

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 1:25-cv-23792 BLOOM / ELFENBEIN

PIERRE REGINALD BOULOS,

Petitioner,

vs.

DIRECTOR, U.S. Department of Homeland
Security Immigration and Customs Enforcement
Enforcement and Removal Operations
Miami Field Office; ACTING DIRECTOR,
U.S. DHS ICE; SECRETARY, DHS; U.S.
ATTORNEY GENERAL; ACTING DIRECTOR,
U.S. Department of Justice Executive Office
for Immigration Review; and U.S. SECRETARY
OF STATE,

Respondents.

**RESPONDENTS' RETURN TO AMENDED PETITION FOR WRIT OF HABEAS
CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Respondents, by and through their undersigned counsel, respond as follows to Petitioner PIERRE REGINALD BOULOS ("Boulos") Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Complaint for Declaratory and Injunctive Relief [ECF 43].

INTRODUCTION

Through his amended habeas petition, Boulos challenges his renunciation of his U.S. citizenship, his current detention, and Secretary Rubio's determination that his presence or activities in the United States poses serious adverse foreign policy consequences for the United States. Amd. Pet., ¶ 6. None of these grounds have merit.

First, Boulos voluntarily relinquished his U.S. citizenship on February 14, 2008. Therefore, the United States has authority to presently detain him pursuant 8 U.S.C. § 1226 of the Immigration and Nationality Act ("INA"). His continued

detention is within the Attorney General's discretionary authority regarding the detention of aliens charged under § 1227(a)(4)(C) and is not ultra vires. Boulos' challenge to Secretary Rubio's determination is similarly without merit as an unreviewable political question.

To the extent Boulos seeks to challenge his detention or Secretary Rubio's determination via the Administrative Procedure Act ("APA"), this is also improper. Because habeas corpus actions and non-habeas corpus actions have different filing fee requirements, different pleading standards, and different substantive standards, it is inappropriate to bring a hybrid action asserting both habeas and non-habeas claims in one case (such as here, where Petitioner did not pay the required filing fee). Additionally, because Secretary Rubio's decision is solely within his discretion, it is not subject to review under the APA.

BACKGROUND

I. Legal Framework for Detention

In the Immigration and Nationality Act ("INA"), Congress enacted a multi-layered statutory scheme for civil detention pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determine where a detainee falls within this scheme and whether detention is discretionary or mandatory. For individuals like Boulos, § 1226 "generally governs the process of arresting and detaining . . . aliens pending their removal." *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). Within § 1226, subsection (a) provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

Section 1226(a) detainees may be detained for the duration of the removal proceedings or be released "on bond of at least \$1,500," or conditional parole. *See* 8 U.S.C. § 1226(a)(1)-(2). When an individual is taken into custody under § 1226(a), an Immigration and Customs Enforcement ("ICE") official makes an initial custody determination, including the setting of a bond. *See* 8 C.F.R. §§ 236.1(c)(8), 236.1(d).

The ICE officer may “in [his] discretion, release an alien” provided that the officer is satisfied that “the alien is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). If ICE determines that detention during the pendency of removal proceedings is necessary, the detainee may request a custody redetermination hearing before an immigration judge (“IJ”). *See* 8 C.F.R. §§ 236.1(d), 1003.19, 1236.1(d). Generally, IJs have broad discretion in deciding whether to release someone on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39 (BIA 2006).

These same regulations limit an IJ’s discretion. IJs cannot review ICE’s custody determinations for someone like Boulos, who is charged with removability under Section 1227(a)(4). 8 C.F.R. § 1003.19(h)(2)(i)(C). Although Boulos cannot challenge ICE’s custody determination specifically, he can request that an IJ determine whether he is properly subject to removal under Section 1227(a)(4). 8 C.F.R. § 1003.19(h)(2)(ii); *see also Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1033 (E.D. Wisc. 2007), *aff’d sub nom. Hussain v. Mukasey*, 510 F.3d 739 (7th Cir. 2007). He can submit evidence and legal authority as to whether he is properly included within the removability charge to allow the IJ to make the determination in the first place. *Hussain*, 492 F. Supp. 2d at 1033. If Boulos disagrees with the IJ’s determination, he can seek review before the Board of Immigration Appeals (“BIA”). 8 C.F.R. § 1003.19(f); *see also Hussain*, 492 F. Supp. 2d at 1033 (discussing the BIA’s decision determining proper detention authority and custody review process).

II. Petitioner’s Immigration Status

Pierre Reginald Boulos is a citizen of Haiti. *See Exhibit 1*, Record of Deportable/Inadmissible Alien (I-213). Petitioner was born in the State of New York but formally renounced his United States nationality on February 14, 2008 by taking the Oath of Renunciation at the U.S. Embassy in Port-au-Prince. *See* Declaration of Matthew Pierce and exhibits attached thereto as Exhibit 2.

On or about February 27, 2020, Petitioner applied for a B1/B2 Nonimmigrant Visa (“NIV”). *See Exhibit 1*, I-213. Petitioner’s application was approved on or about May 13, 2020. *Id.* Petitioner entered the U.S. on June 22, 2021. *Id.* On or about March 26, 2024, United States Citizenship and Immigration Services (“USCIS”) granted

Petitioner's application to adjust his status to a lawful permanent resident of the United States. *Id.* In February 2025, Petitioner was admitted to the United States at Miami International Airport as a Lawful Permanent Resident. *Id.*

Under INA § 237(a)(4)(C), an alien is deportable from the United States if the Secretary of State has reasonable grounds to believe the alien's presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States. INA § 237(a)(4)(C). In June 2025, U.S. Secretary of State Marco Rubio determined that Petitioner is a deportable alien under INA § 237(a)(4)(C) (8 U.S.C. 1227(a)(4)(C)). *See Exhibit 1*, I-213; *see also Exhibit 3*, Memorandum for the Secretary of Homeland Security from Secretary of State Marco Rubio ("Rubio Memorandum"). Secretary Rubio further determined that Petitioner has engaged in a campaign of [REDACTED]

[REDACTED] *Id.* Secretary Rubio concluded that allowing Petitioner to remain in the United States undermines U.S. foreign policy interest in stabilizing Haiti and the region, as it condones his continued actions contrary to that objective. *Id.*; *see also Exhibit 1*, I-213.

III. Petitioner's Immigration Proceedings

On July 17, 2025, HSI Miami and ERO Miami arrested Petitioner and initiated removal proceedings. *See Exhibit 4*, I-200, Warrant for Arrest of Alien. On July 18, 2025, Petitioner was placed in removal proceedings via the issuance of a Notice to Appear ("NTA"). *See Exhibit 5*, NTA. The NTA charges Petitioner with removability under INA sections 237(a)(4)(C)(i) and 237(a)(1)(a). *Id.*

On July 31, 2025, the immigration court conducted a custody redetermination hearing, at which DHS argued that Petitioner was subject to mandatory detention pursuant to 8 C.F.R. § 1003.19(h)(2)(i)(C), and the immigration court denied bond. *See Exhibit 6*, IJ Bond Memorandum (Sept. 17, 2025). The Court issued a written decision memorializing its findings regarding the immigration court's bond redetermination decision pursuant to its authority under *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999) and 8 C.F.R. § 1003.19(h)(2)(ii). *See id.*

Petitioner timely appealed the immigration court's custody determination, which remains pending before the Board of Immigration Appeals ("BIA" or "Board"). On February 4, 2026, DHS filed its brief in opposition, requesting the summary affirmance of the immigration judge's custody redetermination decision, denying bond. *See Exhibit 7*, BIA briefing schedule and DHS's brief.

On October 20, 2025, the immigration court conducted a second custody redetermination hearing, at Petitioner's request, where Petitioner argued there was a material change in circumstance to warrant his release. *See Exhibit 8*, IJ Bond Memorandum, Jan. 14, 2026. During the second custody redetermination hearing, Petitioner argued that DHS had failed to meet its burden of proving alienage and that he remained a United States citizen, because the Department of State did not "follow its own rules and regulations in the renunciation process" and that the Certificate of Loss of Nationality issued by the Department of State was improper. *Id.* DHS argued in opposition that no material changed circumstances warranted disturbing the immigration court's September 17, 2025 order denying bond and finding that Petitioner was subject to mandatory detention. The immigration court determined it lacked jurisdiction to decide whether Petitioner's Certificate of Loss of Nationality was properly issued by DOS. Accordingly, the immigration court denied bond, and a Bond Memorandum was issued on January 14, 2026, to allow for Petitioner's second bond appeal to the BIA, which remains pending. *Id.*

During the course of removal proceedings, Petitioner contested the allegations in the NTA and denied the charges. *See Exhibit 9*, Petitioner's Motion to Terminate Proceedings, filed October 11, 2025. On November 3, 2025, the immigration court denied Petitioner's motion to terminate removal proceedings, finding that DHS had met its burden of proving by clear and convincing evidence that Respondent is removable as charged. 8 C.F.R. § 1240.8(a). *See Exhibit 10*, IJ Order, November 2, 2025. Petitioner's removal proceedings remain pending, and a merits hearing on an application for relief before the immigration court is scheduled for April 2, 2026.

IV. Boulos' Habeas Petition

On August 22, 2025, Petitioner initiated the instant habeas petition and complaint for declaratory and injunctive relief, and emergency motion for preliminary injunction and/or temporary restraining order in the District Court for the Southern District of Florida,¹ challenging ICE custody.

Boulos has now filed an amended petition [ECF 43]. Stopping just short of alleging that he *is* a U.S. citizen, Boulos alleges that he has a “colorable claim” to being a U.S. citizen. *Id.* at ¶¶ 1, 13. Boulos goes on to allege that DHS’s arrest and detention of him was a “retaliatory action” by the Respondents “for speaking out against political corruption or participating in democratic protests.” *Id.* at ¶ 167.

Boulos brings a claim under the Non-Detention Act (Count One), alleging that because he has a “colorable claim to U.S. citizenship, . . . Respondents have no authority under the INA to detain [him].” *Id.* at ¶ 164. Boulos also brings claims under the Due Process Clause of the Fifth Amendment (Count Two) and the First Amendment (Count Three). Finally, Boulos brings a claim under the Administrative Procedure Act (“APA”) (Count Four), alleging that the Secretary of States’s determination of deportability under 8 U.S.C. § 1227(a)(4)(C) exceeds agency authority, lacks substantial evidence, and is arbitrary and capricious.

Boulos requests that this Court assume jurisdiction over this matter, order his immediate release, and declare that Respondents’ actions to arrest and detain him violated the First Amendment and Due Process Clause of the Fifth Amendment. *Id.* at p. 39-40, ¶¶ 1-11.

¹ The Petition names DHS ICE ERO Miami Field Office Director, DHS ICE Acting Director, and DHS Secretary as Petitioner’s legal custodians. A writ of habeas corpus must “be directed to the person having custody of the person detained.” 28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that “the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.” *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). His immediate custodian is Charles Parra, Assistant Field Office Director. Accordingly, the proper Respondent in the instant case is Mr. Parra, in his official capacity, and all other respondents should be dismissed.

LEGAL STANDARD

A district court may grant a writ of habeas corpus to any person who demonstrates he is in custody in violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3). The right to challenge the legality of a person's confinement through a petition for a writ of habeas corpus extends to those persons challenging the lawfulness of immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); and *Demore v. Kim*, 538 U.S. 510, 517 (2003).

“Petitioner ‘bears the burden of proving that he is being held contrary to law; and because the habeas proceeding is civil in nature, he must satisfy his burden of proof by a preponderance of the evidence.’” *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)).

LEGAL ARGUMENT

Through his amended habeas petition, Boulos challenges his renunciation of his U.S. citizenship, his detention, and Secretary Rubio's determination that his presence or activities in the United States poses serious adverse foreign policy consequences for the United States. Amd. Pet., ¶ 6.²

² A recent decision by the Third Circuit Court of Appeals, *Khalil v. President United States of Am.*, Nos. 25-2162 & 25-2357, 2026 U.S. App. LEXIS 1089, 2026 WL 111933 (3d Cir. Jan. 15, 2026) (per curiam) calls into question the Court's jurisdiction to even hear the instant action. In *Khalil*, the petitioner was a lawful permanent resident and an “outspoken advocate for Palestinian human rights.” 2026 U.S. App. LEXIS 1089, 2026 WL 111933 at *1. The Secretary of State determined that Khalil was removable from the United States pursuant to a provision of the Immigration and Nationality Act allowing removal of noncitizens whose “presence or activities in the United States . . . would have potentially serious adverse foreign policy consequences for the United States.” 2026 U.S. App. LEXIS 1089, [WL] at *2 (alteration in original) (quoting 8 U.S.C. § 1227(a)(4)(C)). The government detained Khalil and served him with a Notice to Appear; he then sought habeas relief in federal court, challenging his detention, removal, and “a broad array of alleged governmental misconduct under the First and Fifth Amendments,” the Administrative Procedure Act, and Supreme Court precedent. 2026 U.S. App. LEXIS 1089, [WL] at *10; see 2026 U.S. App. LEXIS 1089, [WL] at *2. The Third Circuit held that § 1252(b)(9) stripped the district court of jurisdiction over Khalil's petition, finding that Khalil's claims were not “wholly collateral to the removal process” but rather “inextricably linked to it” for purposes of

I. The Court Correctly Determined Petitioner Renounced His Citizenship

Boulos' primary argument for release from immigration detention is that he is still a United States citizen despite previously renouncing his citizenship, and the State Department's issuance of a valid Certificate of Loss of Nationality on December 16, 2019. *See Farrell v. Blinken*, 4 F. 4th 124, 132 (D.C. Cir. 2021) ("The citizenship relationship is not completely severed until the government recognizes [petitioner's] expatriation."). According to Boulos, each of his attempts to renounce his citizenship contained material defects that rendered his renunciation invalid.

In its Order on Expedited Motion for Temporary Restraining Order and Motion for Preliminary Injunction [ECF 37], the Court considered Boulos' arguments and rejected them. Noting the "compelling evidence that Boulos' 2019 CLN has been approved by the Department of State," the Court found that "[t]he record demonstrates that the Department of State properly approved the 2019 CLN in accordance with the governing statutes and agency regulations." *Id.*, p. 17. The Court similarly rejected Boulos' argument that his current detention is ultra vires, finding that "8 C.F.R. § 1003.19(h)(2)(i)(C) exceeds the authority set out in § 1226(a), as the regulation falls within the Attorney General's discretionary authority regarding the detention of aliens charged under § 1227(a)(4)(C)." *Id.*, p. 18 – 20.

In each of these instances, the Court was correct in its findings of fact and conclusions of law as to Boulos' citizenship. Boulos is no longer a U.S. citizen. He

§ 1252(b)(9). 2026 U.S. App. LEXIS 1089, [WL] at *9 (internal quotation marks and citation omitted); *see* 2026 U.S. App. LEXIS 1089, [WL] at *9-10. The panel thus reasoned that the claims could be raised later in a petition for review of a final order of removal. *See* 2026 U.S. App. LEXIS 1089, [WL] at *10 ("[A]ddressing any of [Khalil's] claims would require deciding whether removing [him] would be unlawful—the very issue decided through the [petition-for-review] process."). Here, Boulos' challenge to his detention is "inextricably linked" to his removal proceedings. 2026 U.S. App. LEXIS 1089, [WL] at *9. Yet various provisions of the INA limit an alien's ability to collaterally attack (challenge) ongoing immigration proceedings through habeas. In its prior orders, this Court has not seen those limits as barring subject-matter jurisdiction over Boulos' claims. *See* ECF 37 at p. 6. Under the Third District's rationale, 8 U.S.C. § 1252(b)(9) strips this Court of jurisdiction, requiring Boulos to wait to raise his claims until he files a petition for review of a final order of removal.

received a legally sufficient bond hearing before the IJ. The IJ denied him bond. Boulos is currently pursuing his appeal of this very issue before the BIA. Therefore, his continued detention pending removal is lawful.

II. Boulos Cannot Circumvent the Administrative Process Through Habeas

Boulos filed a habeas petition, which in part challenges actions that relate to but are not necessarily about his detention. In his preliminary injunction motion, he requested this Court to enjoin the Secretary of State's foreign policy determination and enjoin the Government from enforcing an undefined policy that targets for detention and removal individuals who engaged in constitutionally protected activity. But these forms of relief are simply an attempt to circumvent the administrative process created by Congress.

"Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). The writ of habeas corpus and its protections are "strongest" when reviewing "the legality of Executive detention." *INS v. St. Cyr.*, 533 U.S. 289, 301 (2001). Therefore, the traditional function of the writ is to seek one's release from unlawful detention. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)). Boulos may seek "simple release". See *Thuraissigiam*, 591 U.S. at 119 ("Claims so far outside the core of habeas may not be pursued through habeas.") (internal quotations and citations omitted). The Third Circuit recently reaffirmed that a petitioner does not have a constitutional right to anything more than the petition-for-review process in a habeas action. *Tazu v. AG United States*, 975 F.3d 292, 300 (3d Cir. 2020). That process is "an adequate substitute for a petitioner's historic right to habeas corpus." *Id.* Hence, the right to habeas for detained aliens likely guarantees only release in the form of removal from the country. *Id.* (citing *Thuraissigiam*, 591 U.S. at 119).

Boulos seeks more than just release—he challenges the Secretary of State's determination that his presence in the United States will have adverse foreign policy consequences. Amd. Pet., ¶ 6. That is simply a misapplication of the Great Writ; it is both an attempt to work around his administrative proceedings, and impermissibly seeks relief other than release from custody. Boulos can obtain review of his bond

eligibility from the IJ and then the BIA. Separately, he has challenged the DHS allegation and charge that he is removable pursuant to INA 237(a)(4)(C) before the IJ, and appealed to the BIA. If he is unsatisfied with the BIA's decision, he may then file a petition for review with the Eleventh Circuit if similarly adverse. At bottom, these claims are not reviewable here; Boulos must pursue them in the proper forum.

III. Boulos' Challenge the Secretary's Determination Invokes an Unreviewable Political Question

The Secretary's foreign policy determination under INA section 237(a)(4)(C) is an unreviewable political question and is thus barred by the political question doctrine.³ As noted by the Supreme Court, the gravamen of any political question is "essentially a function of the separation of powers." *Baker v. Carr*, 369 U.S. 186, 217 (1962). To guide courts in determining when such a question is raised, the Supreme Court identified six "formulations" that indicate a question has been committed to the political branches:

Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id.; accord *Gross v. German Foundation Indus. Initiative*, 456 F.3d 363, 377 (3d Cir. 2006). "A finding of any one of the six factors indicates the presence of a political question." *Gross*, 456 F.3d at 377. Boulos' request to second-guess the Secretary of State's determination and the Executive's foreign policy considerations implicates factors three, four, five, and six of the *Baker* test.

³ This Court cannot review this question under the doctrine. On a petition for review, the appropriate court of appeals would consider whether its precedent allows for any review and if so, the extent of that review.

Necessarily, Boulos' requested injunction sits at the intersection of two issues textually committed to the political branches of the government: (1) foreign affairs, *see State of California v. United States*, 104 F.3d 1086, 1091 (9th Cir. 1997) ("the issue of protection of the States from invasion implicates foreign policy concerns which have been constitutionally committed to the political branches."); *see also El-Shifa Pharmaceutical Industries Co. v. United States*, 607 F.3d 836, 842 (D.C. Cir. 2010) ("The political question doctrine bars our review of claims that, regardless of how they are styled, call into question the prudence of the political branches in matters of foreign policy or national security constitutionally committed to their discretion."); and (2) immigration policy, *see Mathews v. Diaz*, 426 U.S. 67, 81 (1976) ("the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government."). As observed by the Supreme Court, "any policy towards aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952).

Additionally, there is simply no manageable standard on what constitutes "potentially serious adverse foreign policy consequences." 8 U.S.C. § 1227(a)(4)(C)(i). The Third Circuit has recognized that not all foreign policy concerns pose a political question but done so as long "as it involves normal principles of interpretation of the constitutional provisions at issue, normal principles of statutory construction, or normal principles of treat or executive agreement construction." *Gross*, 465 F.3d at 388 (cleaned up). Although Boulos is likely to argue that settled First Amendment principles provide the standard to address the constitutional question, *see Hanlon*, 99 F.4th at 153, this case does not manifest to a manageable standard that would not interfere with the Executive's recognized power to "expel or exclude aliens." *State of New Jersey v. United States*, 91 F.3d 463, 469-70 (3d Cir. 1996) (finding this power as implicating the second *Baker* factor). For this Court to determine what constitutes

a serious or compelling foreign policy consequence, it would have to inescapably obtain information on what the Executive considered in making the determination and how much weight it gave various factors while sifting through numerous documents and materials, all of which counsel against accepting Boulos' invitation into this sensitive area. *See Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 489 (D.N.J. 1999).

Essentially, Boulos is asking this Court to “displac[e] the Executive in its foreign policy making role” and to reverse a political decision that has already been made. *Gross*, 456 F.3d at 389-90. He is in effect asking “the Court to second guess foreign policy decisions that the Constitution has expressly committed to the political branches.” *Nguyen v. United States*, No. 23-cv-06047, 2024 WL 1382470, at *5 (N.D. Cal. Apr. 1, 2024), *aff'd*, No. 24-2221, 2025 WL 880141 (9th Cir. Mar. 21, 2025); *see also Mobarez v. Kerry*, 187 F. Supp. 3d 85, 92 (D.D.C. 2016) (*Ketanji Brown Jackson, J.*) (“[I]f the court is being called upon to serve as a forum for reconsidering the wisdom of discretionary decisions made by the political branches in the realm of foreign policy or national security, then the political-question doctrine is implicated, and the court cannot proceed.”). Second-guessing of this sort of discretion is exactly what the political question doctrine was meant to insulate from judicial review. *See Gross*, 456 F.3d at 390 (noting that factors four, five, and six “is relevant only if judicial resolution of a question would contradict prior decisions taken by a political branch in those limited context where such contradiction would seriously interfere with important governmental interest”) (quotations omitted).

IV. Boulos’ APA Claim Is Not Properly Before the Court

Because habeas corpus actions and non-habeas corpus actions have different filing fee requirements, different pleading standards, and different substantive standards, it is generally inappropriate to bring a hybrid action asserting both habeas and non-habeas claims in one case. *Burnam v. Marberry*, 313 F. App’x 455, 456 n.2 (3d Cir. 2009) (noting that the district court should not have considered habeas claims and claims under the Privacy Act and Administrative Procedures Act in a single case); *accord Malcom v. Starr*, No. 20-cv-2503, 2021 U.S. Dist. LEXIS 45387, 2021 WL

931213, at *2 (D. Minn. Mar. 11, 2021) (“As many other cases from this District have noted, habeas petitions and civil complaints have different and incompatible rules regarding service of process, discovery, and even filing fees.”).

As a threshold issue, Petitioner did not pay the required filing fee for any non-habeas claims. *See* ECF 1, \$5.00 filing fee receipt no. AFLSDC-18727618. The statute governing filing fees in district court clearly states:

The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350, except that on application for a writ of habeas corpus the filing fee shall be \$5.

28 U.S.C. § 1914(a). “The payment of the \$5 habeas filing fee relegates this action to habeas relief only. One cannot pay the minimal habeas fee and pursue non-habeas relief.” *Ndudzi v. Castro*, No. 20-cv-0492, 2020 WL 3317107, at *2 (W.D. Tex. June 18, 2020); *Lopez v. Bobby Thompson, Warden, S. Tex. Det. Ctr.*, No. 25-cv-1533, 2025 U.S. Dist. LEXIS 268675, at *14 n.4 (W.D. Tex. Dec. 12, 2025) (“Petitioner’s civil APA claim could not go forward because Petitioner has paid only the \$5 habeas filing fee.”); *King v. Carlton*, No. 21-cv-21634, 2021 U.S. Dist. LEXIS 83778, at *4 (S.D. Fla. Apr. 30, 2021) (*Bloom, J.*) (finding that petitioner could not circumvent filing fee requirements by filing a “joint or hybrid” habeas action).

Boulos’ failure to pay the filing fee is, standing alone, sufficient grounds to dismiss his APA claim. *See Castro v. Dir., Fed. Deposit Ins. Corp.*, 449 F. App’x 786, 788 (11th Cir. 2011) (“Parties instituting a civil action in district court are required to pay filing fees, and each district court, by local rule, may require advance payment of such fees. . . . [A] prisoner’s case is subject to dismissal by the district court, *sua sponte*, if the filing fee is not paid[.]”); *see also, e.g., Fulmore v. Inch*, 2021 U.S. Dist. LEXIS 142287, 2021 WL 3270058, at *1 (S.D. Fla. July 30, 2021) (*Ruiz, J.*) (“When a civil rights complaint is filed, the filing fee is due at the initiation of the action. . . . Accordingly, since the Plaintiff has not paid the filing fee at the initiation of this action . . . this case should be dismissed.” (citing S.D. FLA. LOCAL RULE 88.2(a))).

V. Boulos Cannot Use the APA to Challenge Secretary Rubio's Discretionary Decision

“Congress passed the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., (“INA”) in 1952 [and] delegated to the Secretary of State significant authority to exclude or classify as deportable non-citizens from the United States, and to revoke visas.” *Am. Ass’n of Univ. Professors v. Rubio*, No. 25-cv-10685, 2025 U.S. Dist. LEXIS 193069, 2025 WL 2777659, at *3 (D. Mass. Sept. 30, 2025).

Under 8 U.S.C. § 1227(a)(4)(C)(i), if the “Secretary of State has reasonable ground to believe” that a noncitizen’s presence or “activities in the United States . . . would have potentially serious adverse foreign policy consequences for the United States,” the noncitizen “is deportable.” There is an exception, however: noncitizens *shall not be* deportable because of their “past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States” 8 U.S.C. § 1182(a)(3)(C)(iii). The exception is then subject to a further exception: noncitizens shall not be deportable because of their lawful “beliefs, statements, or associations” “*unless* the Secretary of State *personally determines* that the [noncitizen’s] admission would compromise a compelling United States foreign policy interest.” 8 U.S.C. § 1182(a)(3)(C)(iii) (emphasis added).

In July 2025, Secretary Rubio advised Secretary of Homeland Security Kristi Noem that Boulos was removable from the country. In support of that determination, Secretary Rubio invoked 8 U.S.C. § 1227(a)(4)(C) and concluded that Boulos’ “presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States.” *See Exhibit 3*. Secretary Rubio specifically noted that “Boulos has engaged in a campaign of violence, gang support, and trafficking weapons and drugs that has contributed to Haiti’s destabilization.” *Id.*⁴

⁴ This finding by Secretary Rubio similarly dooms Boulos’ First Amendment claim. The memorandum, on its face, does not implicate any First Amendment protected activities of Boulos. Instead, it is premised upon Boulos’ violent and criminal acts.

The APA authorizes a reviewing court to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The APA establishes a “basic presumption of judicial review for one suffering legal wrong because of agency action.” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020) (alteration adopted; citation and quotation marks omitted). That presumption can be rebutted by a showing, as relevant here, that the “agency action is committed to agency discretion by law.” 5 U.S.C. § 701(a)(2). The Supreme Court has recognized that an action is committed to agency discretion when a court would have “no meaningful standard against which to judge the agency’s exercise of discretion.” *Heckler v. Chaney*, 470 U.S. 821, 830, 105 S. Ct. 1649, 84 L. Ed. 2d 714 (1985); *see also Kantilal Patel v. Cuccinelli*, No. 19-cv-03014, 2020 U.S. Dist. LEXIS 269278, 2020 WL 13660282, at *4 (N.D. Ga. June 24, 2020) (“In the context of agency action, courts have granted 12(b)(6) motions where the plaintiff failed to state a claim upon which relief could be granted because the challenged action was committed to agency discretion by law, and thus a court would have no meaningful standard against which to judge the agency’s exercise of discretion.” (citations and quotation marks omitted)). Courts ask whether there is sufficient “law to apply” in assessing the agency’s action. *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 413 (1971). A key consideration is whether an agency decision “involves a complicated balancing of a number of factors” that are “peculiarly within [an agency’s] expertise.” *Chaney*, 470 U.S. at 831 (alteration added). In such a scenario, “[t]he agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities.” *Id.* at 831-32 (alteration added).

The Supreme Court has, “on many occasions [] recognized that certain kinds of speech are less central to the interests of the First Amendment than others.” *Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. 749, 758 n.5 (1985). It has long been the rule, of course, that physical violence and the threat of violence are not constitutionally protected: “The First Amendment does not protect violence.” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982); *cf. Harisiades*, 342 U.S. at 591-592 (1952) (advocating violent overthrow of the Government is unprotected speech).

Here, Secretary Rubio's memorandum is solely within his discretion. See *Am. Ass'n of Univ. Professors*, 2025 U.S. Dist. LEXIS 193069, 2025 WL 2777659, at *3 (noting that the "deportability classification power [is] solely with the Secretary of State.") Because this decision is solely within Secretary Rubio's discretion, it is not subject to review under the APA.

CONCLUSION

WHEREFORE, the Court should deny Petitioner Boulos' amended petition for a writ of habeas corpus and relief under the APA.

Respectfully submitted,

JASON A. REDING QUIÑONES
UNITED STATES ATTORNEY

By: John S. Leinicke
JOHN S. LEINICKE
ASSISTANT UNITED STATES ATTORNEY
Fla. Bar No. 64927
United States Attorney's Office
Southern District of Florida
99 N.E. 4th Street, 3rd Floor
Miami, Florida 33132
Tel: (305) 961-9212
E-mail: john.leinicke@usdoj.gov