IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:25-CV-23792-BLOOM/Elfenbein

PIERRE REGINALD **BOULOS,**

Petitioner,

v.

DIRECTOR, U.S. DHS ICE ERO Miami Field Office, *et al.*,

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' RETURN (ECF No. [16]) TO PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND REQUEST FOR HEARING

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In their Return, Respondents did not contest that Dr. Boulos's detention causes irreparable harm and serves no legitimate purpose because he is neither a danger nor a flight risk. *See McGinnis v. Ingram Equipment Co., Inc.*, 918 F.2d 1491, 1493 (11th Cir. 1990) ("[a] party normally waives its right to argue issues not raised in its initial brief"); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (civil detention is only permissible to "ensur[e] the appearance of aliens at future immigration proceedings" and to "[p]revent[] danger to the community"). Instead, Respondents argued as follows: this Court lacks jurisdiction under 8 U.S.C. §§ 1252(b)(9), 1252(g) and 1226(e); that Dr. Boulos impermissibly seeks to circumvent the administrative process by pursuing habeas relief; and that the political question doctrine bars Dr. Boulos's challenge to the Secretary of State's determination under 8 U.S.C. § 1227(a)(4)(C). *See* ECF No. [16] at **6-17 (jurisdictional arguments), **17-20 (political question doctrine). Each argument is unavailing.

I. LEGAL ARGUMENT

A. Courts recently found jurisdiction to consider similar unlawful detention claims.

Respondents have made multiple arguments to eliminate this Court's inherent authority to order Dr. Boulos's release. These arguments have failed in other recent similar cases challenging the legality of detention. And they fail again here. Supreme Court and Eleventh Circuit precedent, in addition to recent decisions from other courts, make clear that this Court has authority to review Dr. Boulos's claims. *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Nielsen v. Preap*, 586 U.S. 392 (2019); *DHS v. Regents*, 591 U.S. 1 (2020); *Madu v. Att'y Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006). In the past six months alone, numerous courts have uniformly rejected Respondents' arguments that the Immigration and Nationality Act's (INA) jurisdiction-stripping provisions bar review of identical or substantially similar claims. *See Khalil v. Joyce*, 780 F.Supp.3d 476 (D.N.J 2025); *Aditya W.H. v. Trump*, 782 F.Supp.3d 691, 703-706 (D. Minn. 2025); *Mohammed H. v.*

Trump, 781 F.Supp.3d 886, 891-92 (D. Minn. 2025); *Mahdawi v. Trump*, 781 F.Supp.3d 214, 223-228 (D. Vt. 2025); *Ozturk v. Trump*, 779 F.Supp.3d 462, 480-86 (D. Vt. 2025), *amended by Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025).

Dr. Boulos brings two distinct sets of claims—one related to his incarceration without the possibility of even a bond hearing, and the other stemming from Respondents' violation of his First and Fifth Amendment rights. Because Dr. Boulos is neither a danger nor a flight risk, this Court should follow the chorus of other courts that have ordered the release of similarly situated detainees targeted by Respondents and arrested due to a determination by Secretary Rubio that their presence in the United States would purportedly have potentially serious adverse foreign policy consequences. *See supra.* Furthermore, this Court should also find, as other courts have, that Respondents' efforts to use 8 U.S.C. § 1227(a)(4)(C) impinge upon Dr. Boulos's protected speech and associations, fail to provide him adequate notice, and otherwise eviscerate any semblance of process due under the U.S. Constitution. *See id.*

Dr. Boulos is the victim of politically motivated targeting by Respondents because of his "involvement in the formation of a political party in Haiti, Mouvement pour la Transformation et la Valorisation d'Haiti." *See* ICE, "ICE arrests Haitian engaged in violence and destabilization of Haiti, in support of Department of State" (updated August 06, 2025), available at https://www.ice.gov/news/releases/ice-arrests-haitian-engaged-violence-and-destabilization-haiti-support-department; *see also Kusper v. Pontikes*, 414 U.S. 51, 56–57 (1973) (citation omitted) ("The right to associate with the political party of one's choice is an integral part of this basic [First Amendment] constitutional freedom"); *Mills v. Alabama*, 384 U.S. 214, 218 (1966) ("there is practically universal agreement that a major purpose of [the First Amendment] was to protect the free discussion of governmental affairs [...] of course includ(ing) discussions of candidates [...]").

Respondents have baldly claimed that Dr. Boulos "has engaged in a campaign of violence, gang support, and trafficking weapons and drugs that has contributed to Haiti's destabilization,"[1] but they provided absolutely no evidence to support their assertions—because none exists. *See* ICE Statement. Dr. Boulos is a well-respected individual and an internationally recognized humanitarian who has given his life to advocating for Haitian people and bettering the conditions in Haiti. *See* Dr. Boulos's "Statement on Current Haiti Crisis," dated March 20, 2020, at https://humanrightscommission.house.gov/sites/evo-subsites/humanrightscommission.house.gov/files/documents/TESTIMONYFINAL_LAST_.pdf. This Court must therefore grant Dr. Boulos's Petition and order his immediate release from custody.

In the recent cases where noncitizens were detained pursuant to Secretary of State determinations, the Courts found that the petitioners presented substantial claims of First Amendment violations arising from protected speech. *See supra.* Moreover, the petitioners in the other cases raised Fifth Amendment Due Process violation claims, and, in three of the cases, the Court found the petitioners raised valid Fifth Amendment violations. *See Mohammed H.*, 781 F.Supp.3d at 894-95 (finding government acted with punitive purpose and failed to provide sufficient notice and opportunity to be heard); *Khalil,* 780 F.Supp.3d at 489 (petitioner raised vagueness challenge); *Mahdawi*, 781 F.Supp.3d at 231-32 (petitioner demonstrated that government acted with punitive purpose and lacks legitimate reason for detention); *Ozturk*, 779 F.Supp.3d at 492-94 (same); *Aditya W.H*, 782 F.Supp.3d at 712 (noting petitioner raised but Court did not rule on Fifth Amendment and APA claims after finding First Amendment

[1] Although the Secretary of State is ostensibly concerned about Dr. Boulos interfering with efforts to stabilize Haiti, Respondents confusingly seek to remove Dr. Boulos to Haiti. *See* Notice to Appear at ECF No. [1-4]. Respondents' removal efforts undermine the Secretary's determination.

violation).Respondents' arguments that the Court lacks jurisdiction to hear Dr. Boulos's claims fail here just as they failed in the other habeas cases involving similar claims. *See infra.*

B. <u>The Jurisdictional Bar at 8 U.S.C. § 1226(e) does not apply.</u>

Counter to clear precedent from the Supreme Court, Respondents have argued, as they did in *Ozturk*, that 8 U.S.C. § 1226(e) precludes the Court's review. *See id.*, 779 F.Supp.3d at 481. The *Ozturk* Court explained that "the Supreme Court has held that 'where a provision precluding review is claimed to bar habeas review, the Court requires a particularly clear statement that such is Congress' intent.'" *Id.* at 481 (citing *Demore v. Kim*, 538 U.S. 510, 511, 517 (2003) (finding that the "clear text of § 1226(e) does not bar a habeas challenge to detention)); *Preap*, 586 U.S. at 401; *Jennings*, 583 U.S. at 295. The *Ozturk* Court further explained that "this mandate for statutory construction is so strict that it has been criticized for establishing a "magic words" requirement for Congress to preclude habeas review." *Ozturk*, 779 F.Supp.3d at 481 (citing *INS v. St. Cyr*, 533 U.S. 289, 327 (2001) (Scalia, J., dissenting)). "Here, the Court does not find such a clear statement of Congressional intent, let alone any magic words, that would support a categorical bar to habeas review of detention under § 1226." *Id.* at 481 (citations cleaned up). Thus, the Supreme Court has been clear that 8 U.S.C. § 1226(e) does not bar jurisdiction over habeas petitions. *See Aditya W.H.*, 782 F.Supp.3d at 705 ("several courts, including the Supreme Court, have held or implied that [§ 1226(e)] does not bar jurisdiction over habeas petitions")

C. <u>The Jurisdictional Bar at 8 U.S.C. § 1252(g) does not apply.</u>

Although Respondents argued that 8 U.S.C. § 1252(g) strips the Court of jurisdiction, the Supreme Court has explained that this provision is narrow and "only applies to three discrete actions that the [DHS Secretary] may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination*

Comm., 525 U.S 471, 482 (1999) ("*AADC*") (emphases adopted); *see also Jennings*, 583 U.S. at 294 (recognizing continuing authority of *AADC* in restricting § 1252(g) to "the three listed actions of the Attorney General"); *Madu*, 470 F.3d at 1368. Here, Dr. Boulos's claims all fall outside § 1252(g)'s narrow scope, as he does not challenge the decision to commence removal proceedings, adjudicate cases or execute removal orders; rather, Dr. Boulos challenges whether his non-discretionary detention without possibility for bond violates the U.S. Constitution, the Non-Detention Act, and the APA. *See* Petition, ECF No. [1] at ¶¶133-157 (claims for relief). Courts have held that § 1252(g) "does not preclude jurisdiction over the challenges to the legality of [a noncitizen's] detention," *Kong v. U.S.*, 62 F.4th 608, 609 (1st Cir. 2023), because such claims "may be resolved without affecting pending removal proceedings." *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999); *Öztürk*, 136 F.4th at 398; *Madu*, 470 F.3d at 1368 (11th Cir. 2006); *Kellici v. Gonzales*, 472 F.3d 416, 420 (6th Cir. 2006); *Bello-Reyes v. Gaynor*, 985 F.3d 696, 698, 700 n.4 (9th Cir. 2021) (1252(g) did not bar First Amendment detention challenge).

Dr. Boulos's claim of detention in violation of the Non-Detention Act falls outside the scope of his removal proceedings. *See Ozturk*, 136 F.4th at 398 (quoting *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1120 ("challenge to [...] detention has nothing to do with whether a 'removal action should be abandoned ... or whether the formal adjudicatory process should proceed'"). Dr. Boulos is not requesting that the Court adjudicate a claim to U.S. citizenship, but rather he has claimed that the Respondents have unlawfully detained him despite a colorable claim to U.S. citizenship. *See* ECF No. [1] at ¶¶47-56 (discussion of Non-Detention Act) and ¶¶133-135 (claim for relief); *see also Regents*, 591 U.S. at 19 (§ 1252(g) does not bar review of APA violation claim).

Additionally, Dr. Boulos's Constitutional Claims fall outside the scope of his removal proceedings as the claims are independent of and collateral to the removal process. *See Ozturk*,

136 F.4th at *397-98 (noting that ICE detained Ozturk, like Dr. Boulos, prior to commencing removal proceedings under 8 U.S.C. § 1229(a) and 8 C.F.R. § 1239.1); *Mahdawi*, 781 F.Supp.3d at 226 (petitioner does "not seek to challenge the removal proceedings but are directed instead at administrative detention alleged to be employed to stifle protected speech"); *see also* Warrant for Arrest at ECF No. [16-4] indicating Respondents detained Dr. Boulos on July 17, 2025 and Notice to Appear dated July 18, 2025, at ECF No. [16-5].

Moreover, whether the regulation at 8 C.F.R. § 1003.19(h)(2)(i) is *ultra vires* to the INA's mandatory detention provisions and whether the Secretary of State failed to comply with 8 U.S.C. § 1227(a)(4)(C)(i) are legal questions that are collateral to removal proceedings. *See Grigorian v. Bondi*, 25-CV-22914-RAR, 2025 WL 1895479, at *4 (S.D. Fla. Jul. 8, 2025), citing to *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en banc) ("a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question – a description of the relevant law – forms the backdrop against which the Attorney General will later exercise discretionary authority". "Section 1252(g) does not bar consideration here of the Secretary of State's determination," but it applies to the Attorney General). *Khalil*, 780 F.Supp.3d at 544

D. <u>The Jurisdictional Bar at 8 U.S.C. §§ 1252(b)(9) and 1252(a)(5) does not apply.</u>

The Supreme Court has rejected this position:

> [I]t is enough to note that the respondents are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined. Under these circumstances, § 1252(b)(9) does not present a jurisdictional bar.

Jennings, 583 U.S. at 294-95; *see also Preap*, 586 U.S. at 402.

In enacting the REAL ID Act of 2005, Congress "stated unequivocally" that 1252(b)(9)

"should not be read to preclude" "challenges to detention," because detention claims are "independent of challenges to removal orders." *Aguilar*, 510 F.3d at 11 (citing H.R. Rep. No. 109-72); *see also E.O.H.C.*, 950 F.3d at 186. Against this backdrop, lower courts have consistently applied § 1252(b)(9) narrowly to permit consideration of unlawful detention claims. *See, e.g., Gonzalez v. ICE*, 975 F.3d 788, 810 (9th Cir. 2020); *Kellici*, 472 F.3d at 420; *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Further, unlike an appeal of a merits decision in removal proceedings, in custody redetermination proceedings, a noncitizen cannot appeal the BIA decision to the circuit court of appeals via a petition for review (PFR). Finally, § 1252(b)(9) does not function to strip Courts of jurisdiction to review APA claims. *See Regents*, 591 U.S. at 19 (§ 1252(g) does not bar review of APA violation claim).

In *Khalil*, the Court engaged in a lengthy examination of whether 8 U.S.C. § 1252(b)(9) applied and determined that "[b]ottom line: Section 1252(b)(9) is irrelevant here. It applies to post-order-of-removal cases, and this is a pre-order-of-removal case." *See Khalil*, 780 F.Supp.3d at 490-548 (emphases adopted). In *Khalil*, as in the instant matter, Respondents asserted that the decision in *Massieu v. Reno*, 91 F.3d 416, 417 (3d Cir. 1996), is "on all fours with this case" and it requires Dr. Boulos to raise his constitutional arguments first before an Immigration Judge ("IJ"), then the Board of Immigration Appeals (BIA), and ultimately the circuit court on a PFR. *See* ECF No. [16] at *10; *Khalil*, 780 F.Supp.3d at 514. In *Khalil*, however, the Court explained that Khalil's case differed from *Massieu* because the IJ could provide "meaningful review" in *Massieu* but not in *Khalil*. 780 F.Supp.3d at 531. The Court noted that "in this case, the time in immigration courts cannot be expected to advance the ball." *Id.* Specifically, the IJ is unable to conduct fact-finding or provide administrative expertise that would develop a case for proper consideration upon a PFR. *Id.* (finding "[t]his is not the kind of fact-finding work the immigration courts have been built for,"

"the immigration courts would also have no real chance to deploy their special expertise" and "[t]here is no room to examine the underlying basis of the Secretary's determination").

Respondents further argued that "[a]lthough [Dr. Boulos] cannot review ICE's custody determination specifically, he can request that an IJ determine whether he is properly subject to removal under Section 1227(a)(4)." *See* ECF No. [16] at *3 (citing to 8 C.F.R. § 1003.19(h)(2)(i)(C)). Respondents are alluding to a hearing pursuant to *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999), and their position requires clarification. "Under *Matter of Joseph*, proceedings are 'properly included' in a mandatory-detention category unless the person subject to removal can show that DHS is 'substantially unlikely' to establish the charge of removability that would otherwise subject him to mandatory detention." *Günaydin v. Trump*, --- F.Supp.3d ----, 2025 WL 1459154, *2 (D. Minn. May 21, 2025) (citing *Matter of Joseph*, 22 I&N Dec. at 802-03, 806). Here, the mandatory detention regulation at 8 C.F.R. § 1003.19(h)(2)(i)(C) renders a *Joseph* hearing meaningless because the IJ will not look behind the Secretary's determination but will use the fact of the determination to find that they lack jurisdiction to provide a bond hearing, which already occurred. *See* ECF No. [1-7] (Immigration Judge order).

Respondents also argued that "Boulos may present his as applied constitutional arguments before an IJ who could rule on the issue." *See* ECF No. [16] at *10 (citing to *Yoc-Us v. Att'y Gen.*, 932 F.3d 98, 102 (3d Cir. 2019). However, "[i]t is not within the province of the Board [or the IJ] to pass upon the constitutionality of the statutes it administers." *Matter of U-M-*, 20 I&N Dec. 327, 334 (BIA 1991). Moreover, neither the IJ nor the Board has authority to declare its own regulations to be invalid or constitutionally defective. *See Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992); *see* ECF No. [1] at ¶¶130-132, 156 (applicable law and claim that 8 C.F.R. § 1003.19(h)(2)(i) is *ultra vires* to mandatory detention statutory provisions); *see Jennings*, 583 U.S. at 300 (citing to

A. Scalia B. Garner, Reading Law 107 (2012)) (quotations omitted) ("Negative-Implication Canon[;] The expression of one thing implies the exclusion of others (*expression unius est exclusion alterius*)"); *Regueiro v. Am. Airlines, Inc.*, 147 F.4th 1281, 1287 (11th Cir. 2025) (citing to *King v. Burwell*, 576 U.S. 473, 486 (2015) ("If the statutory language is plain, we must enforce it according to its terms" and "when deciding whether the language is plain, we must read the words in their context and with a view to their own place in the overall statutory scheme"). Accordingly, this Court is the only forum where Dr. Boulos's claims can be adjudicated.

E. <u>The Political Question Doctrine does not apply.</u>

The Supreme Court outlined factors to determine whether a dispute raises a non-justiciable political question. *See Aktepe v. United States*, 105 F.3d 1400, 1402-03 (11th Cir. 1997) (citing to six factors outlined in *Baker v. Carr*, 369 U.S. 186 (1962)). The *Khalil* Court noted that the political question doctrine does not bar review of the Secretary of State's determination applied via the foreign policy ground is impermissibly vague:

> And note here the main flaw in the Respondents' argument that the Petitioner's challenge to the Secretary's determination raises a non-justiciable "political question." […] Courts cannot usurp the Secretary's role by purporting to determine how the Nation should conduct its foreign policy. […]. Of course not. But the Court here has asked only whether Section 1227, as applied through the Secretary's determination, provides enough notice and properly cabins government authority. These are questions only about whether the Constitution's due process guarantee has been satisfied. Not, for example, about the Secretary's underlying judgement as to the Petitioner. […] There is no political question bar here.

See Khalil v. Trump, --- F. Supp. 3d ----, 2025 WL 1514713, at *48 n.74 (D.N.J. May 28, 2025). (internal citations omitted). As in *Khalil*, Dr. Boulos has raised Constitutional Due Process and authority claims regarding the Secretary's 8 U.S.C. § 1227(a)(4)(C) determination and therefore the political question doctrine does not bar review. *See Littlejohn v. Sch. Bd. Of Leon Cnty., Fla.*, 132 F.4th 1232, 1274 (11th Cir. 2025) (citing to *Baker*, 369 U.S. at 217) ("it's axiomatic our

jurisdiction extends to some so-called 'political cases' and that the 'courts cannot reject [...] a bona fide controversy as to whether some action denominated political' exceeds constitutional authority.").

II. CONCLUSION

Respondents have not challenged Dr. Boulos's claims that his detention is unlawful. They have merely claimed that this Court lacks authority to review Dr. Boulos's claims. These arguments regarding this Court's authority do not apply to Dr. Boulos's unlawful detention claims. Moreover, Dr. Boulos has shown that this Court maintains authority to review *all* his claims.

Dr. Boulos, age 69, has no criminal history, maintains LPR status, fled from Haiti in 2021 after his business was set on fire, and suffers from chronic health issues. *See* ECF No. [1] at ¶21, ¶ 26, ¶ 38, ECF No. [5] at ¶¶10-11; U.S. Department of State, Country Reports on Human Rights Practices for 2021: Haiti, at *25 ("In a night of rioting on March 17 [...] individuals looted the Universal Motors dealership, owned by the wealthy businessman and leader of the Third Way Movement political party, Reginald Boulos, and set the building on fire."). Dr. Boulos will suffer irreparable harm until the Court grants release from detention. *See Siegel v. LePore*, 234 F.3d 1163, 1177-78 (11th Cir. 2000) (presumption of irreparable injury from violation of constitutional speech or privacy); *Cunningham v. Adams*, 808 F.2d 815, 822 (11th Cir. 1987) ("the very violation of certain fundamental constitutional rights can satisfy the irreparable harm requirement in obtaining preliminary injunctive relief"). Accordingly, Dr. Boulos respectfully requests that the Court reject the Respondents' arguments that the Court lacks authority to review the claims of unlawful detention and restore Dr. Boulos to his freedom pending further adjudication.

Respectfully submitted this 12th day of September, 2025,

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REQUEST FOR HEARING

Given the complexity of the legal arguments that Dr. Boulos makes to support his position that his incarceration violates the Constitution, APA, and Non-Detention Act, Dr. Boulos respectfully requests that the Court grant a 30-minute hearing pursuant to 28 U.S.C. § 2243. *See* S.D. Fla. L.R. 7.1(b); *see also* ECF No. [1] at ¶¶ 133-56 (Dr. Boulos's claims for relief, including legal questions of first impression).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Court Clerk and to the best of my knowledge a true and correct copy of the foregoing, along with a Notice of Electronic Filing, will be served through the Court's ECF system to all counsel of record this 12th day of September, 2025.

Respectfully submitted,

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