UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

JACOB IRA VIJANDRE,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 5:25-cv-136
	§	
WARDEN, FOLKSTON ICE PROCESSING CENTER, et al.,	§	
	§	
	§	
Respondents.	§	
	§	

PETITIONER'S REPLY AND BRIEF IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Nine weeks ago, Petitioner Jacob Vijandre ("Mr. Vijandre" or "Petitioner") was living in Dallas, attending demonstrations, engaging in photojournalism, and sharing social media content expressing what an Immigration Judge ("IJ") characterized as "his belief" that certain individuals accused of terrorism "have been wrongfully imprisoned and that they are not having proper treatment." ECF No. 21 ¶ 4. Because he held those beliefs and expressed them on social media, the government now claims *he* is a terrorist. Federal censors on the Joint Terrorism Task Force began scouring his social media accounts and then armed agents descended on his house and placed him under arrest, depriving him of his camera, his social media access, and his freedom.

Respondents do not deny that the First Amendment applies to Mr. Vijandre on account of his substantial connections to the country. They claim that his posts constitute terrorism, but they fail to provide a single social media post that expresses an imminent threat of lawless action with a likelihood of producing or inciting such action, a standard which Respondents tellingly ignore. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

Respondents claim Mr. Vijandre is detained "not based on his speech but his actions," ECF No. 28, at 13, but they do not deny that the Notice of Intent to Terminate ("NOIT"), the Felps Declaration, and IJ's decision each explained the his detention is based on his beliefs and social media posts. *See* ECF No. 21 ¶ 4. And for all Respondents' efforts to re-cast the detention as being based on Mr. Vijandre's actions and not his speech, the Motion to Dismiss only points to one "action," an alleged solicitation of funds for the [redacted] ECF No. 28, at 10-11, 14. But there is no evidence that Mr. Vijandre ever made such a post, which would have been protected, anyway, since the First Amendment protects asking for funds to support a criminal's legal defense in the U.S. or to draw attention to the conditions of their confinement.

Mr. Vijandre's freedom is critical, but far more is at stake here than one man's liberty. If Mr. Vijandre's social media posts or photojournalism make him a terrorist, the executive branch's power to detain individuals within the United States based on speech will know no limits. Respondents' determination that Mr. Vijandre is a terrorist is based on "evidence" of a strikingly shoddy and threadbare character. The posts that Respondents claim make Mr. Vijandre a terrorist consist of "likes" and reposts of Quranic verses and prayers, a martial arts training video with an explicit "training" disclaimer, posts expressing opposition to prison detention conditions and perceived due process violations in the criminal prosecution of those accused of terrorism, and a post sharing what he learned at a 2024 film screening held at a Dallas-area mosque. If these posts constitute terrorism, then *Brandenburg* is bad law.

Respondents' arguments as to jurisdiction, exhaustion, and pleading format all fall short.[1] The Court can and should squarely address the core First Amendment questions at issue in this case by denying Respondents' motion and ordering Mr. Vijandre's immediate release.

FACTUAL BACKGROUND

Mr. Vijandre came to the United States as a 14-year-old boy in 2001 and has lived in the United States for twenty-four years. ECF No. 21 ¶ 14. DHS granted him Deferred Action for Childhood Arrivals ("DACA") in 2013 which afforded him protection him from removal. *Id.* ¶ 20. On September 22, 2025, Respondents mailed Mr. Vijandre a Notice of Intent to Terminate ("NOIT") his DACA. *Id.* ¶ 35.[2]

The NOIT stated that Mr. Vijandre's DACA was being terminated only for speech-related reasons. ECF No. 21 ¶ 4. On October 24, 2025, Respondents submitted a declaration by Deportation Officer Lonnie Felps in Mr. Vijandre's removal proceedings which confirmed Mr. Vijandre was detained solely for protected speech and expressive activity. *Id.* On November 3, 2025, an IJ refused to conduct a bond hearing for Mr. Vijandre, concluding that he was subject to mandatory detention because of his views and speech under the "endorse/espouse" provision of the INA (8 U.S.C. § 1182(a)(3)(B)(VII)) because, *inter alia*, of his "belief that [Aafia Siddiqui and the Holy Land Five] have been wrongfully imprisoned and that they are not having proper treatment" and social media posts expressing those beliefs. *Id.*

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[1] Respondents also argue that only the Warden is a proper Respondent in this habeas action. ECF No. 28, at 3. Petitioner does not oppose dismissing the non-Warden Respondents if the Court agrees that none is necessary to grant the requested relief.

[2] Respondents state that Mr. Vijandre was notified of its intent to terminate his DACA on September 22, 2025. ECF No. 28, at 1. While the letter is *dated* September 22, Mr. Vijandre was not actually *aware* of any problem with his DACA status until his arrest on October 7. He would welcome an evidentiary hearing on this issue should the Court deem it necessary.

On December 2, 2025, Respondents formally terminated Mr. Vijandre's DACA, stating, "Your social media posts are in violation of INA 212(a)(3)(B) and present clear national security and public safety concerns." Exh. E at 1.

LEGAL STANDARD

The *Rules Governing Section 2254 Cases in the United States District Courts* ("Habeas Rules") apply to habeas petitions brought under § 2241. *See* Habeas Rule 1(b). "The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provision or these rules, may be applied to a proceeding under these rules." Habeas Rule 12; *Rodriguez v. Fla. Dep't of Corr.*, 748 F.3d 1073, 1076 (11th Cir. 2014) ("However, if the Habeas Rules do not fully delineate the proper procedure, or if the requirements under these Rule are not clear, courts may turn to the Federal Rules of Civil Procedure ("Civil Rules") to fill any procedural gaps and resolve lingering ambiguities.") (citing Habeas Rule 12). Courts in this Circuit have applied Federal Rule of Civil Procedure 12 to § 2241 habeas proceedings when adjudicating a motion to dismiss.[3] *See* Memorandum Opinion and Order, at 8, *Woolsey v. Warden*, No. 2:25-cv-137 (N.D. Ala. Sept. 8, 2025) (ECF No. 18).

Facial attacks to subject-matter jurisdiction under Fed. R. Civ. P. 12(b)(1) are based on the allegations in the petition which are taken as true. *Morrison v. Amway Corp.*, 323 F.3d 920, 924 n.5 (11th Cir. 2003). A petition satisfies Fed. R. Civ. P. 12(b)(6) if it contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

[3] District Courts have also declined to apply Fed. R. Civ. P. 12 to habeas proceedings, finding them inconsistent with the Habeas Rules. *See Ndudzi v. Castro*, No. 20-cv-0492, 2020 WL 3317107, at *10 (W.D. Tex. June 18, 2020). Because the *Ndudzi* court concluded Fed. R. Civ. P. 12 did not apply, it "denie[d] the motion to the extent it [was] premised on Rule 12(b)(6)." *Id.*

ARGUMENT

I. Mr. Vijandre's Petition is properly before this Court.

A. This Court has jurisdiction.

8 U.S.C. § 1252(g) does not strip this Court of jurisdiction to adjudicate a challenge to Mr. Vijandre's detention. Section 1252(g) does not "cover[] the universe of deportation claims[, but] applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). "It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Id.*

Respondents' anemic § 1252(g) argument would eliminate *all* judicial review of immigration detention. As a preliminary matter, Respondents acknowledge that "Petitioner is not challenging his underlying removal. He also is not challenging the notification from USCIS that it intends to terminate his DACA status. He challenges only the lawfulness of his detention during his immigration proceedings." ECF No. 28, at 2 (citations omitted). It is not clear how Respondents square this recognition with the assertion that the Amended Petition falls under § 1252(g)'s bar on challenges to decisions to "commence proceedings." *Id.* at 8-9.

The Supreme Court rejected Respondents' sweeping interpretation of § 1252(g) in *AADC* and courts across the country regularly adjudicate habeas challenges to the constitutionality of a non-citizen's detention. *See, e.g.*, *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (rejecting argument that 8 U.S.C. § 1252(b)(9) stripped courts of jurisdiction to consider a non-citizen's entitlement to a bond hearing and noting that provision's similarity to § 1252(g)); *Demore v. Kim*, 528 U.S. 510, 517 (2003) (rejecting argument that 8 U.S.C. § 1226(e) stripped courts of jurisdiction

to consider the constitutionality of § 1226(c)); *Zadvydas v. Davis*, 533 U.S. 678, 688 (recognizing that habeas is available to determine "the extent of [the government's detention] authority[,]" even if review of the exercise of discretion itself is foreclosed, and noting this principle's applicability to 8 U.S.C. § 1252(g)). If Respondents are correct, § 1252(g) would have prevented any of these cases—all of which factually arose from the government's decision to detain a non-citizen—from being adjudicated. It did not.

Respondents cite two cases in support of their argument that 8 U.S.C. § 1252(g) strips this Court of jurisdiction to hear Mr. Vijandre's challenge to the constitutionality of his detention: *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013), and *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194 (11th Cir. 2016). Neither supports Respondents' argument and the latter contradicts it. As an initial matter, Respondents ignore another case in which the Circuit stated explicitly that, "[w]hile [§ 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions." *Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006). Neither *Gupta* nor *Alvarez* purported to overturn or question *Madu*. In any case, neither *Gupta* nor *Alvarez* involved habeas petitions; both were *Bivens* actions challenging "the *methods* that ICE used to detain [the plaintiffs] prior to [their] removal hearing[s]." *Alvarez*, 818 F.3d at 1204 (emphasis added). The Circuit Court held that review of such decisions was not available under 8 U.S.C. § 1252(g). However, the *Alvarez* court explicitly held that § 1252(g) did *not* strip the courts of jurisdiction to hear a claim that "the agency had no statutory grounds on which to detain [Alvarez]." *Id.* at 1205. Notably, Alvarez filed a habeas petition five years earlier and the Circuit held that the district court had jurisdiction over Alvarez's habeas challenge to the conditions of his release on supervision. *See Alvarez v. Holder*, 454 Fed. Appx. 769, 772 (11th Cir. 2011).

The District Court for the Middle District of Florida recently addressed the applicability of *Gupta* and *Alvarez*'s holdings to habeas challenges to the government's decision to apply a mandatory detention statute (8 U.S.C. § 1225(a)(2)), rather than a discretionary detention provision (8 U.S.C. § 1226(a)), to two non-citizens. The court rejected the argument that § 1252(g) precluded its jurisdiction to consider the legal basis of the government's detention decisions. *See* Opinion and Order, at 4, *Vasquez Carcamo v. Noem, et al.*, No. 25-cv-00922 (M.D. Fla. Nov. 7, 2025) (ECF No. 10); Opinion and Order, at 4, *Hinojosa Garcia v. Noem, et al.*, No. 25-cv-00879 (M.D. Fla. Oct. 31, 2025) (ECF No. 18).

Mr. Vijandre does not ask this Court to enjoin his removal proceedings, to stop the IJ from adjudicating his case, or to bar execution of any future removal order. Rather, he challenges the statutory and constitutional basis for his detention which is based entirely on his speech. The Amended Petition challenges the *extent* of Respondents' detention authority, not their decision to exercise it or the methodology by which they did. As such, 8 U.S.C. § 1252(g) does not preclude this Court's jurisdiction.

B. Exhaustion is prudential, not jurisdictional, and is excused or satisfied here.

As Respondents correctly note, ECF No. 28, at 5, exhaustion of administrative remedies is not a jurisdictional requirement under 28 U.S.C. § 2241. *Santiago-Lugo v. Warden*, 785 F. 3d 467, 474-75 (11th Cir. 2015) ("It is no longer the law of this circuit that exhaustion of administrative remedies is a jurisdictional requirement in a § 2241 proceeding."). Because exhaustion is non-jurisdictional, "[i]n determining whether exhaustion is required, federal courts must balance the interest of the individual in retaining prompt access to a federal judicial forum against countervailing institutional interests favoring exhaustion." *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S.

81, 88-89 (2006). "Application of this balancing principle is intensely practical because attention is directed to both the nature of the claim presented and the characteristics of the particular administrative procedure provided." *Id.* (cleaned up) (internal quotations marks and citations omitted).

In *McCarthy*, the Supreme Court noted that there are "sets of circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion." *Id.* One such circumstance is the scenario in which a petitioner "may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *Id.* at 147. Exhaustion is also not required when "an agency, as a preliminary matter, may be unable to consider whether to grant relief because it lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute." *Id.* at 147-48. There, "the question of the adequacy of the administrative remedy is for all practical purposes identical with the merits of the plaintiff's lawsuit." *Id.* (cleaned up) (internal alterations, quotation marks, and citations omitted). In short, a petitioner need not exhaust administrative remedies when delay would result in irreparable harm and/or the agency does not have the authority to adjudicate his claims or grant him relief.

That is the case here. First, all of Mr. Vijandre's claims are constitutional challenges to Respondents' authority to detain him. Count I is a First Amendment challenge to Respondents' reliance on Mr. Vijandre's protected speech to justify his detention. Count II asserts that 8 U.S.C. § 1182(a)(3)(B)(i)(VII) is unconstitutional as applied to Mr. Vijandre; Counts IV and V claim that this provision is unconstitutionally vague and overbroad, respectively. Count III contends that Respondents violated the First Amendment by detaining Mr. Vijandre expressly to prevent his speech. Count VI alleges that Respondents' justification for Mr. Vijandre's detention do not comply with the Fifth Amendment's limitations on civil detention. Finally, Count VII raises a Fifth

Amendment challenge to the agency procedures that place the burden of proof for custody redetermination on the non-citizen, rather than the government. The IJ and Board of Immigration Appeals ("BIA") do not have authority to adjudicate any of these claims. Moreover, Mr. Vijandre cannot challenge the "terrorism" designations in removal proceedings because Respondents have not charged him with being inadmissible under these grounds.

Respondents argue that exhaustion would allow "the agency responsible for detention to develop a factual record, as well as to discover and correct any errors it may have committed." ECF No. 28, at 5. No such development is necessary or even useful because Mr. Vijandre asserts that it is *unconstitutional altogether* to detain him pursuant to 8 U.S.C. § 1182(a)(3)(B)(i)(VII) or, generally, on the basis of his protected speech. The BIA cannot determine the constitutionality of a provision of the INA or whether its application to a particular person violates the First or Fifth Amendments. *See Khalil v. Joyce*, 780 F. Supp. 476, 526 (D.N.J. 2025) ("First Amendment issues have little or no place on an immigration judge's docket") (citing *Axon Enter., Inc. v. Fed. Trade Comm'n*, 598 U.S. 175, 94 (2023) and *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 489 (2010)); *see also Ruiz-Massieu*, 22 I. & N. Dec. 833, 838 n.6 (B.I.A. 1999) (BIA has no authority to address First Amendment and void-for-vagueness claims addressed in federal court cases); *Matter of H-*, 3 I. & N. Dec. 411, 456 (B.I.A. 1948) (BIA has no authority to address respondent's First Amendment claims). The Eleventh Circuit has noted that courts do not require exhaustion for such claims. *See Sundar v. I.N.S.*, 328 F.3d 1320, 1325 (11th Cir. 2003), *abrogated on other grounds as recognized by Kemokai v. U.S. Atty. Gen.*, 83 F.4th 886, 891 (11th Cir. 2023).

Another reason exhaustion is not required here is because it would inflict irreparable harm on Mr. Vijandre. Respondents' position is that Mr. Vijandre is subject to mandatory detention under 8 U.S.C. § 1226(c). *See* ECF No. 28, at 9. The Immigration Judge agreed, finding that she did not

have jurisdiction to conduct a bond hearing because Mr. Vijandre's speech triggered 8 U.S.C. § 1182(a)(3)(B)(i)(VII). *See* ECF No. 21 ¶ 49. The BIA is limited to review of whether the IJ correctly applied the statute as written (a statute Mr. Vijandre claims is vague, overbroad, and otherwise violative of the First and Fifth Amendments). Thus, the BIA's decision will ultimately have no bearing on the claims raised in the Amended Petition, but waiting for it will subject Mr. Vijandre to an indeterminate period of prolonged unconstitutional detention. That is exactly the scenario "in which the interests of the individual weigh heavily against requiring administrative exhaustion." *McCarthy*, 530 U.S. at 146.

II. The Amended Petition is not a shotgun pleading.

A "shotgun pleading" is one that makes it impossible to know which facts support which legal claims. *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1321-23 (11th Cir. 2015). That is not the case with the Amended Petition before this Court. In *Weiland*, the court declined to find that the complaint was a shotgun pleading where it "identifie[d] the constitutional amendment or amendments that govern each count." *Id.* at 1325. The Amended Petition in this case does more than that; it separates distinct constitutional theories into separate counts, clearly identifies the challenged statute or regulation within each count, ties each count back to the common factual narrative of Petitioner's speech and detention, and recites specific facts relevant to each count.

In their Motion to Dismiss, Respondents summarize the claims and offer specific arguments responding to them, demonstrating that they have been given sufficient notice as to what Petitioner's claims are. ECF No. 28, at 9-14. "[T]his is not a situation where a failure to more precisely parcel out and identify the facts relevant to each claim materially increased the burden of understanding the factual allegations underlying each count." 792 F.3d at 1324. In *Villa v. Normand*, this Court rejected a nearly identical shotgun argument in another immigration detention

habeas case, holding that even a "complex and somewhat convoluted" petition was sufficient where respondents could understand and respond to the core claim for release. No. 5:25-cv-100, 2025 WL 3188406, at *5 (S.D. Ga. Nov. 14, 2025). And here, each claim is based on the same set of operative facts: the NOIT, the Felps Declaration, and the IJ's statements and decision during the November 3 hearing at which she declined to conduct a bond hearing. Each claim properly refers to these sets of facts.

Even if the petition were a shotgun pleading (which it is not), dismissal would not be required, as this Court recognized in *Villa*. 2025 WL 3188406, at *5; *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1296 (11th Cir. 2018) ("When a litigant files a shotgun pleading, is represented by counsel, and fails to request leave to amend, a district court must sua sponte give him one chance to replead before dismissing his case with prejudice on non-merits shotgun pleading grounds."). Any technical incorporation issue identified by the Court could be cured by amendment or a clarifying order. Dismissing a detainee's habeas petition on that basis, where the issues are already fully briefed and the petition plainly states a detention challenge, would elevate form over liberty.

III. The Amended Petition states plausible First and Fifth Amendment claims.

Respondents raise two arguments to support dismissal of Mr. Vijandre's constitutional claims.[4] First, they assert that Mr. Vijandre's detention is "based not on his speech but on his actions," ECF No. 28, at 14, and second, that Mr. Vijandre's social media posts that constitute "endorsing" or "espousing" terrorism are not protected by the First Amendment. *Id.* at 10-12. Each argument is based on an *ex post facto* effort to draw attention away from the plainly unlawful reasons Respondents have already given to justify Mr. Vijandre's detention in the NOIT, Felps Declaration, and IJ order.

[4] Respondents do not address Mr. Vijandre's Fifth Amendment claims.

A. Respondents' *ex post facto* attempt to alter the reasons given by DHS and the IJ for Mr. Vijandre's detention reveals the flaw in their merits argument and is improper at this stage.

The Motion to Dismiss provides a different legal rationale for Mr. Vijandre's detention than those given by DHS and the IJ. The Motion claims Mr. Vijandre is detained based on his actions and not his speech, but the NOIT,[5] Felps Declaration, and IJ's ruling each make clear that the detention was based on protected speech. It is understandable why Respondents seek to distance themselves from the IJ's statement that Mr. Vijandre's detention was justified because of his "belief that [Aafia Siddiqui and the Holy Land Five] have been wrongfully imprisoned and that they are not having proper treatment." *See* ECF No. 21 ¶ 4 (listing eleven separate evidentiary reasons for Mr. Vijandre's detention provided by DHS and the IJ). But it is the NOIT, Felps Declaration, and the IJ's ruling, not the Motion to Dismiss, that created the legal fact of Mr. Vijandre's arrest and ongoing detention, notwithstanding Respondents' counsel's efforts to render the basis for the detention more palatable in the Motion to Dismiss.

The Court should not accept Respondents' effort to erase the reasoning already provided by DHS and the IJ for Mr. Vijandre's detention, especially at the pleading stage when Mr. Vijandre's plausible factual allegations must be accepted as true. *Iqbal*, 556 U.S. at 678. A party can prevail on a motion to dismiss either by establishing that the factual allegations in the petition, taken as true, does not state a plausible claim for relief or that they would prevail as a matter of law on those facts. *See Sexton v. Carnival Corp.*, 504 F. Supp. 3d 1359, 1362 (S.D. Fla. 2020). Respondents do neither. The IJ stated that Mr. Vijandre's detention is based on his "beliefs," his

[5] In his declaration, Deportation Officer Felps does not state when the decision to detain Mr. Vijandre was made. He does, however, repeat the social media reasons listed in the NOIT and states that his social media posts showed "Mr. Vijandre's apparent support . . . of terrorist organizations and individuals involved in terrorism." ECF No. 21-3 ¶ 7.

social media posts about due process, Islam, prison conditions, and pro-Palestine advocacy. ECF No. 21 ¶ 4. Respondents tellingly refuse to address these facts. As such the Motion should be denied.

B. Mr. Vijandre is detained for his speech, not his actions

Respondents acknowledge that Mr. Vijandre is correct in arguing that even if he *had* expressed support for a terrorist group, such expression of support would be constitutionally protected. *See* ECF No. 28, at 14 ("an expression of support for a terrorist group may be protected . . .."). Respondents also do not deny that independent advocacy for terrorist groups remains protected speech after *Holder v. Humanitarian Law Project*, 561 U.S. 1, 23-24 (2010).

For all Respondents' efforts to re-cast the detention as being based on Mr. Vijandre's actions and not his speech, the Motion to Dismiss only points to one "action," an alleged solicitation of funds for the [redacted] ECF No. 28 at 10-11, 14. There are numerous problems with this argument.

First, Respondents have not provided Mr. Vijandre or this Court with a copy of such a post. It is not clear that such a post exists, as Mr. Vijandre does not recall making such a post. ECF No. 21 ¶ 48. Second, if such a post does exist, Respondents themselves do not appear confident in what it shows, as the NOIT states that Mr. Vijandre "*appears*" to have "*sought* to raise money" for the Fort Dix Five, ECF No. 21-1, at 1 (emphasis added), while the IJ stated Mr. Vijandre was detained merely for "sharing on his story information about Fort Dix Five." ECF No. 21 ¶ 4.

Third, even if Mr. Vijandre *had* solicited funds for the Fort Dix Five, Respondents assert that he did so in a single social media post, and this would clearly constitute protected speech rather than unprotected conduct. Respondents make no attempt to claim Mr. Vijandre was secretly providing resources to the [redacted] to further their conspiracy. It appears that Respondents

believe he shared a post asking individuals to support their legal defense or to help draw attention to their conditions of confinement. There is nothing unlawful about raising funds to increase awareness of an important legal case or to assist a legal defense campaign to ensure individuals are adequately represented by counsel in American courts of law. *See generally Citizens United v. FEC*, 588 U.S. 310 (2010) (holding that spending money is essential to disseminating speech). Congress barred donations to "terrorist activity" or a "terrorist organization;" it did not bar donations to support legal defense campaigns or to raise awareness of the plight of prisoners. Otherwise, individuals who have donated to the American Civil Liberties Union to support the legal defense of inmates at Guantanamo Bay are also guilty of supporting "terrorism," and that cannot be the case.

Respondents equate Mr. Vijandre's purported post "fundraising" for a legal campaign with the facts of *U.S. v. Kasimov*, No. 22-1329, 2024 WL 4541061 (2d Cir. 2024). This comparison is instructive. In *Kasimov*, the Second Circuit stated that the Defendant's possession of ISIS videos and expression of support for ISIS were "protected by the First Amendment." *Id.* at *3. The Defendant was not convicted for these—he was convicted because he provided funds for a soldier "to travel to Syria to fight for ISIS." *Id.* There is no equating funding a soldier to fight for ISIS with a potentially non-existent social media post that may have entailed raising funds for the defense of individuals facing criminal convictions or deplorable conditions in U.S. prisons.

Even if this social media post *was* an action rather than speech (which it was not), it would constitute expressive conduct under *Spence v. Washington*, 418 U.S. 405 (1974). Conduct or activity that is intended to convey a particularized message and would be understood as such by those who viewed the video is protected by the First Amendment. *Id.* at 410-11. Given Mr. Vijandre's longstanding focus on prison conditions and due process violations in criminal

prosecutions, there can be no question that Mr. Vijandre's reposting of a fundraising appeal would have been perceived by his social media followers as conveying the particularized message that the US justice system is unfair and that greater democratic protections are required. This plainly constitutes protected speech and cannot justify his ongoing detention.

C. Respondents have provided no evidence that Mr. Vijandre is detained based on speech that is not protected under *Brandenburg*.

Respondents attempt to direct attention away from the NOIT, Felps Declaration, and IJ order by pointing to three posts that Mr. Vijandre "endorsed" or "espoused" terrorist activity. Even if these three posts *were* the only reasons for the NOIT and IJ's decision, they do not individually or collectively come close to constituting unprotected speech under the Supreme Court's test in *Brandenburg v. Ohio*, 395 U.S. 444 (1969), a case which Respondents tellingly fail to address.[6]

The three posts are: (1) a martial arts training video demonstrating the "castle doctrine," ECF No. 21 at 12, (2) a "like" of a social media post from a generic Islamic account featuring the Shahada (Islam's fundamental declaration of faith), *id.*, and (3) a post expressing the general Islamic belief that meeting Allah through "death" is a "victory." *Id.*

[6] Respondents acknowledge that Mr. Vijandre is detained based on § 1182(a)(3)(B)(VII) (the "endorse/espouse" provision) of the INA, but also claim the detention is based on the "solicitation" ground, § 1182(a)(3)(B)(IV). ECF No. 28, at 11-13. Section 1182(a)(3)(B)(IV) was not the basis for the detention as provided by the NOIT (which lists no TRIG ground), Felps Declaration (which also lists no TRIG ground) or the IJ (who cited only the "endorse/espouse" provision as the legal basis for holding she lacked jurisdiction to conduct a bond hearing). ECF No. 21 ¶ 46. Respondents' Motion does not state that Mr. Vijandre is inadmissible under the "material support" provision, §1182(a)(3)(B)(VI). A reference to this latter statutory provision at ECF No. 28, at 11, is plainly a typographical error.

1. Mr. Vijandre's martial arts training video is protected speech

Respondents paint Mr. Vijandre's martial arts training video about the "castle doctrine" as a sinister threat against federal agents and an attempt to "persuade others to endorse his own actions." ECF No. 28, at 12. This argument has several flaws.

First, it is not clear what unlawful "actions" Respondents believe the video was intended to endorse, especially considering the castle defense is enshrined in Texas law. The conclusory assertions of Deportation Officer Felps that the video involved unlawful action are contradicted by the weight of the evidence. It is undisputed that Mr. Vijandre is a martial arts instructor. ECF No. 21 ¶ 2. The video included text indicating it was for training purposes only, stating "This is a training drill Using a BB gun." *Id.* ¶ 44. This disclaimer clearly shows Mr. Vijandre's intent was pedagogical, and that he wanted his audience to understand the video served to instruct proper gun safety in the event of a home invasion. The fact that Mr. Vijandre deleted this video for fear it would be misinterpreted further shows his intent was never to incite violence. Respondents do not deny the "gun" in question was a BB gun. They point to no evidence—nothing in the video's text or audio—that indicates that this video has a sinister purpose. Therefore, it constitutes protected speech under *Brandenburg*.

Second, Respondents' assertion that Mr. Vijandre posted this video "days after receiving USCIS's notice of intent to revoke his DACA status" is blatantly false. *Id.* Neither Mr. Vijandre nor the undersigned had access to the NOIT until *after* Mr. Vijandre was arrested. The NOIT is dated September 22, 2025, but Mr. Vijandre was not aware that his immigration status was in question until he was arrested at gunpoint on the morning of October 7, 2025. Mr. Vijandre would welcome an evidentiary hearing on this question should the Court deem it necessary.

2. Mr. Vijandre's posts about Islam constitute protected speech.

Respondents assert that Mr. Vijandre is a terrorist because he "liked" a post of [redacted] and made a generalized faith-based post expressing the religious belief that "death" is "the inescapable process for us to meet Allah; what is more victorious than that!" ECF No. 21-4. These efforts to draw an equal sign between Islam and terrorism must fail.

As for the former post, Mr. Vijandre had no knowledge that it included a quote from a prominent member of [redacted] as Respondents assert. The text and visual content of the post that Mr. Vijandre "liked" is religious and non-violent, and no reasonable person would assume it was intended to convey a threat. The page that made the post in question is a general Islamic account that did not identify the quote as coming from a member of [redacted] ECF No. 21 ¶ 42. Respondents' assertion that the quote also appears in an ISIS magazine is immaterial here, and Respondents have provided no evidence that Mr. Vijandre had ever read that magazine. In fact, he had never heard of it until Respondents brought it up. Petitioner would welcome an evidentiary hearing on this matter should the Court find it appropriate, but even if Mr. Vijandre *had* made a post in support of [redacted] that post would still be protected speech unless it contained an imminent threat of lawless action with a likelihood of producing or inciting such action. *Brandenburg*, 395 U.S. at 447. Respondents do not provide any indication as to how this post satisfies the second prong of the *Brandenburg* test which requires showing the speech is likely to produce imminent lawless action.

The social media post including the words "death is our victory" is also not a threat.[7] If anything, it appears to communicate the belief that individuals who die are "victorious" by meeting

[7] It is difficult to see how this post could be understood as a threat. The full sentence reads, "A Warrior of Islam can never be assassinat*ed* for DEATH IS OUR VICTORY!!" ECF No. 21 ¶ 43 (emphasis added). The plain meaning of this sentence is that being killed is not something for

God—a basic precept of Islam. Respondents have failed to articulate the unlawful action that is threatened here. And even if they could, they have likewise failed to show it is likely to produce such action. Notably, the screenshot Respondents provide about this post indicates it accumulated zero "likes," comments, or retweets and was "viewed" by 24 people, ECF No. 21-4, so even if it was intended to communicate a violent threat (it was not), it was not likely to produce violence. It therefore also falls well short of the *Brandenburg* test.

D. Respondents cannot rely on protected speech to establish Mr. Vijandre's "motive" to commit a crime that has not occurred.

Respondents assert that they have relied on Mr. Vijandre's protected speech only to help establish a motive or intent associated with his putative unlawful and unprotected actions. ECF No. 28, at 14. They cite *Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993), *Kasimov*, and *United States v. Stewart*, 65 F.3d 918, 930 (11th Cir. 1995) to support the permissibility of reliance on speech in criminal prosecution of terrorists or perpetrators of hate crimes.

This argument has a glaring flaw: unlike here, the defendants in those cases had actually committed an underlying, unlawful act of violence. In *Mitchell*, the Court ruled that state judges could consider a group of defendants' racist verbal statements when considering sentencing enhancements after they were convicted for physically assaulting a boy and rendering him

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people of faith to fear because it results in meeting God. Similar sentiments have been expressed by Christian religious leaders like Billy Graham who once said, "I think I can honestly say that I'm not afraid of death, because I've committed my life to Jesus and I know I'll go to be with Him in heaven." Billy Graham Evangelical Ass'n, *Billy Graham "My Answer"*, https://billygraham.org/answers/i-think-i-can-honestly-say-that-im-not-afraid-of-death-because-ive-committed-my-life-to-jesus-and?. That the quote here uses harder language (in the context of a violent military campaign that has killed thousands of Muslim Palestinians in Gaza) does not change its meaning or render it a threat. *See also* 2 Corinthians 5:8 (New Int'l Version) ("We are confident, I say, and would prefer to be away from the body and at home with the Lord"); Philippians 1:21 (New Int'l Version) ("For to me, to live is Christ and to die is gain"); Revelation 14:13 (New Int'l version) ("Blessed are the dead who die in the Lord from now on").

unconscious. 508 U.S. at 479-80, 489. In *Kasimov*, the defendant's possession of ISIS training videos was deemed relevant for considering his motive when he spent money arranging for a soldier to fight for ISIS in the Middle East. 2024 WL 4541061, at *3. In *Stewart*, the Eleventh Circuit allowed a court to consider KKK members' racist statements in determining their motive for burning a cross and firing guns at African Americans outside their home. 65 F.3d at 930.

Here, Respondents have pointed to no underlying criminal or deportable "action" for which his speech might prove a motive. In any event, the NOIT, Felps Declaration, and IJ ruling all make clear that Mr. Vijandre's speech and beliefs were the basis for the detention, not that they were used to establish motive toward some violent, unprotected action. There is no mention of this justification in any of those three sources explaining why Mr. Vijandre is detained. The speech in question here was relied on to detain Mr. Vijandre, not to help establish a motive for some other violent action, which, in any event, he did not commit.

E. Respondents decline to defend the constitutionality of § 1182(a)(3)(B) as applied to protected speech or on void-for-vagueness grounds.

Respondents decline to respond on the merits to Mr. Vijandre's argument that the statutory provisions upon which his detention is based are unconstitutional. While Respondents make a factual argument that *one* of the expressions in question is not speech but unprotected activity, *see* ECF No. 28, at 13-14, they make no effort to address the merits of Mr. Vijandre's argument that § 1182(a)(3)(B) is unconstitutionally vague and overbroad under the First and Fifth Amendments, and unconstitutional as applied to Mr. Vijandre under the First Amendment.

F. Respondents sweeping constitutional arguments militate against their technical arguments about jurisdiction, exhaustion, and pleading format.

Respondents declare that Mr. Vijandre's social media posts are not "permissible" and that the Court should therefore dismiss his Petition. ECF No. 28, at 13. Such statements illustrate why

Article III review is not only proper but constitutionally necessary. Respondents argue that because Congress has "criminalized actions that provide material support to terrorist organizations" and enacted § 1182(a)(3)(B), Mr. Vijandre is detainable. ECF No. 28, at 10-13.[8] But a back-page proffer in a Department of Justice brief does not mean that Congress has given the executive branch the authority to detain a 20+ year U.S. resident and DACA recipient based on his social media posts about due process and prison conditions of individuals Petitioner believes were *wrongfully* called terrorists. On the contrary, this is exactly the type of case and controversy over which the judicial branch must have the final say. Mr. Vijandre's Amended Petition challenges the constitutionality of the statutory provision that "authorizes" his detention. *See* ECF No. 21 ¶¶ 64-100. Whether the legislature gave the executive the authority to detain longtime lawful residents because of his speech *must* be a question for the judiciary.

CONCLUSION

Respondents admit that Mr. Vijandre is detained based on his "belief" (in the IJ's words) that individuals accused of terrorism were falsely accused, deprived of their due process rights or mistreated in American custody, and his journalistic work and social media activity expressing those views. While effectively conceding that this is unlawful, Respondents improperly attempt to alter the reasoning for the detention to focus on three social media posts to which they impute a nefarious purpose. But none of these posts is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg*, 395 U.S. at 447. Mr. Vijandre's ongoing detention is therefore unconstitutional, and he must be released.

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[8] Respondents assert that it is "unsurprising that [Mr. Vijandre] does not challenge the government's application of § 1226(c)(1)(D) to his situation." ECF No. 28, at 9. But Mr. Vijandre clearly does challenge the basis of his detention, as Respondents acknowledge when they state that he "challenges only the lawfulness of his detention during his immigration proceedings." ECF No. 28, at 2.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2025, I electronically filed the foregoing on the Court's CM/ECF system, that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

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