 861.

D. Release Is An Appropriate Remedy.

In sum, Mr. Harsono has established that he was arrested and detained in retaliation for political speech protected by the First Amendment. Respondents failed to meet their burden that he would have been detained without such speech. Accordingly, Mr. Harsono’s writ should be granted.

III. THE GOVERNMENT’S DETENTION OF MR. HARSONO VIOLATES THE FIFTH AMENDMENT.

The Court should order Mr. Harsono released for the independent reason that Respondents are detaining him for improper purposes that violate his fundamental rights to liberty and due process. Specifically, Respondents are detaining Mr. Harsono to intimidate other international students into self-deporting for fear of a similar fate. *See* Thompson Decl. ¶¶ 4–6 (describing fear that international students in Minnesota have faced from recent detentions). This violates the Fifth Amendment. *Zadvydas*, 533 U.S. at 690 (noting that immigration detention must “bear a reasonable relation to the purpose for which the individual [is detained]” so that it is “nonpunitive in purpose and effect” (cleaned up)). Moreover, Mr. Harsono’s detention is being unconstitutionally prolonged by DHS’s targeted use of an automatic stay.

A. Respondents Are Detaining Mr. Harsono for Impermissible Purposes.

The Fifth Amendment prohibits immigration detention without a reasonable

relation to a legitimate government purpose, part of a long line of caselaw preventing civil detention from being impermissibly punitive. *See Zadvydas*, 533 U.S. at 690. The Supreme Court has only ever authorized two legitimate purposes for immigration detention: to protect the community and to prevent flight. *Id.*

The Government has made no individualized showing that Mr. Harsono's detention serves either interest actually sanctioned by *Zadvydas*; indeed, the immigration judge found that Mr. Harsono was neither a public safety nor flight risk. Rather than rebutting Mr. Harsono's evidence about his strong community ties and limited criminal history, Respondents repeat the grounds for the purported visa revocation as "public safety," with no explanation for this assertion—a glaring omission because they decided to detain Mr. Harsono before his visa was revoked. Moreover, in light of Mr. Harsono's discretionary Section 1226(a) detention, the Government cannot rest on any categorical findings to support his detention. *Cf. Demore*, 538 U.S. at 519.⁴⁰

Indeed, Mr. Harsono's detention is explained not by these justifications but rather by Respondents' four-part campaign to encourage international students to "self-deport" through terror and fear. The first part was Respondents' broad threats—that students must "behave," must not hold "hostile" attitudes toward the United States, and must not "caus[e] a ruckus." Pet. ¶¶ 39 n.11; *see supra* n.2.

⁴⁰ This also dooms Respondents' reliance on *Carlson v. Landon*, 342 U.S. 524 (1952), where Congress sought to deport all alien Communists based on specific findings that Communists posed a clear and present danger. Resp. at 18. Mr. Harsono was not detained because he qualifies as a member of a class of noncitizens for whom Congress has made specific findings on the need for pre-removal detention—let alone a member of a group that "advocates the overthrow by force of this Government[.]" *Carlson*, 342 U.S. at 529.

The widespread SEVIS terminations comprised the second part. With no notice, students received emails stating that their visas had been revoked. *See, e.g., Doe 4*, 2025 WL 1208072, at *3. The chilling emails stated that the students could be detained—and sent to a third country. *Id.* Students have been terrified of speaking out or even leaving their home for fear that they may be detained or deported. Thompson Decl. ¶¶ 4–6.

The third part is an insistence on an untenable legal limbo such that the students self-deport. Respondents refused to clarify whether the widespread SEVIS terminations actually placed over a thousand students at risk of detention or deportation. *Sultan*, 2025 WL 1207071, at *4; *see supra* n.17. Eventually, under judicial pressure, Respondents claimed that the visa revocations for most of the students were “prudential,” not “immediate.” Nothing on the face of the emails makes that distinction. Indeed, the notification sent to Mr. Harsono, ECF No. 17-1, does not state that the revocation was immediate, even though DHS claims that it was.

And the fourth—and crucial—piece was the detention of certain targets, including Mr. Harsono. This is explicit: Respondent Rubio admitted, “We’re basically asking them to leave the country. *That’s why they’ve been detained.*” By detaining some individuals, Respondents made clear that they were following through on the deportation threats. *See* Pet. ¶¶ 46–55.

The Government has previously asserted that it can use immigration detention for general deterrence purpose—in other words, detaining a few “for the sake of sending a message of deterrence to other . . . individuals who may be considering immigration.” *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 188–89 (D.D.C. 2015) (Boasberg, J.). The

Supreme Court has resoundingly rejected such a purpose in civil-commitment contexts. *See Kansas v. Crane*, 534 U.S. 407, 412 (2002) (warning that civil detention may not “become a ‘mechanism for retribution or general deterrence’—functions properly those of criminal law, not civil commitment”); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). The *R.I.L.-R* court also rejected the Government’s theory, faulting it for vaguely invoking national security reasons as a cloak for unsubstantiated economic reasons. *R.I.L.-R*, 80 F. Supp. 3d at 189–90. Respondents seek general deterrence to kick out certain viewpoints and convince noncitizens not to remain in the country—even though they “may have legitimate claims.” *Id.* at 190. Such impermissible reasons cannot underpin detention, and their invocation requires release.

Respondents misconstrue Mr. Harsono’s due process claim as challenging the constitutionality of general processes governing immigration detention and argue that immigration detention “as [removal] proceedings occur is constitutional.” Resp. at 2, 18. But the question here is not whether Mr. Harsono *can* be detained in a hypothetical vacuum; it is whether Mr. Harsono *is* being detained for illegitimate reasons. Respondents also argue that Mr. Harsono has not been deprived of process because he allegedly has had a “short period of detention” and “process afforded.” Resp. at 21. But the nonprecedential opinion they cite has nothing to say about the most relevant question here: whether Mr. Harsono’s detention—however long—was imposed for purposes that are impermissible under the Fifth Amendment.

B. The Government's Use of the Auto-Stay Provision Is Unconstitutional as Applied to Mr. Harsono.

In addition to its impermissible reasons for detention generally, DHS has unconstitutionally prolonged Mr. Harsono's detention. Specifically, DHS detains Mr. Harsono based on the auto-stay regulation, 8 C.F.R. § 1003.19(i)(2), which purports to permit DHS to unilaterally detain a person after an order of release on bond while DHS appeals to the BIA. The auto-stay, unlike if DHS *requested* a stay from the BIA, offers the detained person with no opportunity to respond. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (holding that "an opportunity to present their objections" is the core of due process). To subject Mr. Harsono to detention based purely on a regulation that has no statutory basis is unconstitutional *as applied* to him. The invocation of the automatic stay regulation against him is extraordinary. Doyle Decl. ¶¶ 11–12. At no point have Respondents explained why its invocation is necessary. *See* ECF No. 7-8. And its invocation in recent student cases indicates that it is motivated by retaliation and deterrence, not proper interests. *See* Pet. ¶ 44.

Respondents cite to *Farias v. Garland*, No. 24-cv-04366 (MJD/LIB) (D. Minn. Dec. 6, 2024), ECF Nos. 14, 18. *Farias* rejected a challenge to a regulation requiring immigration judges to categorically deny release to certain detainees subject to removal. *See* 8 C.F.R. § 1003(h)(1)(i)(C). *Farias* considered the agency's authority to issue the regulation, not its constitutionality. *See* Order at 5–8, *Farias*, ECF No. 18. Besides, the regulation in *Farias* is unlike the auto-stay regulation. The *Farias* regulation reflected the agency's categorical determination about risks posed by certain persons. The auto-stay

regulation is not categorical; instead, to invoke it, DHS must undertake an individual determination, and such determinations cannot be taken for unconstitutional reasons. *Cf. Wong*, 373 F.3d at 963 (“[D]ecisions that violate the Constitution cannot be ‘discretionary[.]’”).

IV. THE GOVERNMENT’S DETENTION OF MR. HARSONO VIOLATES THE ACCARDI DOCTRINE.

Arbitrary, capricious, or otherwise unlawful agency action must be set aside. 5 U.S.C. § 706(2)(A). Agencies cannot violate their own regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265–68 (1954). DHS memoranda prohibit enforcement based on First Amendment activity. Pet’r Mem. at 37–38. DHS policy does not permit SEVIS termination based on visa revocation. Pet. ¶ 50.

Moreover, agency action must be justified based on the “grounds that the agency invoked when it took the action.” *Regents*, 591 U.S. at 20. An agency cannot invent post hoc rationalizations. *Id.* at 21–22. That is what Respondents did here. They claim to have detained Mr. Harsono because of his visa revocation. *See* Resp. at 44; ECF No. 7-2. But the Armstrong memorandum makes clear that DHS decided to detain Mr. Harsono before DOS revoked Mr. Harsono’s visa. *See* ECF No. 7-4. Although Respondents claim that Mr. Harsono is a public safety risk, they do not explain why—or why they “change[d] course” against their earlier view that his criminal history did not bar his entry. *Regents*, 591 U.S. at 30.

Respondents argue only that there is no final agency action apart from the unreviewable decision to commence removal proceedings. Resp. at 46. Not so. ICE’s

detention of Mr. Harsono was not mandatory; its choice to do so marked the “consummation of the agency’s decisionmaking process,” and determined his rights—namely, his liberty—satisfying the two aspects of a final agency action. *Sisseston-Wahpeton Oyate of Lake Traverse Rsrv. v. U.S. Corps of Eng’rs*, 888 F.3d 906, 915 (8th Cir. 2018). Because this decision was arbitrary and capricious, it must be set aside.

CONCLUSION

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

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