

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): No. 26-2509

Caption [use short title]

Motion for: Emergency Motion for an Administrative Stay
and a Stay Pending AppealAhmed v. Rubio

Set forth below precise, complete statement of relief sought:

Plaintiff-Appellant Imran Ahmed seeks an administrative stay
and a stay pending appeal of the district court's opinion
and order, dated September 8, 2026, insofar as it dissolves
the temporary restraining order previously entered by the
district court, which terminates September 15, 2026.Mr. Ahmed respectfully requests a ruling by September 14, 2026.MOVING PARTY: Imran AhmedOPPOSING PARTY: Marco Rubio, et al.☒

Plaintiff

☐

Defendant

☒

Appellant/Petitioner

☐

Appellee/Respondent

MOVING ATTORNEY: Roberta A. KaplanOPPOSING ATTORNEY: Danielle J. Marryshow

[name of attorney, with firm, address, phone number and e-mail]

Kaplan Martin LLPAssistant United States Attorney1133 Avenue of the Americas, Suite 1500, New York, NY 1003686 Chambers Street, 3rd Floor, New York NY 10007(212) 316-9500 rkaplan@kaplanmartin.com(212) 637-2689 danielle.marryshow@usdoj.comCourt- Judge/ Agency appealed from: Loretta A. Preska, U.S. District Judge of the Southern District of New York

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒

Yes

☐

No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?

☒

Yes

☐

No

Has this relief been previously sought in this court?

☐

Yes

☒

No

Requested return date and explanation of emergency: 09/14/2026The temporary restraining order protecting Mr. Ahmed from arrest, detention, and transfer
is set to expire after September 15, 2026. If Mr. Ahmed is arrested or detained while this
appeal is pending he will be irreparably harmed.

Opposing counsel's position on motion:

☐

Unopposed

☐

Opposed

☒

Don't Know

Does opposing counsel intend to file a response:

☐

Yes

☐

No

☒

Don't Know

Is the oral argument on motion requested?

☐

Yes

☒

No (requests for oral argument will not necessarily be granted)

Has the appeal argument date been set?

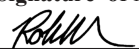
☐

Yes

☒

No If yes, enter date:

Signature of Moving Attorney:

Date: 09/09/2026Service: ☒ Electronic ☐ Other [Attach proof of service]

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

IMRAN AHMED,

Plaintiff-Appellant,

v.

MARCO RUBIO, *et al.*,

Defendants-Appellees.

No. 26-2509

**EMERGENCY MOTION FOR STAY AND A STAY PENDING APPEAL
WITH RELIEF REQUESTED BY SEPTEMBER 14, 2026**

PRELIMINARY STATEMENT

This case presents the question of whether a federal court has the power to prevent the illegal arrest, detention, and transfer of a green card holder based on the Administration’s policy of retaliating against speech criticizing the practices at the major technology companies, which one other court has already held violates the First Amendment. *Coal. for Indep. Tech. Rsch. v. Rubio*, 2026 WL 2030770 (D.D.C. July 14, 2026) (Boasberg, C.J.) (“*CITR*”). The district court (Preska, J.) appears to agree, noting that “without any hint of irony, the Secretary of State determined that

rendering Mr. Ahmed deportable on account of his lobbying and advocacy efforts was necessary to protect American ‘freedom of expression.’” ECF 67 at 1.

Nonetheless, on September 8, 2026, the district court granted the government’s motion to dismiss, concluding that under *Mahdawi v. Trump*, 183 F.4th 103 (2d Cir. 2026), *reh’g en banc granted*, No. 25-1113, Dkt. 244.1 (2d Cir. Sept. 3, 2026), the Immigration and Nationality Act (“INA”) strips federal courts of jurisdiction to provide Mr. Ahmed with any relief. Recognizing the importance of the relief that had been provided, the district court continued the existing temporary restraining order (“TRO”) which had been in place for more than eight months for an additional five business days to provide Mr. Ahmed with an opportunity to seek emergency relief from this Court.

As set forth below, we respectfully disagree with the district court, and the merits panel in *Mahdawi*, and believe that the federal courts have jurisdiction to provide relief in these circumstances. Six of the active judges of this Court reached that very conclusion in *Mahdawi* itself when they denied *en banc* review on a motion for a stay. *Öztürk v. Hyde*, 155 F.4th 187 (2d Cir. 2025) (denying rehearing *en banc*).¹ While the merits panel in *Mahdawi* disagreed, just last week, the full Court took the unusual step of granting rehearing *en banc* before a petition for rehearing was filed. That history strongly suggests that the Court will soon hold that federal courts

¹ *Mahdawi* and *Öztürk* were heard in tandem. *Id.*

possess jurisdiction. At the very least, it raises a strong showing that Mr. Ahmed will prevail on the merits with respect to jurisdiction.

Indeed, this case presents the textbook example of the kind of circumstances that justify emergency relief. Mr. Ahmed is a lawful permanent resident who lives here with his American wife and children. He founded and leads a nonprofit that researches social media platforms and advocates for greater transparency and accountability. The government announced that it would arrest and detain Mr. Ahmed because of that advocacy in violation of the First Amendment.

Mr. Ahmed will obviously face irreparable harm absent emergency relief. The TRO below prevented the government from arresting, detaining, and transferring Mr. Ahmed on account of his speech, before the courts could review his claims. That injunction below was in place for more than eight months, without any objection from the U.S. Government. Continuing that protection now would maintain the status quo to which the government previously consented while the parties in *Mahdawi* and the parties here litigate these issues in an orderly manner.

BACKGROUND

Mr. Ahmed is a citizen of the United Kingdom and a lawful permanent resident of the United States. ECF 43 (“Compl.”) ¶ 21. He moved to the United States in 2021 and obtained permanent residency in 2024. *Id.* He founded and leads the Center for Countering Digital Hate (“CCDH”), a nonprofit that researches online

hate and disinformation and advocates for greater transparency and accountability from social media platforms. Its work includes reports on antisemitism, vaccine misinformation, and children’s exposure to harmful content, as well as advocacy concerning platforms’ content-moderation practices. *Id.* ¶¶ 2, 26-29.

In December 2025, the government targeted Mr. Ahmed for removal based on that work. The administrative record, subsequently produced in this litigation, includes a memorandum from Under Secretary of State Sarah B. Rogers dated December 16, 2025, entitled “Response Options to the European Commission’s Fine of X Corp. Under the Digital Services Act (DSA).” The memorandum recommended determining that Mr. Ahmed was deportable under 8 U.S.C. § 1227(a)(4)(C) and notifying the Department of Homeland Security (“DHS”) of that determination. Supporting materials expressly contemplated that DHS might detain Mr. Ahmed in the process. ECF 42 at 2-3, 7.

The government publicly announced its actions about an hour before the district court closed for Christmas Eve. ECF 10 at 1. On December 23, 2025, Under Secretary Rogers posted on X: “WE’VE SANCTIONED: Imran Ahmed.”² She singled out CCDH’s “infamous” Disinformation Dozen report, including its criticism of the statements of now-Secretary of Health and Human Services Robert

² Sarah B. Rogers (@UnderSecPD), X (Dec. 23, 2025, at 3:46 PM), <https://x.com/UnderSecPD/status/2003567950541058394>.

F. Kennedy Jr. regarding vaccines, and its advocacy of greater social media regulation. Compl. ¶¶ 43-45.

PROCEDURAL HISTORY

Faced with the prospect of arrest, Mr. Ahmed filed this action on Christmas Eve while physically present in New York City. *Id.* ¶¶ 17-19. On Christmas Day, Judge Vernon S. Broderick, to whom the case was assigned as the Part I judge, granted a TRO barring Defendants from arresting or detaining Mr. Ahmed pending further order. ECF 14 ¶¶ 1-2. After the case was assigned to Judge Loretta A. Preska, the government consented to extend the TRO. ECF 26 ¶ 1; ECF 40 ¶ 1. Without defending the challenged policy or the Secretary's determination on the merits, the government moved to dismiss or transfer, arguing that three provisions in the INA—8 U.S.C. §§ 1252(a)(5), (b)(9), and (g)—stripped the district court of jurisdiction and that venue was improper. ECF 48-49.

While those motions were pending, the new policy of targeting noncitizens for their protected speech was held unconstitutional by two separate district courts. *Stanford Daily Publishing Corp. v. Rubio*, 2026 WL 2549090 (N.D. Cal. Aug. 28, 2026); *CITR*, 2026 WL 2030770. In his decision, Judge Boasberg specifically cited the government's targeting of Mr. Ahmed in determining that the plaintiff had standing. *Id.* at *7-8.

Prior to the above, a three-judge motions panel denied the government's motion to stay Mahdawi's release. The panel considered each of the three jurisdiction-stripping provisions relevant here—8 U.S.C. §§ 1252(a)(5), (b)(9), and (g)—and concluded that none barred review of Mahdawi's detention claims. *Mahdawi v. Trump*, 136 F.4th 443, 449-53 (2d Cir. 2025) (“*Mahdawi I*”). On July 21, 2026, a different three-judge panel issued a merits decision holding that § 1252(b)(9) deprived the district court of jurisdiction over Mahdawi's habeas claims because they were intertwined with the government's basis for seeking his removal. 183 F.4th 103, 113-20 (2d Cir. 2026) (“*Mahdawi II*”). Mr. Ahmed promptly advised the district court of the decision, but noted the panel departed sharply from *Mahdawi I*; a plurality of the active judges of this Court, *Öztürk v. Hyde*, 155 F.4th 187, 205 (2d Cir. 2025) (Nathan, J., concurring); and the Fourth Circuit, *Suri v. Trump*, 184 F.4th 260 (4th Cir. 2026).

On September 3, 2026, this Court granted *en banc* review of *Mahdawi II*. Five days later, the district court dismissed this action solely on jurisdictional grounds. ECF 67. First, the district court held that it lacked jurisdiction under 8 U.S.C. § 1252(g) because it believed that Mr. Ahmed sought an injunction that “would prevent the Government from commencing removal proceedings against him,” notwithstanding that Mr. Ahmed expressly disclaimed seeking any such relief. ECF 54 at 12. Although the district court noted that the merits panel in *Mahdawi II* did

not address § 1252(g), it did not mention that six active judges of this Court had addressed that provision in prior *en banc* proceedings, concluding that § 1252(g) “does not preclude jurisdiction over ... challenges to the legality of [a noncitizen’s] detention,” *Öztürk v. Hyde*, 155 F.4th 187, 207-08 (2d Cir. 2025) (Nathan, J., concurring) (citation omitted). Second, the district court held that Mr. Ahmed’s claims are foreclosed by 8 U.S.C. § 1252(a)(5) and (b)(9) under the three-judge panel’s decision in *Mahdawi II*. The district court recognized that this Court granted rehearing in *Mahdawi*, but “decline[d] to delay these proceedings pending resolution of that matter” because *Mahdawi II* is “the current law of this Circuit.” ECF 67 at 15-16. The district court directed that the TRO would dissolve in five business days absent further order. *Id.* at 19.³

The next day, September 9, 2026, Mr. Ahmed filed a timely notice of appeal and moved in the district court for a stay of the order dissolving the TRO. That motion remains pending, and given the exigencies, Mr. Ahmed now seeks the same relief in this Court. Fed. R. App. P. 8(a)(2)(A)(ii).

LEGAL STANDARD

In deciding whether to grant a stay pending appeal, this Court considers:

(1) whether the applicant has made a strong showing that he is likely to succeed on

³ Having concluded that it lacked subject-matter jurisdiction, in dicta the district court added that, if any district court had jurisdiction, it would transfer the action to the District of Columbia. ECF 67 at 17-18.

appeal; (2) whether he will suffer irreparable injury absent a stay; (3) whether a stay will substantially injure the opposing party; and (4) where the public interest lies. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *DiMartile v. Hochul*, 80 F.4th 443, 456 (2d Cir. 2023); *Mahdawi v. Trump*, 136 F.4th 443, 449 (2d Cir. 2025). The first two factors are the most critical, and the final two merge when the government is the opposing party. *Nken*, 556 U.S. at 434-35.

An administrative stay “freeze[s] legal proceedings until the court can rule on a party’s request for expedited relief” and “buys the court time to deliberate”; such stays “do not typically reflect the court’s consideration of the merits of the stay application.” *United States v. Texas*, 144 S. Ct. 797, 798 (2024) (Barrett, J., concurring); *Hassoun v. Searls*, 976 F.3d 121, 126 (2d Cir. 2020) (extending administrative stay “to ensure that it had adequate time to consider the government’s [underlying stay] motion”).

ARGUMENT

This Court should grant a stay because Mr. Ahmed is likely to establish that the federal courts have jurisdiction to review the government’s unlawful conduct. The government has never argued that its decision to target Mr. Ahmed on the basis of his speech is lawful, the Court has jurisdiction to provide Mr. Ahmed with the relief he seeks, and Mr. Ahmed will be irreparably harmed if the government is permitted to arrest and detain him in violation of the First Amendment.

**I. MR. AHMED HAS MADE A STRONG SHOWING THAT HE IS
LIKELY TO SUCCEED ON THE MERITS**

**A. This Court Will Likely Hold that 8 U.S.C. § 1252 Does Not Deprive
District Courts of Jurisdiction to Hear Retaliatory Detention
Claims**

The district court had subject-matter jurisdiction over Mr. Ahmed’s claims because they arise from his imminent retaliatory arrest, detention, and transfer, and the separate determination of Secretary Rubio, not the commencement of removal proceedings by DHS. As a plurality of the active judges of the Second Circuit has already held, Section 1252(a)(5), (b)(9), and (g) do not permit the Executive to arrest, detain, or transfer noncitizens without judicial review. *See Öztürk*, 155 F.4th at 207-09 (Nathan, J., joined by Lee, Robinson, Pérez, Merriam, and Kahn, JJ.); *see also id.* at 215-16 (statement of Parker and Carney, Senior Circuit Judges). Although the merits panel in *Mahdawi II* held otherwise as to § 1252(b)(9), it did not address § 1252(a)(5) and (g), leaving *Mahdawi I*’s analysis of those provisions undisturbed. And the full Court has taken the extraordinary step of *sua sponte* voting to rehear the *Mahdawi II* determination *en banc*.

**B. Section 1252(g) Does Not Bar Review of Retaliatory Detention
Claims**

This Court has already addressed the distinction between retaliatory detention and removal proceedings. In *Mahdawi I*, it held § 1252(g) likely did not bar review because “claims of unlawful and retaliatory detention [are] independent of, and collateral to, the removal process.” 136 F.4th at 450. That conclusion follows from

the Supreme Court’s instruction that § 1252(g) reaches only three discrete actions—the commencement of proceedings, adjudication of cases, and execution of removal orders—and does not impose a general jurisdictional bar on claims arising from the removal process. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (“*AADC*”).

That reasoning applies here. The district court concluded that an injunction “would prevent the Government from commencing removal proceedings.” ECF 67 at 11. But Mr. Ahmed does not seek to prevent DHS from commencing removal proceedings, which under Section 1229 (“Initiation of removal proceedings”) would occur through the issuance and service of a Notice to Appear (“NTA”). He seeks instead to prevent his unlawful arrest, detention, and transfer. *See* Compl. Prayer for Relief. Consistently, the TRO protects him against arrest and detention, while leaving the government free to serve and file a Notice to Appear. ECF 14. Indeed, Mr. Ahmed and the government entered a stipulation into the record clarifying that he was *not* seeking relief from removal proceedings. ECF 26 at 3.

The district court did not address *Mahdawi I*’s analysis of § 1252(g). *Mahdawi II* did not either: the merits panel expressly declined to reach § 1252(g). 183 F.4th at 113 n.9. As a result, *Mahdawi I* remains good law, and the district court erred in overlooking it. *See Labrador v. Poe*, 144 S. Ct. 921, 932 (2024) (Kavanaugh, J., joined by Barrett, J., concurring) (interim decisions by courts of

appeals have “precedential effect—formally, when there is a precedential opinion”—on “district courts in that circuit”); *Trump v. CASA, Inc.*, 606 U.S. 831, 874 (2025) (Kavanaugh, J., concurring) (interim appellate decisions “will often constitute a form of precedent (*de jure* or *de facto*) that provides guidance” to lower courts).

The district court collected isolated statements in Mr. Ahmed’s filings that it construed to mean that he sought to prevent the commencement of removal proceedings. ECF 67 at 10-11. But the notice of motion and the proposed order were clear: they sought only to prevent Mr. Ahmed’s arrest, detention, and transfer, not the service or filing of an NTA. ECF 8 ¶¶ 1-2; 8-1 ¶¶ 2-3. And even if other language in Mr. Ahmed’s filings could be construed more broadly, the Court “need not decide whether every Prayer for Relief survives § 1252(g).” *Öztürk v. Hyde*, 136 F.4th 382, 388-89 & n.6 (2d Cir. 2025) (holding that the petition survived, and the district court retained jurisdiction, so long as part of the detention challenge fell outside § 1252(g)).⁴

⁴ The district court also cited Judge Menashi’s two-judge concurrence in *Öztürk* for the proposition that Section 1252(g) applies. ECF 67 at 11. But a plurality of the active judges of this Court reached the opposite conclusion. *Öztürk*, 155 F.4th at 207-08 (Nathan, J., concurring). Nor did the district court address *CITR*, 2026 WL 2030770, at *11-15, which held that §§ 1252(a)(5), (b)(9), and (g) did not bar a challenge seeking relief directed at the policy itself rather than any individual removal proceeding. *See also Stanford Daily Publishing*, 2026 WL 2549090, at *28.

C. Section 1252(a)(5) and (b)(9) Do Not Bar Review of Retaliatory Detention Claims

The district court dismissed under *Mahdawi II* because it is “the current law of this Circuit.” ECF 67 at 16. But the grant of rehearing *en banc* itself renders the panel decision’s “precedential status” “somewhat ambiguous.” *El Badrawi v. Dep’t of Homeland Sec.*, 579 F. Supp. 2d 249, 263 n.15 (D. Conn. 2008). That uncertainty is especially pronounced here because this Court acted *sua sponte*—an extraordinary step signaling “at least some ground for concern with the panel decision.” *Animal Legal Def. Fund v. Veneman*, 490 F.3d 725, 727-28 (9th Cir. 2007) (en banc) (Bybee, J., concurring). Indeed, a plurality of the active judges on the Second Circuit has already concluded that Section 1252 “poses no barrier” to jurisdiction. *Öztürk*, 155 F.4th at 209 (Nathan, J., concurring).

Whatever *Mahdawi II*’s continuing precedential status, preserving Mr. Ahmed’s protection from arrest would allow the full Court to resolve the jurisdictional question before Mr. Ahmed suffers the very injury for which he seeks judicial review. This is precisely the course that this Court has taken in another case which also presents the same jurisdictional question that will be resolved in *Mahdawi*. *Chung v. Trump*, No. 25-1660, ECF 51 (2d Cir. July 29, 2026) (staying proceedings pending issuance of the mandate in *Mahdawi*). And there are good reasons to believe that the merits panel’s interpretation of § 1252(b)(9) is unlikely to survive *en banc* review.

Section 1252(b)(9) channels questions arising from the removal process into a single petition for review of a final removal order. The subsection expressly applies “[w]ith respect to review of an order of removal.” 8 U.S.C. § 1252(b). Yet the *Mahdawi II* panel treated that limitation as having a “broadening effect,” extending the jurisdictional bar to “matters relating to” a removal order, including the Secretary of State’s antecedent removability determination. 183 F.4th at 117.

As Judge Nathan has explained, that expansive reading conflicts with *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Öztürk*, 155 F.4th at 209. In *Jennings*, the plurality rejected an interpretation of § 1252(b)(9) that would sweep in collateral claims merely because they arose from detention associated with removal. 583 U.S. at 293-94. It emphasized that the respondents were not seeking review of a removal order, the government’s decision to seek removal, or the process for determining removability. *Id.* at 294. Three additional Justices concluded that § 1252(b)(9) did not apply “by its terms” because the respondents challenged “their detention without bail, not an order of removal.” *Id.* at 355 (Breyer, J., dissenting).⁵

⁵ To be sure, the *Jennings* plurality observed that the respondents were not challenging the “decision to detain them in the first place.” 583 U.S. at 294. But it expressly declined “to provide a comprehensive interpretation” of § 1252(b)(9). *Id.* The district court repeatedly cited Justice Thomas’s separate opinion, joined in relevant part only by Justice Gorsuch, which would have held that § 1252(b)(9) barred jurisdiction over the detention claims. ECF 67 at 12-16; *Jennings*, 583 U.S. at 314-15 (Thomas, J., concurring in part and concurring in the judgment). The Alito plurality, however, rejected an expansive reading of the provision because it would produce “staggering results” and make prolonged-detention claims “effectively

The Court reaffirmed that limitation in *Department of Homeland Security v. Regents of the University of California*, holding that “§ 1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.” 591 U.S. 1, 19 (2020). If every antecedent policy or determination that might contribute to removal fell within § 1252(b)(9), the challenge to DACA’s rescission would likewise have been barred. *Regents* rejected that result.

Mr. Ahmed’s detention claim falls on the same side of that line. He challenges the government’s use of arrest and detention to punish protected speech. That claim can be resolved without reviewing a removal order or preventing an immigration court from adjudicating his removability. Moreover, no order of removal has issued against Mr. Ahmed. That supplies an additional ground for jurisdiction under the reading of § 1252(b)(9) endorsed by Judge Nathan and adopted by the Fourth Circuit. *See Öztürk*, 155 F.4th at 209 (Nathan, J., concurring); *Suri*, 184 F.4th at 296.

Mahdawi II expressly adopted the Third Circuit’s conclusion in *Khalil* that retaliatory-detention claims challenge the government’s “very basis for trying to remove” the petitioner. 183 F.4th at 113 (quoting *Khalil v. President, United States*, 164 F.4th 259, 274 (3d Cir. 2026)). But that conclusion conflicts directly with Judge

unreviewable.” *Id.* at 293. And when the Court restated *Jennings*’s limiting principle in *Regents*, it omitted that reference to the initial detention decision. *Öztürk*, 155 F.4th at 209.

Nathan’s concurrence in *Öztürk* and the Fourth Circuit’s decision in *Suri*. As the Fourth Circuit explained when declining to follow *Khalil*, this interpretation conflicts with the reasoning of six Justices in *Jennings* and the Supreme Court’s subsequent treatment of that decision in *Regents*. *Suri*, 184 F.4th at 296. The Fourth Circuit agreed with Judge Nathan’s concurrence and held that §§ 1252(b)(9) and (a)(5) apply to review of a removal order, and “no order of removal is at issue here.” *Id.* at 298. It further explained that a challenge to detention based on unconstitutional targeting is “distinct” from a challenge to removal. *Id.* at 296-97.

Section 1252(a)(5) does not independently bar review. As noted, *Mahdawi II* expressly declined to reach that provision. 183 F.4th at 113 n.9. And this Court in *Mahdawi I* held that “Section 1252(a)(5) bars district court review ‘of an order of removal,’ but no order of removal is at issue here.” 136 F.4th at 453. This Court’s holding in *Mahdawi I* remains good law and governs here because Mr. Ahmed seeks protection against retaliatory arrest and detention, and no removal order exists for the district court to review.

D. In Any Event, Mr. Ahmed’s Case Is Materially Different from *Mahdawi*

Even if *Mahdawi II* survives *en banc* review, it would not dictate dismissal here for three reasons.

First, nothing in *Mahdawi II* holds that § 1252(b) applies where the government has issued no NTA and there is no order of removal. The panel had no

cause to consider that situation because Mahdawi was arrested, detained, served with an NTA, and placed in proceedings. “[S]ection 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. I.C.E.*, 510 F.3d 1, 11 (1st Cir. 2007). The provision routes “questions of law and fact” into “review of a final order,” which assumes that a final order will issue and that a PFR will follow. Where the government has not “moved to remove” the plaintiff, there may never “be a PFR into which questions could be channeled.” *Suri*, 184 F.4th at 305 (Wilkinson, J., dissenting). Even Judge Wilkinson, who dissented in *Suri* and would read § 1252(b)(9) at its broadest, drew the line there: a policy challenge brought where the government has not sought removal is “hardly similar” to “an alien’s challenge to an aspect of his ongoing removal proceedings.” *Id.*

Second, the panel never held that § 1252(b)(9) bars a challenge to the government’s policy of rendering noncitizens deportable for speech it disfavors. It focused almost exclusively on Mahdawi’s detention claims, holding them barred because they challenged “the government’s . . . basis for trying to remove” him. 183 F.4th at 113. As to the policy claim, the panel suggested only that Mahdawi’s as-applied challenge could be litigated on “a PFR, which Mahdawi has now filed,” because his alleged policy “is a ‘matter[] on which the validity of the final order is contingent.’” 183 F.4th at 122. That reasoning depends on the existence of a final order whose validity the policy challenge could affect. Mr. Ahmed has no final

order, so there is nothing for his policy challenge to be “contingent” upon, and no PFR forum into which to channel it. The panel did not reject—and had no reason to reject—Judge Boasberg’s holding that “the prospect that [a] policy may later contribute to some noncitizen’s removal does not transform a challenge to the policy into the review of an order of removal.” *CITR*, 2026 WL 2030770, at *14. That holding governs here.

Third, even assuming Mr. Ahmed’s claims fall within § 1252(b)(9)’s ambit, the court retains jurisdiction to redress his irreparable First Amendment injuries. The panel required a “now-or-never” claim to raise “not only an alleged injury that will occur before the conclusion of removal proceedings . . . but also ‘legal or factual questions’ . . . that are not bound up in the ongoing removal proceedings and that a court of appeals will not later be able to review meaningfully on a PFR.” 183 F.4th at 120. Both conditions are met here because there are no “ongoing removal proceedings.” Unlike Mahdawi and Khalil—each arrested, detained, and placed in proceedings that guaranteed a later PFR—Mr. Ahmed has no assured avenue of review at all. There is thus no guarantee that any proceeding will ever arise in which he could raise his legal questions—particularly now that Judge Boasberg has stayed the policy itself. *CITR*, 2026 WL 2030770, at *27.

E. Venue Is Proper in the Southern District of New York

Mr. Ahmed is also likely to succeed on the merits because venue for his claims was and remains proper in SDNY. After concluding that it lacked subject-matter jurisdiction, the district court devoted two pages of dicta to explaining that it would have transferred the action to the District of Columbia under 28 U.S.C. § 1404(a). ECF 67 at 17-18. That discussion necessarily presupposed that venue was proper in SDNY because “Section 1404(a) is only available when the court initiating the transfer is the proper venue and has personal jurisdiction over the defendant.” *Wohlbach v. Ziady*, 2018 WL 3611928, at *3 (S.D.N.Y. July 27, 2018).

Venue is proper here for two reasons. First, a “substantial part of the events or omissions giving rise to the claims” occurred in SDNY. 28 U.S.C. § 1391(e)(1)(B). Mr. Ahmed challenges both the government’s designation of him and the actions that the government would have taken against him on December 23 and 24, 2025 when he was in New York. While physically present in New York City, Mr. Ahmed sought an order enjoining his arrest, detention, and transfer from the district. *See Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 496 (S.D.N.Y. 2009). Moreover, the government’s recent practice is full of examples of ICE agents arresting and detaining individuals without regard to their state of residence. *See* ECF 54 at 18-20.

Second, venue in SDNY is also proper under 28 U.S.C. § 1391(e)(1)(A) because a civil action against a federal officer or agency “may be brought” in any judicial district in which “a defendant in the action resides.” The Complaint names Judith Almodovar in her official capacity as Acting Field Office Director of the New York ICE Field Office, which alone establishes venue under the text of the statute. *Stafford v. Briggs*, 444 U.S. 527, 540 (1980). Mr. Ahmed frequently travels to Manhattan as part of his job and was here when the action was filed and he faced the impending threat of detention and deportation.

II. MR. AHMED WILL BE IRREPARABLY HARMED ABSENT A STAY

In four business days, the TRO protecting Mr. Ahmed will dissolve. The government has repeatedly made clear it will arrest and detain him on account of his speech. If that happens, no later appellate ruling can give Mr. Ahmed back the time he spent in custody.

This Court’s stay decision in *Mahdawi I* confirms the weight of that injury. 136 F.4th at 455-56. The court denied a stay that would have allowed the government to re-detain Mahdawi during its appeal, emphasizing both the substantial liberty interest at stake and the First Amendment claims implicated. *Id.* (citing *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987)). So too here. The Secretary’s determination rests on Mr. Ahmed’s public work and advocacy. ECF 42 at 9-10. Detaining Mr. Ahmed on that basis would burden his speech by preventing him from

continuing his research and advocacy. And “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Nor would the harm stop with Mr. Ahmed. The Second Circuit has warned that retaliatory immigration enforcement based on disfavored speech can “broadly chill protected speech” among activists, citizens, and other residents who fear the same treatment. *Ragbir v. Homan*, 923 F.3d 53, 71 (2d Cir. 2019), *vacated and remanded on other grounds sub nom. Pham v. Ragbir*, 141 S. Ct. 227 (2020) (mem.); *see also NAACP v. Button*, 371 U.S. 415, 433 (1963) (“The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions.”).

Mr. Ahmed does not intend to leave the United States or voluntarily submit to immigration detention while he seeks appellate review. He will remain with his American wife and children and continue to advocate for transparency and accountability for social media companies. Without a stay, he will do so under the immediate threat that the government may arrest and detain him at any time.

It is no answer that Mr. Ahmed can seek relief after he is arrested. Where the government’s authority to make the arrest is itself disputed, courts have rejected the notion that an individual must first be arrested and then seek habeas relief. *Vergas v. Shaughnessy*, 97 F. Supp. 335, 338 (S.D.N.Y. 1951). Nor could Mr. Ahmed obtain an ordinary bond redetermination from an immigration judge. If detained under

§ 237(a)(4), the immigration judge could determine only whether Mr. Ahmed was properly subject to that provision—not redetermine the conditions of his custody. 8 C.F.R. § 1003.19(h)(2)(i)(C), (ii).

And any eventual petition for review would ordinarily be confined to the administrative record underlying the removal order, 8 U.S.C. § 1252(b)(4)(A)—not a record developed to determine whether Mr. Ahmed’s detention was retaliatory. *See Saget v. Trump*, 345 F. Supp. 3d 287, 296 (E.D.N.Y. 2018). By the time such review became available, the detention and its accompanying burdens on Mr. Ahmed’s speech, family, and work would already have occurred. A stay avoids that irreparable injury and preserves the status quo while the Second Circuit decides the jurisdictional question *en banc*.

III. A STAY WILL NEITHER SUBSTANTIALLY HARM THE GOVERNMENT NOR DISERVE THE PUBLIC INTEREST

A stay will require the government only to continue complying with the TRO that it consented to and that has governed the parties for more than eight months. It will give Mr. Ahmed no new relief and will not prevent the government from continuing any removal proceedings it may initiate.

In *Mahdawi I*, the government argued that continued release impaired its sovereign authority over immigration detention. The Court held that the government had shown no irreparable injury because the relief did not prevent it from continuing removal proceedings. 136 F.4th at 454-55. In *Öztürk*, the Court held that ongoing

removal proceedings defeated the government's claimed enforcement injury and that its administrative and logistical costs did not outweigh the petitioner's interests. 136 F.4th at 401-02.

Although the government has argued that there is a public interest in the prompt resolution of determining removability, it has not served Mr. Ahmed with an NTA, despite having determined that he is deportable in December 2025, and despite the fact that the TRO definitively did not prevent the government from serving Mr. Ahmed with an NTA and commencing removal proceedings. *Carter v. Sewell*, 2023 WL 7164304, at *1 (S.D.N.Y. Oct. 31, 2023) (“[M]onths-long delays ... undercut the sense of urgency.”).

A stay simply preserves the status quo under which the government has operated for months while the Second Circuit decides *Mahdawi*. That limited burden cannot outweigh the loss of liberty and constitutional injury Mr. Ahmed faces if the TRO dissolves.

CONCLUSION

The Court should grant an administrative stay and a stay pending appeal.

Dated: September 9, 2026
New York, New York

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d) because it contains 5,174 words. This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27(d) because it was prepared using Microsoft Word in 14-point Times New Roman, a proportionally spaced typeface.

Dated: September 9, 2026
New York, New York

/s/ Roberta A. Kaplan
Roberta A. Kaplan

APPENDIX OF EXHIBITS

1. Temporary Restraining Order, *Ahmed v. Rubio, et al.*, No. 25 Civ. 10705 (S.D.N.Y.), ECF 14.
2. Order Extending Temporary Restraining Order, *Ahmed. v. Rubio, et al.*, No. 25 Civ. 10705 (S.D.N.Y.), ECF 26.
3. Opinion and Order Granting Defendants' Motion to Dismiss, *Ahmed v. Rubio, et al.*, No. 25 Civ. 10705 (S.D.N.Y.), ECF 67.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
IMRAN AHMED,	:	
	:	
Plaintiff,	:	
	:	25-CV-10705
-against-	:	
	:	<u>ORDER</u>
MARCO RUBIO, in his official capacity as	:	
Secretary of State, SARAH B. ROGERS, in	:	
her official capacity as Under Secretary of	:	
State for Public Diplomacy, PAMELA BONDI,	:	
in her official capacity as Attorney General,	:	
KRISTI NOEM, in her official capacity as	:	
Secretary of Homeland Security, TODD M.	:	
LYONS, in his official capacity as Acting	:	
Director of U.S. Immigration and Customs	:	
Enforcement; JUDITH ALMODOVAR, in her	:	
official capacity as Acting Field Office	:	
Director of the New York Immigration and	:	
Customs Enforcement Office,	:	
Defendants	:	
	:	
-----X	:	

VERNON S. BRODERICK, United States District Judge:

I am in receipt of Plaintiff Imran Ahmed's Complaint, (Doc. 1), and Memorandum of Law in Support of a Temporary Restraining Order and a Preliminary Injunction, (Doc. 10).

Upon review, it is hereby ORDERED:

1. Plaintiff's motion for a temporary restraining order is granted;
2. Defendants are enjoined from arresting or detaining the Plaintiff pending further order of the Court;
3. If Defendants have taken Plaintiff into custody they are enjoined from transferring the Plaintiff from the jurisdiction of this District pending further ruling of the Court;
4. Should Defendants seek to arrest, detain, or transfer Plaintiff on any asserted basis other than pursuing his removal under 8 U.S.C. § 1227(a)(4)(C) pending the Court's decision on a preliminary injunction, Defendants shall provide sufficient advance

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notice to the Court and counsel to enable Plaintiff an opportunity to be heard regarding whether any such asserted basis for detention violates Plaintiff's rights under the First Amendment or the Fifth Amendment, or otherwise applicable law;

5. The parties shall attend an initial telephonic case conference on Monday, December 29, 2025 at 4:30 p.m. The dial-in number is 1-855-244-8681 and the access code is 2309 3085 835. There is no attendee ID. The parties should be prepared to address venue, this Court's jurisdiction to hear this case, including how long Plaintiff intends to be in New York, and what steps Defendants have taken to impose visa restrictions and initiate removal proceedings against Plaintiff and others pursuant to the same or similar State Department sanction(s). The parties should also be prepared to discuss the schedule for briefing during the telephonic conference;
6. The bond requirement of Federal Rule of Civil Procedure 65(c) is waived.

SO ORDERED.

Dated: December 25, 2025
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive, flowing style.

Vernon S. Broderick
United States District Judge

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IMRAN AHMED,

Plaintiff,

v.

MARCO RUBIO, in his official capacity as Secretary of State, SARAH B. ROGERS, in her official capacity as Under Secretary of State for Public Diplomacy, PAMELA BONDI, in her official capacity as Attorney General, KRISTI NOEM, in her official capacity as Secretary of Homeland Security, TODD M. LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement, and JUDITH ALMODOVAR, in her official capacity as Acting Field Office Director of the New York Immigration and Customs Enforcement Office,

Defendants.

Case No. 25 Civ. 10705 (LAP)

STIPULATION AND ~~PROPOSED~~ ORDER

WHEREAS, on December 24, 2025, Plaintiff filed a Complaint, ECF 1, and Order to Show Cause for Temporary Restraining Order and Preliminary Injunction, ECF 8;

WHEREAS, on December 25, 2025, the Court entered a Temporary Restraining Order (“TRO”) which, among other things, enjoined Defendants from arresting or detaining Plaintiff pending further order of the Court, ECF 14;

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WHEREAS, on January 5, 2026, counsel for the parties to the above-captioned action appeared before the Court for an Interim Pretrial Conference;

WHEREAS, during that conference, counsel for Defendants consented to an extension of the TRO such that the TRO shall remain in full force and effect during the pendency of Plaintiff's Order to Show Cause; and

WHEREAS, the Court asked the parties to memorialize these agreements (including with respect to the briefing schedule).

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the parties that:

1. The TRO entered on December 25, 2025 is extended by consent and shall remain in full force and effect during the pendency of Plaintiff's Order to Show Cause in this Court.
2. Defendants shall file any opposition to the Order to Show Cause and any motion to dismiss by January 30, 2026.
3. Plaintiff shall file his reply in further support of the Order to Show Cause and his opposition to Defendants' motion to dismiss by February 27, 2026. In that reply, Plaintiff will not be limited to responding only to the arguments made by the Defendants in their opposition to Plaintiff's Order to Show Cause.
4. Defendants shall file their reply in further support of their motion to dismiss by March 11, 2026.

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5. The subparagraph in the Prayer for Relief in Plaintiff's Complaint which requests that the Court "[e]njoin Defendants from taking any enforcement action against Mr. Ahmed arising directly or indirectly from an investigation into the applicability of the Foreign Policy Ground," ECF 1 at 29, is hereby struck from the Complaint, without the need for Plaintiff to file an Amended Complaint.
6. A facsimile or scanned copy of this stipulation will be considered the same as an original and may be filed with the court electronically.

Dated: January 9, 2026
New York, New York

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** *pro hac vice*

Attorneys for Plaintiff Imran Ahmed

IT IS SO ORDERED.



Hon. Loretta A. Preska
United States District Judge

Dated: January 13, 2026

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IMRAN AHMED,

Plaintiff,

-against-

MARCO RUBIO, et al.,

Defendants.

No. 25-CV-10705 (LAP)

OPINION AND ORDER

LORETTA A. PRESKA, Senior United States District Judge:

Plaintiff, Imran Ahmed, moves for a preliminary injunction to prevent the Government from arresting, detaining, or transferring him, which the Government opposes. See kt. nos. 8 (Proposed OSC), 49 (Gov. MOL), 54 (Plaintiff's MOL), 60 (Gov. Reply). Concurrently, the Government moves to dismiss this matter or, alternatively, to transfer it to the District of Columbia, which Plaintiff opposes. See kt. nos. 49, 54, 60.

The Amended Complaint alleges that the Secretary of State determined that Mr. Ahmed is deportable under the Immigration and Nationality Act due to his lobbying and advocacy efforts as Chief Executive Officer of the Center for Countering Digital Hate ("CCDH"). According to the Administrative Record, and without any hint of irony, the Secretary of State determined that rendering Mr. Ahmed deportable on account of his lobbying and advocacy efforts was necessary to protect American "freedom of expression"

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and to “reject encroachments” that “undermine the exercise of our fundamental right to free speech.” Dkt. no. 42 at PDF 9–10.

The Court finds that federal statutes and precedent from the United States Court of Appeals for the Second Circuit divest this Court of jurisdiction to review Mr. Ahmed’s claims. Ultimately, while Mr. Ahmed may very well have valid causes of action, his claims are premature, and Congress has determined that this Court may not review them. Rather, judicial review of his claims will be available upon his receipt of a final removal order and filing of a petition for review (“PFR”) with the appropriate Court of Appeals.

For the reasons set forth below, the Government’s motion to dismiss this matter is GRANTED.

I. Background

In December 2025, Plaintiff brought suit against the following individuals: 1) Marco Rubio, in his official capacity as Secretary of State; 2) Sarah B. Rogers, in her official capacity as Under Secretary of State for Public Diplomacy; 3) Pamela Bondi, in her official capacity as Attorney General; 4) Kristi Noem, in her official capacity as Secretary of Homeland Security; 5) Todd M. Lyons, in his official capacity as Acting Director of United States Immigration and Customs Enforcement; and 6) Judith Almodovar, in her official capacity as Acting Field Office Director

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of the New York Immigration and Customs Enforcement Office.¹ See dkt. no. 1 (Compl.) at 1; dkt. no. 43 (Am. Compl.) at 1.

The Amended Complaint alleges the following:

Plaintiff, Imran Ahmed, a native and citizen of the United Kingdom and lawful permanent resident of the United States, who lives in the United States with his American wife and child, founded and runs CCDH, a nonprofit "which studies the content moderation policies of major social media companies, including Elon Musk's company, X Corp." Am. Compl. ¶¶ 1, 2, 21, 22, 27. CCDH conducted "research that was published on the front page of The New York Times that showed an increase in hate speech on X since Elon Musk had taken over the social media company." Id. ¶ 36.

In December 2025, the Government "announced that it had taken steps to impose visa restrictions and initiate removal proceedings against certain individuals pursuant to Immigration and Nationality Act ("INA") Section 273(a)(4)(C), 8 U.S.C. § 1227(a)(4)(C)." Am. Compl. ¶ 3. The United States Under Secretary of State posted on social media that the Government had "SANCTIONED[] Imran Ahmed," grounding the sanctions in CCDH's reporting on the spread of anti-vaccine misinformation online and CCDH's advocacy in support of the United Kingdom's Online Safety

¹ See Fed. R. Civ. P. 25(d) (the successor of a public officer sued in an official capacity is automatically substituted as a party).

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Act and the European Union's Digital Services Act. Id. The Secretary of State, Marco Rubio, also issued a contemporaneous press release announcing that, as a result of the sanctions, Ahmed would be subjected to visa restrictions, potential removal proceedings, and would be "generally barred from entering the United States." Id. And while the Administrative Record "cites 'serious adverse foreign policy consequences' attributable to Mr. Ahmed's presence or activities," it "provides no evidence or supporting documents, nor does it describe these so-called 'consequences.'" Id. ¶ 5. Rather, the determination relies on "shifting, contradictory, and unsupported rationales." Id. ¶ 118. As a result, Mr. Ahmed "now faces the imminent prospect of unconstitutional arrest, punitive detention, and expulsion from his home country away from his wife and child for exercising his basic First Amendment rights." Id. ¶ 3.

The Amended Complaint contains four counts pursuant to the First Amendment (Count I); the Due Process Clause of the Fifth Amendment (Count II); the INA, the Administrative Procedure Act and the Accardi Doctrine (Count III); and the Non-Delegation Doctrine (Count IV). See id. ¶¶ 95-122.

Moreover, Plaintiff asks for the Court to:

- i. Take jurisdiction over this case;
- ii. Vacate and set aside the Announcement of Actions to Combat the Global Censorship-Industrial Complex;

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- iii. Vacate and set aside Defendants' unlawful policy of targeting noncitizens for removal based on First Amendment protected speech;
- iv. Enjoin Defendants from arresting or detaining Mr. Ahmed pending these proceedings;
- v. Enjoin Defendants from transferring Mr. Ahmed away from the jurisdiction of this District pending these proceedings;
- vi. Enjoin Defendants from removing Mr. Ahmed from the United States pending these proceedings;
- vii. Order Defendants to provide Mr. Ahmed with notice and a meaningful opportunity to challenge any attempt to restrict his movement or otherwise impose conditions that change his rights as a lawful permanent resident of the United States;
- viii. Declare that Defendants' actions to arrest, detain, or transfer Mr. Ahmed violate the First Amendment, the Due Process Clause of the Fifth Amendment, the INA, the APA, the Accardi doctrine, and the non-delegation doctrine;
- ix. Award Plaintiff his costs for the action, including reasonable attorneys' fees; and
- x. Grant all such other and further relief as it deems just and proper.

Am. Compl. at 42-43.

In February 2026, the Government produced the Administrative Record in this matter. See dk. no. 42. The Administrative Record contains a December 2025, memorandum from the Secretary of State to the Secretary of the Homeland Security, with the subject "Determination of Deportability under Section 237(a)(4)(C) of the INA." Id. at PDF page 8 ("Rubio Determination").

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The Rubio Determination states the following:

[] I am writing to inform you I have determined that Imran Ahmed (DOB: [] - POB: UK), an alien in LPR status, is deportable under INA section 237(a)(4)(C)(8 U.S.C. 1227(a)(4)(C)). I understand DHS may now initiate removal charges against him.

[] Under INA section 237(a)(4)(C)(i), an alien is deportable from the United States if the Secretary of State has reasonable ground to believe the alien's presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States. Under INA section 237(a)(4)(C)(ii), for cases in which the basis for this determination is the alien's past, current, or expected beliefs, statements, or associations that are otherwise lawful, the Secretary of State must personally determine that the alien's presence or activities would compromise a compelling U.S. foreign policy interest.

[] Pursuant to these authorities, I have determined that Ahmed's activities and presence in the United States have potentially serious adverse foreign policy consequences and compromise a compelling U.S. foreign policy interest. Ahmed is the CEO of the Center for Countering Digital Hate (CCDH). Ahmed successfully led efforts to lobby Google to remove ads from the Federalist and ZeroHedge. CCDH's infamous "disinformation dozen" report specifically called for deplatforming Secretary Robert F. Kennedy and others. Leaked CCDH documents listed "kill Musk's Twitter" and "trigger EU and UK regulatory action" as priorities. CCDH advocates for both the UK Online Safety Act and EU Digital Services Act (DSA). Ahmed was listed as a signatory in HateAid's petition calling on the European Commission to take action to ensure access of platform data to researchers under the DSA. This determination is based on the same foreign policy objectives articulated in my May announcement of a policy to restrict visa issuance under INA section 212(a)(3)(C) (8 U.S.C. 1182(a)(3)(C)) for foreign nationals who censor Americans. Consistent with E.O. 14150, American First Policy Directive to the Secretary of State, the foreign policy of the United States protects core American interests and U.S. citizens, and protecting the freedom of expression of Americans is a core American interest, as is defending American sovereignty from foreign encroachment. This determination reflects this Department's efforts to reject encroachments upon American

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sovereignty, especially when such encroachments undermine the exercise of our fundamental right to free speech.

[] The Department of State also requests the opportunity to consult with DHS on any public statements regarding this determination.

[] I hereby expressly, authorize use of this notification by the Department of Homeland Security in immigration court, and the Department of Justice in any judicial proceedings, as needed.

Dkt. no. 42 at PDF page 9-10.

Moreover, in the early stages of this case, Plaintiff moved for injunctive relief, seeking to enjoin the Government from detaining him during the pendency of this action. See dkt. no. 8. In December 2025, the Court issued a temporary restraining order ("TRO") enjoining the Government from detaining Plaintiff until the Court decided Plaintiff's preliminary injunction motion. See dkt. no. 14. Thereafter, the Court extended the TRO during the pendency of Plaintiff's order to show cause in this Court. See dkt. no. 26.

II. Law and Analysis

A. Jurisdiction

"A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000). In considering whether to do so, this Court "may refer to evidence outside the pleadings." Id.

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1. Jurisdiction-Stripping Statutes

Regarding the commencement of removal proceedings, in 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). See Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 472-73 (1999). Within IIRIRA is a jurisdiction-stripping provision, which states:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g).² As the Supreme Court has explained, "[s]ection 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." Am.-Arab, 525 U.S. at 485 n.9. "The provision 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.'" Id. at 482 (quoting § 1252(g)). And, "[b]y its plain terms, § 1252(g) bars [this Court] from questioning the government's discretionary decisions to commence removal of an

² "In 2002, Congress transferred authority (1) to commence removal proceedings and (2) to adjudicate applications for naturalization from the Attorney General to the Secretary of the Department of Homeland Security." Ajlani v. Chertoff, 545 F.3d 229, 231 n.2 (2d Cir. 2008)

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alien. . . ." Öztürk v. Hyde, 155 F.4th 187, 190 (2d Cir. 2025) (Menashi, J., concurring in the denial of rehearing in banc) (quotation marks and citation omitted).

Separately, section (b)(9) states:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9). This section "is a judicial channeling provision, not a claim-barring one." Aguilar v. U.S. Immigr. & Customs Enf't Div. of Dep't of Homeland Sec., 510 F.3d 1, 11 (1st Cir. 2007). Thus, section "1252(b)(9) channels judicial review of removal-related questions into a single PFR of a final order of removal." Mahdawi v. Trump, 183 F.4th 103, 115 (2d Cir. 2026).

Finally, section (a)(5) states:

Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e). For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms "judicial review" and "jurisdiction to review" include habeas corpus review pursuant to section 2241 of Title 28, or any other habeas corpus provision, sections 1361 and 1651 of

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such title, and review pursuant to any other provision of law (statutory or nonstatutory).

8 U.S.C. § 1252(a)(5).

"[T]aken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising from any removal-related activity can be reviewed only through a petition for review filed with an appropriate court of appeals." Asylum Seeker Advoc. Project v. Barr, 409 F. Supp. 3d 221, 224 (S.D.N.Y. 2019) (quotation marks and citation omitted).

Furthermore, in Delgado v. Quarantillo, the Court of Appeals held that Section 1252(a)(5) strips district courts of jurisdiction of both direct and indirect challenges to removal orders. See 643 F.3d 52, 55 (2d Cir. 2011). The Court of Appeals held that while "a suit brought against immigration authorities is not per se a challenge to a removal order," the question of a district court's jurisdiction "will turn on the substance of the relief that a plaintiff is seeking." Id. In that case, Plaintiff Delgado brought a mandamus action in district court to compel USCIS to rule on the merits of her pending I-212 application (an application seeking permission to reapply for admission after her previous removal). Id. at 54. Ultimately, the Court of Appeals held that even if a granting of the I-212 waiver would not "per se prevent [Delgado's] removal," it was "inextricably linked" to her removal order because it was "a necessary prerequisite to her ultimate

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goal of adjustment of status.” Id. at 54-55. Thus, the Court of Appeals held that Delgado’s mandamus action was an indirect challenge to her order of removal and the district court lacked jurisdiction. Id.

2. Section 1252(g)

Here, the Court finds that section 1252(g) strips this Court of subject matter jurisdiction. Although Mr. Ahmed claims he only seeks to “prevent his unlawful arrest, detention, and transfer,” dkt. no. 54 at 4, his Amended Complaint shows otherwise. Indeed, Mr. Ahmed alleges that “[t]his Court should vacate and set aside the Defendants’ efforts to target Mr. Ahmed, declare Defendants’ actions to be illegal, enjoin Defendants from arresting, detaining, transferring, or deporting Mr. Ahmed from this district unless Defendants establish that their actions are lawful and do not violate the Constitution’s protections against retaliation and discrimination.” Am. Compl. ¶ 7 (emphasis added). The relief Plaintiff seeks is barred by section 1252(g) because, if granted, an injunction would prevent the Government from commencing removal proceedings against him – precisely the action Congress has removed from this Court’s authority. See Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 485 (1999) (discussing how Section 1252(g) is “designed to give some measure of protection” to “discretionary determinations”); see also Öztürk v. Hyde, 155 F.4th 187, 190 (2d Cir. 2025) (Menashi, J., concurring in the

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denial of rehearing in banc) (“[Section] 1252(g) bars the claims of aliens that the government is selectively enforcing immigration laws against them in violation of their First and Fifth Amendment rights because such claims represent a challenge to the Attorney General’s decision to commence proceedings against them.” (quotation marks and citation omitted)).

The Supreme Court’s Decision in Dep’t of Homeland Sec. v. Regents of the Univ. of California is distinguishable and does not assist Mr. Ahmed. 591 U.S. 1 (2020). Unlike in Regents — where the Supreme Court held that Section 1252(g) did not present a jurisdictional bar to reviewing the Government’s rescission of the Deferred Action for Childhood Arrivals program, because that was not “a decision to ‘commence proceedings,’” Regents, 591 U.S. 1 at 19, — here, Mr. Ahmed preemptively challenges the Government’s decision to commence removal proceedings against him. See Am. Compl. ¶ 92 (“Defendants’ actions have inflicted irreparable harm on Mr. Ahmed. The prospect of imminent detention and the commencement of deportation proceedings have affected his liberty, free speech, and continued advocacy with CCDH.” (emphasis added)).

3. Sections 1252(a)(5) and (b)(9)

The Court also finds that the relief Mr. Ahmed seeks is “inextricably intertwined” with the PFR process and therefore, under Delgado and its progeny, Sections 1252(a)(5) and (b)(9) divest this Court of jurisdiction. Mahdawi, 183 F.4th at 120.

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As the Administrative Record makes clear, the Secretary of State has determined that Mr. Ahmed is "an alien in LPR status, is deportable" under the INA and that "DHS may now initiate removal charges against him." Dkt. no. 42 at PDF 8. Mr. Ahmed, in turn, asks this Court to vacate the Secretary of State's underlying policy, enjoin the Government from removing him from the country, and declare that the Government's actions are unconstitutional. See Am. Compl. at 42-43. Moreover, as stated in support of his motion for a preliminary injunction, "Plaintiff's single most important reason for filing this case is to be able to remain here with his wife and daughters" Dkt. no. 54 at 24.

The substance of the relief Mr. Ahmed seeks is "inextricably linked" to any potential removal order he might face because it is "a necessary prerequisite" to stop his deportation. Delgado, 643 F.3d at 55; see also Melgar v. Wolf, 590 F. Supp. 3d 472, 476 (E.D.N.Y. 2022) ("following Delgado, courts routinely dismiss cases where the requested relief would lead, or be a prerequisite, to invalidation of a removal order").

Mr. Ahmed argues that Section 1252(a)(5) and (b)(9) do not apply because he has not actually received a final order of removal. Dkt. no. 54 at 9. Such argument, however, is plainly foreclosed by the recent holding of the Court of Appeals in Mahdawi v. Trump. As the Court of Appeals explained, "the relevant inquiry is whether the legal or factual questions raised" by Ahmed "aris[e]

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from any action taken . . . to remove [him]." Mahdawi, 183 F.4th at 115-16 (emphasis in original, quoting the statute). Here, as in Mahdawi, "the plain meaning of 'any action taken . . . to remove an alien' encompasses [] the Secretary of State's removability determination" Id. (cleaned up and citation omitted).

Mr. Ahmed's subsequent argument that his case is "easily distinguishable from Mahdawi" because in his case, "immigration proceedings have not yet commenced, let alone terminated, and there is no order of removal," is unavailing. Dkt. no. 64-2 at 2. Both cases challenge on First Amendment grounds, a "Rubio Determination" that the individual in question is removable pursuant to 8 U.S.C. § 1227(a)(4)(C). Mahdawi, 183 F.4th at 109, 112 n.8. And, "even the narrowest definition of 'any action taken . . . to remove an alien' would include a removability determination under the INA." Mahdawi, 183 F.4th at 116.

Moreover, that removal proceedings for Mr. Ahmed have not commenced does not salvage his claim. See Ajlani v. Chertoff, 545 F.3d 229, 234 (2d Cir. 2008) ("Although no removal proceedings were pending against Ajlani at the time he filed his initial complaint, the district court correctly concluded that it lacked jurisdiction to review his subsequent prayer for relief from removal"). This is because "[s]ection 1252(b)(9) is not restricted to challenges to removal orders. The text refers to review of 'all questions of law and fact' arising from removal, not just

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removal orders.” Jennings v. Rodriguez, 583 U.S. 281, 320 (2018) (Thomas, J., concurring in part and concurring in the judgment, joined by Gorsuch, J.) (quoting § 1252(b)(9)). And “[i]nterpreting § 1252(b)(9) to govern only removal orders ignores this language and effectively reads ‘or such questions of law or fact’ out of the statute.” Mahdawi, 183 F.4th at 118 (cleaned up and citation omitted).

Furthermore, that Mr. Ahmed is not bringing a habeas petition is of little import. See dkt. no. 64-1 at 2. The plain text of the statute makes clear that “[n]either ‘habeas corpus’ nor ‘any other provision of law’ can be used to avoid § 1252(b)(9)’s jurisdictional bar.” Jennings, 583 U.S. at 316-17 (Thomas, J., concurring in part and concurring in the judgment, joined by Gorsuch, J.) (quoting § 1252(b)(9)); Delgado, 643 F.3d at 55 (“The APA explicitly does not apply to the extent that statutes preclude judicial review” (cleaned up and citation omitted)).

4. Appellate Litigation in Mahdawi

Finally, the Court is aware that in Mahdawi, the Court of Appeals granted rehearing in banc. See Mahdawi v. Trump, No. 25-1113, dkt no. 244 (2d Cir. September 3, 2026) (ordering rehearing in banc). Moreover, in that order granting rehearing in banc, the Court of Appeals stated that such proceedings “shall be paused and held in abeyance in the event that the Supreme Court” grants certiorari on the issue presented in Mahdawi. Id.

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Nevertheless, this Court declines to delay these proceedings pending resolution of that matter. See Cox v. Dep't of Just., 111 F.4th 198, 209 (2d Cir. 2024) ("Let us be clear: A published opinion . . . becomes binding precedent when it is decided. The fact that a mandate has not yet issued means only that jurisdiction over the case has not yet shifted back to the district court; it does not undermine the immediate precedential weight of our decision.").

Mahdawi is the law of this Circuit, and this Court is bound to follow its precedent. Moreover, this Court has also determined that it also lacks jurisdiction under 8 U.S.C. § 1252(g), which the Merits Panel in Mahdawi did not reach. See Mahdawi v. Trump, 183 F.4th 103, 113 n.9 (2d Cir. 2026).

Accordingly, this Court declines to stay these proceedings, on speculation that the precedent of Mahdawi, will be revised by an in banc panel of the Court of Appeals or the Supreme Court of the United States. See Studiengesellschaft Kohle, mbH v. Novamont Corp., 578 F. Supp. 78, 80 (S.D.N.Y. 1983) (Sweet, J.) ("It is not an appropriate function for this court to pass on the likelihood that the ruling of a higher court will be accepted for review by the Supreme Court.").

The Court's decision today is based on the current law of this Circuit and a plain reading of three provisions of 8 U.S.C. § 1252. Resolving this matter today enables this Court to exercise

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"judicial resources efficiently, concentrating [its] efforts on the prompt hearing and disposition of cases." Jon O. Newman, In Banc Practice in the Second Circuit, 1989-93, 60 BROOK. L. REV. 491, 503 (1994).

Accordingly, this Court declines to stay Mr. Ahmed's proceedings pending rehearing in banc in Mahdawi.

B. Venue

The Government also moves to dismiss this matter due to improper venue or transfer it to the District of Columbia, which "would be the appropriate venue." Dkt. no. 49 at 11.

The Court alternatively holds that the District of Columbia would be the proper venue for this action and, assuming any district court had subject-matter jurisdiction, this Court would transfer this action there.

A district court may transfer a civil action to any other district "[f]or the convenience of parties and witnesses" and "in the interest of justice." 28 U.S.C. § 1404(a). In deciding a motion to transfer venue, this Court inquires "whether the action could have been brought in the transferee district, and, if yes, whether transfer would be an appropriate exercise of the Court's discretion." Robertson v. Cartinhour, 2011 WL 5175597, at *3 (S.D.N.Y. Oct. 28, 2011).

Moreover, in assessing whether transfer is appropriate, the Court weighs several factors, including:

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(1) the convenience of witnesses; (2) the convenience of the parties; (3) the locus of operative facts; (4) the availability of process to compel the attendance of the unwilling witnesses; (5) the location of relevant documents and the relative ease of access to sources of proof; (6) the relative means of the parties; (7) the forum's familiarity with the governing law; (8) the weight accorded to the plaintiff's choice of forum; (9) trial efficiency; and (10) the interest of justice, based on the totality of circumstances.

Jean-Louis v. ACS, 2022 WL 16857359, at *2 (S.D.N.Y. Oct. 14, 2022).

As to balancing the factors, with the exception of Plaintiff's choice of forum, all weigh decidedly in favor of transferring this action to the District of Columbia. Indeed, that is where all the relevant decisions were made, documents might be located, and even where Mr. Ahmed himself lives. See Am. Compl. ¶ 8.

Of course, transfer is not appropriate because the District of Columbia would also not have jurisdiction over this case for the same reasons that this Court does not. Congress has stripped district courts of jurisdiction of review of cases such as Mr. Ahmeds pursuant to 8 U.S.C. §§ 1252(g), (b)(9), and (a)(5).

Accordingly, dismissal rather than transfer is proper. See Luctama v. Knickerbocker, 2020 WL 1503563, at *5 (S.D.N.Y. Mar. 30, 2020) (dismissal rather than transfer is appropriate where claim could not survive in transferee court).

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III. Conclusion

For the foregoing reasons, the Court grants Defendants' motion to dismiss for lack of subject matter jurisdiction. The Clerk of Court shall enter judgment in favor of Defendants, deny all pending motions as moot, and close the case.

Nevertheless, the temporary restraining order governing this matter, see dkt. nos. 14, 26, shall remain in effect for five business days from the date of this order and shall thereafter dissolve, absent any further order from the United States Court of Appeals for the Second Circuit or the Supreme Court.

SO ORDERED.

Dated: September 8, 2026
New York, New York



LORETTA A. PRESKA
Senior United States District Judge