

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-23792-BLOOM/ELFENBEIN

PIERRE REGINALD BOULOS,

Petitioner,

v.

DIRECTOR, U.S. DHS ICE ERO MIAMI
FIELD OFFICE, *et al.*,

Respondents.

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

Petitioner Pierre Reginald Boulos (“Dr. Boulos”) respectfully submits this Traverse to Respondents’ Return to Dr. Boulos’ Amended Petition for Writ of Habeas Corpus and Compliant for Declaratory and Injunctive Relief. For the reasons that follow, Respondents have advanced meritless arguments in their Return and the Court should issue a writ of habeas corpus in Dr. Boulos’ favor.

ARGUMENT

I. The Court has jurisdiction over Dr. Boulos’ habeas claims.¹

Respondents call into question the Court’s jurisdiction over Dr. Boulos’ habeas petition. Dkt. No. 48 at 7 n.2, 9–10. But their arguments fall flat because they do not grapple with binding Eleventh Circuit law and rest on a mischaracterization of the relief Dr. Boulos seeks, which is release from unlawful detention. *Compare id.* at 9 (claiming Dr. Boulos “seeks more than just release”), *with* Am. Pet. ¶¶ 1–11, 39–40 (limiting prayer for injunctive relief to release from detention and prohibition on transfer while in custody).

In a footnote, Respondents appear to urge this Court to follow a recent decision from the Third Circuit rather than case law from the Eleventh Circuit, which Respondents fail to cite. Dkt. No. 48 at 7 n.2 (discussing *Khalil v. President*, 164 F.4th 259, 285 (3d. Cir. 2026)). In *Khalil*, a divided Third Circuit found its prior precedent—which limited the jurisdiction-stripping provision at 8 U.S.C. § 1252(b)(9) to final orders of removal—was abrogated by a “strong implication” in *Jennings v. Rodriguez* that § 1252(b)(9) “covers at least some challenges to detention before a final order of removal.” *Khalil*, 164 F.4th at 273; *but see id.* at 282–83 (Freeman, C.J., dissenting) (noting that the Eleventh, Ninth, Second, and Fourth Circuits share the interpretation that *Jennings* stands for the proposition that § 1252(b)(9) only reaches final orders of removal). The court then fashioned a new rule: § 1252(b)(9) deprives a district court of jurisdiction over legal questions that can later be raised in a Petition for Review (“PFR”). *Id.* at 274–75.

Had Respondents surveyed Eleventh Circuit law, they would have observed that it directly contradicts their position that this Court lacks jurisdiction over Dr. Boulos’s habeas petition. Indeed, Respondents’ arguments do not hold water in the Eleventh Circuit, which has repeatedly clarified, even after *Jennings*, that “the zipper clause only affects cases that ‘involve[] review of

¹ Dr. Boulos incorporates by reference his arguments regarding his U.S. citizenship as fully set forth in his Expedited Motion for Temporary Restraining Order and Preliminary Injunction. Dkt. No. 31; Dkt. No 36.

an order of removal.” *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020) (*Canal A*) (quoting *Madu v. U.S. Att’y Gen.*, 470 F.3d 1362, 1367 (11th Cir. 2006)); *Bejacmar v. Ashcroft*, 291 F.3d 735, 737–38 (11th Cir. 2002); *Guo Xing Song v. U.S. Atty. Gen.*, 516 F. Appx. 894, 899 (11th Cir. 2013) (“[S]o long as an alien does not challenge a final order of removal, district courts retain jurisdiction under § 2241 to review habeas petitions, including challenges to an alien’s detention.”). *Khalil* is, quite simply, not the law in this circuit.

When determining whether a claim is barred by § 1252, a court must focus on “the action being challenged,” *Canal A*, 964 F.3d at 1257–58, and Respondents must overcome “the strong presumption in favor of judicial review of administrative action” to prevail on a jurisdiction-stripping claim. *Alvarez v. USCIS*, 818 F.3d 1194, 1201 (11th Cir. 2016) (quoting *INS v. St. Cyr*, 533 U.S. 289, 298 (2001)).² Here, the action being challenged is Respondents’ unlawful detention of Dr. Boulos; thus, his claims are properly before this Court. Count I alleges detention in violation of the Non-Detention Act, because, as a U.S. citizen born in the United States, Dr. Boulos cannot lawfully be detained in civil immigration custody. Am. Pet. ¶ 34. Count II challenges Dr. Boulos’ detention as unconstitutional retaliation for protected speech. *Id.* ¶ 34–35. Count III asserts that Dr. Boulos’ detention violates due process because it rests upon an unduly vague foreign policy determination that deprives Dr. Boulos of a meaningful opportunity to challenge his detention and because the underlying statute represents an unconstitutional delegation of legislative power. *Id.* ¶¶ 37–38. Count IV challenges the ultra vires regulation under which Dr. Boulos is mandatorily detained and alleges that the Secretary of State failed to comply with procedural requirements in making the determination that led to Dr. Boulos’ detention. *Id.* ¶¶ 38–39. The relief he seeks further confirms that his requests sound in habeas—he asks for release from custody, not termination of removal proceedings or a declaration that he is not removable. These are detention claims within the heartland of habeas jurisdiction that do not require this Court to adjudicate his ultimate removability.

² See, e.g., *Heikkila v. Barber*, 345 U.S. 229, 235–36 (1953) (recognizing availability of habeas to vindicate due process rights violated by deportation procedures); *Ulysse v. DHS*, 291 F. Supp. 2d 1318, 1324 (M.D. Fla. 2003) (jurisdiction over noncitizen’s claim that government violated removal statute); *E.D.Q.C. v. Warden*, 789 F. Supp. 3d 1234, 1240 (M.D. Ga. 2025) (jurisdiction to review legal basis for third country removal); *Espinoza-Sorto v. Agudelo*, 2025 WL 3012786, at *5 (S.D. Fla. Oct. 28, 2025) (jurisdiction to review legality of removal given deferred action).

Respondents contend that Dr. Boulos could adequately address his claims through a Petition for Review. Not so. A PFR is limited to review of a “final order of removal” rendering detention claims unavailable in that forum. 8 U.S.C. § 1252(a); 8 C.F.R. § 1003.19(d) (providing that bond proceedings “shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding.”). The lack of judicial review would be particularly egregious in this context, where the sole basis for Dr. Boulos’ mandatory detention is the conclusory statements in the Rubio Memorandum. *Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (violation of due process to rely on unsworn and highly incriminating statements; noting that “[m]eticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness.”). In sustaining the charge of removability—and thus, the sole basis for mandatory detention—the IJ found no jurisdiction to look behind the Memorandum to review its sufficiency. Am. Pet. ¶ 72. Moreover, the IJ and counsel for the Department noted that Dr. Boulos is unlikely to receive a decision from the BIA prior to the conclusion of removal proceedings. *Id.* ¶ 76. A finding that § 1252 strips this Court of jurisdiction would implicate the Suspension Clause, as Dr. Boulos would be totally deprived of any review of the legality of his detention. Such a result offends the core tenets of due process, which demand “individualized procedures to ensure there is at least some merit to [DHS’] charge and, therefore, sufficient justification to detain a lawful permanent resident alien pending a more formal hearing.” *Demore v. Kim*, 538 U.S. 510, 531 (2003) (Kennedy, J., concurring) (citation omitted).

II. The political question doctrine does not bar this Court from adjudicating Dr. Boulos’ habeas action.

Respondents’ strained attempt to reframe the Amended Petition as a “request to second-guess” United States foreign policy cannot convert a straightforward constitutional and statutory challenge to Dr. Boulos’ detention into a political question. Indeed, their reliance on this doctrine reveals the weakness of their position. Under the political question doctrine, courts refrain from deciding disputes when the underlying issues are “textually [and] demonstrabl[y]” committed to “a coordinate political department” or when there is “a lack of judicially discoverable and manageable standards for resolving” the dispute. *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012) (quoting *Nixon v. United States*, 506 U.S. 224, 228 (1993)). But the Supreme Court has long recognized that this doctrine is merely “a narrow exception” to the judiciary’s

“responsibility to decide cases properly before it.” *Zivotofsky*, 566 U.S. at 194–95 (citation modified).

As an initial matter, and contrary to Respondents’ suggestion, the limited political question doctrine does not automatically bar the judiciary from rendering decisions related to United States’ foreign policy interests or immigration decisions. *See, e.g., Fed. for Am. Immigr. Reform, Inc. v. Reno*, 897 F. Supp. 595, 602 (D.D.C. 1995) (“[T]he fact that this case [may] involve[] foreign relations does not, in itself, render this case nonjusticiable” on political question grounds); *Haitian Refugee Ctr. v. Civiletti*, 503 F. Supp. 442, 471 (S.D. Fla. 1980) (“To ensure that individuals are not injured by unlawful action in the immigration and naturalization context, courts rarely apply the political question doctrine when such challenges are brought.”). “[C]ourts can and do review constitutional challenges to the substance and implementation of immigration policy . . . [and] [t]his is no less true when the challenged immigration action implicates national security [or foreign policy] concerns.” *Washington v. Trump*, 847 F.3d 1151, 1163 (9th Cir. 2017) (first citing *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001), and then citing *Ex parte Quirin*, 317 U.S. 1, 19 (1942)). Nevertheless, Respondents erroneously claim that the Amended Petition is immune from adjudication because it raises issues that may touch upon foreign affairs and/or immigration. If that was the case, nearly every detention under the INA could conceivably raise a “political question” that precludes judicial examination. *See Reno*, 897 F. Supp. at 601 (“Were this true, questions regarding immigration would always constitute political questions”). The Court need not entertain such a reductive argument.

In reality, courts only lack authority to decide a matter under the political question doctrine when one of the six factors set forth in *Baker v. Carr*, 369 U.S. 186, 217 (1962), clearly apply. Respondents claim that factors three, four, five, and six apply. Dkt. No. 48 at 10. But they fail to establish how adjudicating Dr. Boulos’ claims would require the Court to make its own foreign policy (factor three), contradict decisions of existing political branches of government (factor four), undermine settled political decisions (factor five), or create conflicting positions that could embarrass the United States abroad (factor six). The Amended Petition, which asks the Court to assess whether Respondents have violated Dr. Boulos’ fundamental First Amendment speech and Fifth Amendment due process rights, does not satisfy *any* of these factors.

The Amended Petition clearly asks the Court to determine whether Dr. Boulos’ detention complies with the Constitution and the Administrative Procedure Act (“APA”), and *not* whether

United States' foreign policy objectives, or Secretary Rubio's views, are wise. In habeas proceedings, courts regularly adjudicate whether immigration detainees have raised substantial claims of constitutional or statutory violations, even when foreign policy considerations arise. *See, e.g., Mohammed H. v. Trump*, 781 F. Supp. 3d 886 (D. Minn. 2025) (granting habeas after finding noncitizen's detention presented First Amendment retaliation and Fifth Amendment due process violation claims); *Mahdawi v. Trump*, 781 F. Supp. 3d 214 (D. Vt. 2025) (granting habeas after finding noncitizen raised substantial claims that his arrest and detention were retaliatory in violation of First Amendment and improperly motivated in violation of substantive due process); *Ozturk v. Trump*, 783 F. Supp. 3d 801 (D. Vt. 2025) (granting habeas after finding noncitizen raised substantial First Amendment and Due Process Clause claims).

Further, Dr. Boulos raises justiciable questions about the constitutionality of his detention that warrant adjudication. *First*, the Amended Petition alleges that Dr. Boulos has been detained after engaging in protected political speech against antidemocratic regimes in Haiti. The Constitution "does not permit immigration detention to be used as a punitive or suppressive tool against protected speech," *Mohammed H.*, 781 F. Supp. 3d at 895, so Dr. Boulos' First Amendment claim³ warrants serious and prompt adjudication. *Second*, the Amended Petition challenges the evidentiary sufficiency of the Rubio Memorandum's claim that Dr. Boulos' activities and presence in the United States "would have potentially serious adverse foreign policy consequences for the United States" on due process grounds. Am. Pet. ¶ 45. Specifically, the Amended Petition

³ Respondents contend that Dr. Boulos' First Amendment claims fail because the Rubio Memorandum "is premised upon Boulos' violent and criminal acts." Return at 14–15 & n.4. Respondents have not offered one scintilla of evidence to support the proposition that Dr. Boulos engaged in the conduct alleged in the Rubio Memorandum. Whether *any* evidence supports the allegations is the subject of a motion for discovery Dr. Boulos filed with this Court. Dkt. No. 49. Dr. Boulos asserts that the allegations in the Rubio Memorandum stem from misinformation provided by political opponents who seek to target him for protected political activity. Am. Pet. ¶ 107. This claim is decidedly plausible in light of: (i) the U.S. government's vulnerability to misinformation emanating from Haiti due to the paucity of intelligence-gathering personnel on the ground, *id.* ¶ 47; (ii) Dr. Boulos is sixty-nine years old and has never been convicted of a crime, *id.* ¶ 42; (iii) Dr. Boulos was a trusted ally to the United States, *id.* ¶ 32; (iv) the U.S. government granted Dr. Boulos immigration benefits he would not have received if the government possessed credible evidence that he engaged in the activity described in the Rubio Memorandum, *id.* ¶ 50; and (v) trusted allies, including France and the U.K. granted Dr. Boulos immigration benefits. Dkt. No. 49-1. The well-pleaded allegations in the Amended Petition "must" be accepted as true—particularly when stacked against the Rubio Memorandum's conclusory allegations. *Agan v. Dugger*, 835 F.2d 1337, 1338 (11th Cir. 1987).

challenges the credibility, sufficiency, and even the existence of any evidence that led to this determination, particularly since it directly conflicts with critical information indicating that Secretary Rubio's conclusions lack merit. As the Amended Petition discusses, between 2022 and 2024, the U.S. government *twice* approved Dr. Boulos for TPS; granted him legal permanent resident status; and even admitted him into CBP's Trusted Traveler Program after extensive vetting. *Id.* ¶¶ 50, 52–54, 176. None of this would have been possible if valid evidence existed indicating that Dr. Boulos engaged in violent gang activities or trafficked drugs or weapons, as the Rubio Memorandum suggests without any evidentiary support.

Nowhere does the Amended Petition ask the Court to evaluate the substance of the United States' foreign policy interests. Instead, Dr. Boulos asks the Court to, *inter alia*, adjudicate the sufficiency of the evidence underlying the U.S. government's decision to detain him—for that directly implicates his fundamental, individualized constitutional rights. *See Venckiene v. United States*, 929 F.3d 843, 859 (7th Cir. 2019) (recognizing that habeas courts “may evaluate whether the [Secretary of State's] decisions were properly made without regard to [] constitutionally impermissible factors”). Adjudicating this action does not require the Court to evaluate whether the Secretary of State's foreign policy assessment was wise—only whether adequate evidence supports his determination given that Dr. Boulos' constitutional rights hang in the balance.

To that effect, none of the *Baker* factors cited by Respondents clearly apply here and, thus, their political question argument fails:

- *Third factor*: The Amended Petition does not ask the Court to make foreign policy. Rather, Dr. Boulos requests that the Court decide whether the Secretary of State complied with the constitutional and statutory requirements necessary to render the Rubio Memorandum.
- *Fourth factor*: The Court's review of the Secretary of State's compliance with the Constitution cannot contradict the decisions of existing political branches of government, because “the separation of powers rationale underlying the political question doctrine does not shield [an executive's] actions from judicial review.” *Al Shimari v. CACI Premier Tech., Inc.*, 840 F.3d 147, 158 (4th Cir. 2016) (citing *Baker*, 369 U.S. at 217).
- *Fifth factor*: No “settled political decision” is at issue here. This factor “contemplates cases of an ‘emergency[] nature’ that require ‘finality in the political determination,’ such as the cessation of armed conflict.” *Gross v. German Found. Indus. Initiative*, 456 F.3d 363, 390 (3d Cir. 2006) (quoting *Baker*, 369 U.S. at 213). The Rubio Memorandum is an individualized determination about Dr. Boulos' continued presence in the United States, as opposed to some larger declaration about the United States' pressing foreign policy objectives that require “unquestioning adherence.” *Khouzam v. Att'y Gen. of U.S.*, 549 F.3d 235, 253 (3d Cir. 2008).

- *Sixth factor:* The Amended Petition does not demand that the Court create conflicting positions that would embarrass the United States abroad, because this action simply concerns the constitutionality of Dr. Boulos' individual detention.

Contrary to Respondents' claims, both *Nguyen v. United States* and *Mobarez v. Kerry* are inapposite. Both cases involved plaintiffs who asked federal courts to substitute their own judgment for the Executive Branch's geopolitical decisions and unilaterally change U.S. foreign policy positions. In *Nguyen*, a *pro se* plaintiff challenged a U.S. foreign policy that she opposed—the United States' support for Israel's military invasion of the Gaza Strip—and, therefore, a federal district court's intervention would only serve to second-guess the United States' geopolitical position. 2024 WL 1382470, at *1, *4–*5 (N.D. Cal. Apr. 1, 2024). And in *Mobarez*, Yemeni-American plaintiffs asked then-District Judge Ketanji Brown-Jackson to reverse the Executive Branch's purported “decision to refrain from using military force” and order the U.S. to evacuate them from Yemen amid growing turmoil. 187 F. Supp. 3d 85, 93 (D.D.C. 2016). The plaintiffs' claims in *Nguyen* and *Mobarez* were indistinguishable from larger geopolitical judgments that are unquestionably, by the Constitution's text, committed to the political branches of U.S. government. Here, by contrast, Dr. Boulos has not challenged any U.S. geopolitical decision or asked the Court to order the U.S. government to redirect military or diplomatic resources. Rather, he only raises *individual* constitutional rights claims based on a U.S. government determination *specific to him* that has led to his *personal* detention. In fact, this is precisely the type of case that Judge Jackson contemplated would be justiciable in *Mobarez*: a case hinging on “purely legal issues such as whether the government had legal authority to act” and “merely task[s] [the Court] with the ‘familiar judicial exercise’” of determining “whether [Dr. Boulos' detention] is constitutional.” 187 F. Supp. 3d at 91–92 (citations omitted).

Respondents also failed to show that the Court lacks manageable standards for evaluating the evidentiary sufficiency of the Rubio Memorandum. Respondents suggest that “there is simply no manageable standard on what constitutes ‘potentially serious adverse foreign policy consequences,’” claiming that the Court would effectively have to “interfere with the Executive's recognized power to ‘expel or exclude aliens’” to adjudicate this habeas action. Dkt. No. 48 at 11–12. Quite the contrary. Courts routinely apply procedural due process in immigration detention cases, assessing whether evidence used to deprive an individual of their liberty must be “probative and its admission . . . fundamentally fair.” *Tun v. Gonzales*, 485 F.3d 1014, 1026 (8th Cir. 2007)

(quoting *Nyama v. Ashcroft*, 357 F.3d 812, 816 (8th Cir. 2004)). In sum, the political question doctrine does not bar the Court from adjudicating this habeas action.

III. Respondents' APA violations are properly before this Court.

Respondents argue that Dr. Boulos' APA claims are not properly before this Court and that Dr. Boulos cannot challenge Secretary Rubio's determination under the APA. These arguments are meritless and fail for several reasons.

First, as discussed, Dr. Boulos' claims fall squarely within habeas jurisdiction because he challenges the legality of his detention and seeks his release. Indeed, this Court and numerous federal courts have described the writ of habeas corpus as the exclusive vehicle by which to challenge the lawfulness of one's detention. *See, e.g., Mahmud v. Sessions*, 2017 WL 11696899, at *1 (S.D. Fla. Mar. 27, 2017) ("A writ of habeas corpus *must* be filed pursuant to 28 U.S.C. § 2241 when a petitioner is challenging the execution of his sentence, rather than the validity of the underlying conviction." (emphasis added)).⁴ The habeas statute itself is on its face capacious enough for APA claims: 28 U.S.C. § 2241(c)(3) provides that "[t]he writ of habeas corpus shall not extend to a prisoner unless . . . he is in custody in violation of the Constitution *or laws* or treaties of the United States" (emphasis added). Therefore, where an APA violation forms a basis for the unlawful detention, the APA claim is properly set forth in a habeas petition—as this District has affirmed. *Jeanty v. Bulger*, 204 F. Supp. 2d 1366, 1383 (S.D. Fla. 2002) ("The court may address this [APA] claim under habeas jurisdiction because if the APA required notice-and-comment rulemaking for the policy pursuant to which [p]etitioners were held, their detention could be 'in violation of . . . the laws . . . of the United States.' 28 U.S.C. § 2241(c)(3)"); *see also Wright v. Haynes*, 410 F. App'x 262, 264 (11th Cir. 2011) (noting that "federal courts have chosen to consider APA claims brought in support of a § 2241 habeas petition"). Here, Dr. Boulos raises APA violations because they make his detention unlawful. The Secretary of State's failure to follow the substantive and procedural requirements for issuing a determination under 8 U.S.C. § 1227(a)(4)(C)(i) and Respondents' application of an ultra vires regulation requiring mandatory

⁴ *See also Preiser v. Rodriguez*, 411 U.S. 475, 486 (1973) (characterizing habeas as the "specific instrument to obtain release" from unlawful confinement); *Valenti v. Clark*, 83 F. Supp. 167, 168 (D.D.C. 1949) (explaining that even when a person challenges their confinement as violative of the APA, the "sole remedy is by way of a petition for a writ of habeas corpus in the district in which he is being restrained of his liberty.").

detention are violations of the APA that make Dr. Boulos' detention unlawful, warranting the issuance of a Writ of Habeas Corpus.

The cases Respondents invoke to assert that APA violations fall outside this Court's purview are inapposite. *Burnam v. Marberry* held that APA claims challenging the security level under which the petitioner was confined—not the legality of confinement—were improper for habeas review. 313 F. App'x 455 (3d Cir. 2009). *Ndudzi v. Castro* held that when a petitioner asserts both habeas and non-habeas claims, the court will separate the claims or provide notice and an opportunity to cure the deficiency. 2020 WL 3317107, at *2 n.3, *3 (W.D. Tex. June 18, 2020). In *King v. Carlton*, the petitioner challenged the conditions of confinement rather than the legality of the detention and sought monetary relief rather than release from confinement. 2021 WL 1738766, at *2 (S.D. Fla. May 3, 2021). These cases demonstrate that habeas is the vehicle to challenge the lawfulness of detention, not conditions of confinement, and that courts should sever non-habeas claims. In contrast, Dr. Boulos is not raising non-habeas claims or seeking injunctive relief other than release from unlawful detention. His claims are properly rooted in habeas jurisdiction, and this case is not a hybrid or joint action. He cannot be required to pay additional filing fees or file a separate suit. In fact, as noted above, habeas is the exclusive means by which Dr. Boulos can challenge the lawfulness of his detention and seek his release.

Second, the Rubio Memorandum is not an agency action so rooted in agency discretion that it is immune from judicial review. While the APA precludes from judicial review agency action that is “committed to agency discretion by law,” 5 U.S.C. § 701(a)(2), judicial review is the rule, “and nonreviewability is a narrow exception which must be clearly demonstrated.” *Greenwood Utilities Comm'n v. Hodel*, 764 F.2d 1459, 1464 (11th Cir. 1985). Indeed, the exception to judicial review for action committed to agency discretion is limited to “those rare instances where statutes are drawn in such broad terms that in a given case there is no law to apply.” *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971) (citation modified). The INA outlines processes the Secretary of State must follow when making a determination under 8 U.S.C. § 1227(a)(4)(C)(i) that implicates protected speech. 8 U.S.C. § 1182(a)(3)(C)(iii) (exception to deportability for protected speech); *see also Khalil v. Trump*, 784 F. Supp. 3d 705, 718 (D.N.J. 2025), *vacated on other grounds*, *Khalil v. President*, 164 F.4th 259 (3d Cir. 2026) (noting the procedural and substantive aspects that must be met). Courts therefore have a standard by which to judge whether the Secretary's determination comports with the APA:

did the Secretary make the determination himself, report that determination to Congress, and determine that the noncitizen's presence would compromise a *compelling* U.S. foreign policy interest? *See* 8 U.S.C. §§ 1182(a)(3)(C)(iii); 1182(a)(3)(C)(iv); 1227(a)(4)(C)(i).

Secretary Rubio's determination that Dr. Boulos is deportable under 8 U.S.C. § 1227(a)(4)(C)(i) is reviewable under the APA to verify whether Dr. Boulos's detention is unlawful. It is true that the INA delegates the decision-making authority under § 1227(a)(4)(C)(i) to the Secretary of State, but that delegation does not make his decision unreviewable. When the "best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress *subject to constitutional limits*. The court fulfills that role by . . . ensuring the agency has engaged in reasoned decisionmaking." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024) (citation modified). Indeed, far from declining to review Secretary Rubio's actions, the court in *American Association of University Professors v. Rubio*—which Respondents cite for the proposition that the Rubio Determination is unreviewable—held that government officials' actions, including Secretary Rubio's foreign policy determinations, were implemented in "a viewpoint-discriminatory way to chill protected speech" in violation of the First Amendment and the APA. 802 F. Supp. 3d 120, 175, 192 (D. Mass. 2025).⁵

⁵ Even if this Court agreed with Respondents that the Rubio Memorandum is not reviewable under the APA, Dr. Boulos raises additional APA violations distinct from the Memorandum, including that Respondents are subjecting him to unlawful detention pursuant to a regulation, 8 C.F.R. § 1003.19(h)(2)(i), that is *ultra vires* to detention provisions in the INA.

Dated: February 17, 2026

Respectfully Submitted,

/s/ Shane Grannum

BARBARA R. LLANES

Florida Bar No. 1032727

bllanes@gsgpa.com

SHANE GRANNUM

Florida Bar No. 1055050

sgrannum@gsgpa.com

GELBER SCHACHTER & GREENBERG, P.A.

One Southeast Third Avenue, Suite 2600

Miami, Florida 33131

Telephone: (305) 728-0950

Facsimile: (305) 728-0951

E-service: efilings@gsgpa.com

PATRICK TAUREL *

ptaurel@grossmanyoun.com

KELLY CATHERINE WALKER

Florida Bar No. 1048822

cwalker@grossmanyoun.com

GROSSMAN YOUNG & HAMMOND

4922 Fairmont Avenue, Suite 200

Bethesda, MD 20814

Telephone: (240) 403-0913

Facsimile: (240) 363-0735

* Admitted *pro hac vice*

Counsel for Petitioner Pierre Reginald Boulos