No. 26-530

IN THE

Supreme Court of the United States

MAHMOUD KHALIL,

Petitioner,

v.

DONALD J. TRUMP, PRESIDENT
OF THE UNITED STATES, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF FREE SPEECH FOR PEOPLE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER AND REVERSAL

SUPARNA REDDY
Counsel of Record
JOHN BONIFAZ
BEN CLEMENTS
COURTNEY HOSTETLER
FREE SPEECH FOR PEOPLE
28 South Main Street,
Suite 200
Sharon, MA 02067
(617) 244-0234
sreddy@freespeechforpeople.org

Counsel for Amicus Curiae

TABLE OF CONTENTS

Page

TABLE OF CONTENTS. i

TABLE OF CITED AUTHORITIES iii

INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 1

ARGUMENT. 3

I. The Framers wrote the writ of habeas corpus into the Constitution to protect individual rights and our democratic system against arbitrary abuses of power 3

II. Habeas corpus is a critical safeguard to protecting individuals from government abuse 8

A. Habeas corpus and due process are essential and protected rights for immigrants. 8

B. Habeas corpus is also an essential backstop for protecting individual liberties, including First Amendment rights. 9

C. Our immigration court system fails to provide sufficient safeguards against arbitrary detention 12

Table of Contents

Page

III. Foreclosing the writ of habeas corpus will empower a broader attack on free speech and dissent 18

CONCLUSION 23

TABLE OF CITED AUTHORITIES

Page

Cases

A.A.R.P. v. Trump,
605 U.S. 91 (2025). 8-9

Am. Ass'n of Univ. Professors v. Rubio,
802 F. Supp. 3d 120 (D. Mass. 2025),
judgment entered, No. 25-cv-10685-WGY,
2026 WL 524753 (D. Mass. Jan. 22, 2026),
appeal docketed, No. 26-1141
(1st Cir. Feb. 19, 2026) 11, 12

Benham v. City of Charlotte,
635 F.3d 129 (4th Cir. 2011). 11

Boumediene v. Bush,
553 U.S. 723 (2008). 3, 4, 8, 9, 14

Bridges v. Wixon,
326 U.S. 135 (1945). 8-10

Brown v. Kemp,
86 F.4th 745 (7th Cir. 2023) 11

Dep't of Homeland Sec. v. Thuraissigiam,
591 U.S. 103 (2020). 9

Elrod v. Burns,
427 U.S. 347 (1976) 10

Cited Authorities

Page

Khalil v. Joyce,
780 F. Supp. 3d 476 (D.N.J. 2025),
motion to certify appeal denied,
No. 25-cv-01963 (MEF) (MAH), 2025 WL 1262349
(D.N.J. May 1, 2025), and *vacated and remanded sub nom. Khalil v. President, United States*,
164 F.4th 259 (3d Cir. 2026). 11

Khalil v. President, U.S.,
164 F.4th 259 (3d Cir. 2026). 13

Kwong Hai Chew v. Colding,
344 U.S. 590 (1953). 8, 9

Libertarian Party of L.A. v. Bowen,
709 F.3d 867 (9th Cir. 2013). 11

Make the Road N.Y. v. Mullin,
No. 25-5320 (D.C. Cir. docketed Sep. 5, 2025) 14

Mathews v. Diaz,
426 U.S. 67 (1976). 8, 9

NAACP v. Button,
371 U.S. 415 (1963). 9, 11, 21

Oestereich v. Selective Serv. Sys. Local Bd. No. 11,
393 U.S. 233 (1968). 10

Plyler v. Doe,
457 U.S. 202 (1982). 8

Cited Authorities

Page

Porter v. Martinez,
68 F.4th 429 (9th Cir. 2023). 11

Preiser v. Rodriguez,
411 U.S. 475 (1973).. 3

Rasul v. Bush,
542 U.S. 466 (2004). 3

Rhoney v. Barbosa da Cunha,
No. 26-104, 2026 WL 2942994 (U.S. Oct. 1, 2026)
(cert. granted). 15

Stanford Daily Publ'g Corp. v. Rubio,
No. 25-cv-06618-NW (N.D. Cal. Aug. 28, 2026),
Dkt. No. 108, *appeal filed* 11

Trump v. J. G. G.,
604 U.S. 670 (2025). 8, 9

Virginia v. American Booksellers Ass'n,
484 U.S. 383 (1988). 11

Yick Wo v. Hopkins,
118 U.S. 356 (1886). 8

Zadvydas v. Davis,
533 U.S. 678 (2001). 8, 9

Cited Authorities

Page

Constitutional Provisions

U.S. Const. art. I, § 9, cl. 2. 3

Statutes

28 U.S.C. § 2241(c)(3). 9

Regulations

Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139 (Jan. 24, 2025). 14

Determination: Foreign Affairs Functions of the United States, 90 Fed. Reg. 12200 (Mar. 14, 2025). 21

Exec. Order No. 14159, *Protecting the American People Against Invasion*, 90 Fed. Reg. 8443 (Jan. 29, 2025). 14

Other Authorities

"You're Only Getting Out Deported or Dead": Abusive US Immigration Detention at Ft. Bliss, Hum. Rts. Watch (July 15, 2026). 16

1 *Journals of the Continental Congress* 1774–1789. 6

1 William Blackstone, *Commentaries*. 4, 5, 10

Cited Authorities

Page

3 *Debates in the Several State Conventions on the Adoption of the Federal Constitution* (Jonathan Elliot ed., 2d ed., Philadelphia, J.B. Lippincott, 1859). 8

5 *Debates on the Adoption of the Federal Constitution in the Convention Held at Philadelphia in 1787* (Jonathan Elliot ed., Philadelphia, J.B. Lippincott, 1845). 8

Aala Abdullahi & Geoff Hing, *ICE Detained Them, and Then They Vanished*, Marshall Project (June 1, 2026) 17

Aaron Blake, *The Trump Team's Disdain for Judicial Orders Is Blowing Up in Court. Accountability Has Been Slow in Coming,* CNN (Oct. 19, 2026) 20

Akash Pillai, Drishti Pillai & Samantha Artiga, *Deaths and Health Care Issues in ICE Detention Centers Under the Second Trump Administration*, KFF (Mar. 25, 2026). 16

Alan Clarke, *Habeas Corpus: The Historical Debate*, 14 N.Y.L. Sch. J. Hum. Rts. 375 (1998). 4

Am. C.L. Union & Amnesty Int'l USA, *Student Speech Under Attack: Suppression of Pro-Palestine Speech and Dissent on Campus* (2026) 22

Cited Authorities

Page

Amanda L. Tyler, *Habeas Corpus and the American Revolution*, 103 Cal. L. Rev. 635 (2015). 6, 7

Anthony R. Enriquez, *Structural Due Process in Immigration Detention*, 21 CUNY L. Rev. 35 (2015). 11-12

Ben Wider & Shirsho Dasgupta, *Hundreds of Alligator Alcatraz Detainees Drop Off the Grid*, Miami Herald (Sep. 16, 2025) 17

Bess Levin, *Trump Suggests He's Open to Deporting Musk*, Vanity Fair (July 1, 2025). 19

Brandon Drenon, *What We Know About the Criminal Investigation into US Congresswoman Ilhan Omar*, BBC (Oct. 15, 2026) 19

Chris Cameron, *Trump Escalates Attacks on Mamdani*, N.Y. Times (July 1, 2025) 19

CNN, *Mahmoud Khalil Describes Conditions at ICE Detention Facility* (YouTube, July 11, 2025) . .16

Donald J. Trump (@realDonaldTrump), Truth Social (May 10, 2025, 1:05 PM) 18

Page

Elizabeth Jordan, *Constitutionally Adequate Immigration Bond Procedures*, Harv. L. Rev. (July 20, 2026) 15

Eric Levenson & Gloria Pazmino, *Why ICE Is Really Moving Detainees Over a Thousand Miles*, CNN (Apr. 10, 2025) 17

Humanitarian or Significant Public Benefit Parole for Aliens Outside the United States, U.S. Citizenship & Immig. Servs. 16

Jack Landau, *Magna Carta Turns 800*, Or. St. B. Bull., June 2025. 4

Jake Offenhartz, *Pressed for Evidence Against Mahmoud Khalil, Government Cites Its Power to Deport People for Beliefs*, Associated Press News (Apr. 10, 2025) 21

Julia Ingram, *More People Booked into ICE Detention in June Than in Any Month Since Crackdown Began*, CBS (July 22, 2026) 15

Letter from Thomas Jefferson to James Madison (Dec. 20, 1787), Founders Online, Nat'l Archives 5

Letter from Thomas Jefferson to James Madison (July 31, 1788), Founders Online, Nat'l Archives 6

Page

Maria Sacchetti & Carol D. Leonnig, *ICE Declares Millions of Undocumented Immigrants Ineligible for Bond Hearings*, Wash. Post (July 15, 2025) . . 15, 16

Maria Sacchetti, *Immigrants Are Giving Up Their Cases and Leaving the U.S. in Soaring Numbers*, Wash. Post (May 8, 2026) 16

Matthew Purdy & Alan Feuer, *How Trump Has Cracked Down on Dissent Since the Killing of Charlie Kirk*, N.Y. Times (Sep. 22, 2026) 19

Meg Satterthwaite & Sang-Min Kim, *Key Trump Deportation Strategies: Removing, Replacing, and Pressuring Immigration Judges*, Just Security (July 17, 2026) 15

Neil Douglas McFeeley, *The Historical Development of Habeas Corpus*, 30 Sw. L.J. 585 (1976) 4, 7

Nicole Foy et al., *506 U.S. Citizens Detained*, ProPublica (Oct. 6, 2026) 20

Niha Masih, *Inside the Little-Used Foreign Policy Provision Cited for Student Deportations*, Wash. Post (Apr. 29, 2025) 21

Order, *Khalil v. Trump*, No. 25-cv-01963 (MEF) (MAH) (D.N.J. June 20, 2025), ECF No. 316 13

Page

Paul M. Pruitt, Jr., *King John, Magna Carta and the Origins of English Legal Rights*, 76 Ala. Law. 116 (2015) 4

Ray Sanchez, *"Rules Aren't Clear Anymore," Trump Crackdown on Student Protesters*, CNN (Mar. 18, 2025), https://www.cnn.com/2025/03/16/us/mahmoud-khalil-columbia-protests-free-speech. 22

Rubio Issues Broad Declaration on Foreign Affairs Exception of the Administrative Procedure Act, Econ. Pol'y Inst. (Mar. 19, 2025) 21

Scott Neuman, *DHS Secretary Misstates Meaning of Habeas Corpus Under Senate Scrutiny*, NPR (May 20, 2025) 20

The Federalist No. 84 (Alexander Hamilton). 5

Tonya Mosley, *Mahmoud Khalil on His Detention by ICE: 'It Is a Stain on the U.S. Consciousness,'* NPR (Sep. 29, 2026) 13

Zolan Kanno-Youngs & Hamed Aleaziz, *Inside Trump's Crackdown on Dissent*, N.Y. Times (Mar. 12, 2025). 19

INTEREST OF AMICUS CURIAE[1]

Amicus **Free Speech For People (FSFP)** is a national, non-partisan, nonprofit public interest organization dedicated to protecting our country's core democratic principles and our Constitution. FSFP has worked to protect the opportunity for equal and meaningful civic participation by championing freedom of speech for individuals, challenging big money in politics, confronting corruption in government, fighting for free and fair elections, and advancing a new jurisprudence grounded in the promises of political equality and democratic self-government. FSFP engages in legal advocacy, public education, and organizing in communities across the country. The organization has more than one million supporters nationwide.

SUMMARY OF ARGUMENT

Our Framers understood the writ of habeas corpus—which demands that any government of the people must curtail its authority to carry out arbitrary detentions—to be a central component to the functioning of our democracy, one that serves as a necessary and important protection against government abuse. The prohibitions against illegal imprisonment in Great Britain and the experiences of the founding generation with habeas corpus before and during the American Revolution shaped the

1. Pursuant to Rule 37.6, amicus affirms that no counsel for a party authored this brief in whole or in part, and that no person other than amicus or its counsel contributed money intended to fund preparing or submitting this brief. Pursuant to Rule 37.2, amicus affirms that counsel for all parties have been given timely notification of amicus's intent to file this brief.

decision to enshrine habeas corpus in the Constitution. Since our country's founding, habeas corpus, in tandem with due process rights, has served as a critical protection of individual rights and safeguard from government abuse through arbitrary detention, particularly for immigrants.

The writ of habeas corpus remains an invaluable and irreplaceable safety valve that should not be unconstitutionally restricted, as such restrictions undermine our democracy and the rights of those who live here. To justify the unjust detention and abuse of process visited upon Mahmoud Khalil and others because they exercised their First Amendment rights, the government seeks to restrict federal district courts' jurisdiction over habeas corpus writs for immigration detainees, thereby limiting immigrants' access to relief from unjust detention, leaving them vulnerable to extended periods of confinement, and curtailing access to already-limited due process rights. Trial courts have long played an essential role in the administration of the writ. Without access to the courts, that protection crumbles. The government would be able to imprison individuals for their speech and associations without meaningful court oversight. Habeas corpus developed to specifically protect against this type of government abuse.

Fundamental rights must extend to immigrants to ensure their full effectuation for all Americans. Absent correction by this Court, the current circuit split creates regional variation in access to habeas—an outcome antithetical to our constitutional principles of equal protection and due process. We urge the Court to grant certiorari.

ARGUMENT

I. The Framers wrote the writ of habeas corpus into the Constitution to protect individual rights and our democratic system against arbitrary abuses of power.

The Framers viewed the writ of habeas corpus as an essential tool for protecting individuals from government action against their rights, authorizing its limitation only in the most serious of circumstances: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2.

This was not merely philosophical. The Suspension Clause was written by men who directly experienced the tyranny of British colonial rule, the suspension of habeas, and the dangers of a government authorized to detain persons without reason. This history is instructive to the current case, as "protection for the privilege of habeas corpus was one of the few safeguards of liberty specified in the Constitution that, at the outset, had no Bill of Rights. In the system conceived by the Framers the writ had a centrality that must inform proper interpretation of the Suspension Clause." *Boumediene v. Bush*, 553 U.S. 723, 739 (2008).

At the Constitution's drafting, the concept of a right against unjustified detention was already centuries old in England. *Rasul v. Bush*, 542 U.S. 466, 473–74 (2004) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973)). Historically, attempts to curtail the right were often an initial step towards increasingly dangerous abuses of

power. In 1215, when the unpopular King John refused to rule in accordance with the custom and law of the time, the rebel barons deemed protection for free men against illegal imprisonment important enough to include it in the Magna Carta. Paul M. Pruitt, Jr., *King John, Magna Carta and the Origins of English Legal Rights*, 76 Ala. Law. 116, 121 (2015). And though the Magna Carta provided this guarantee in principle, it was King James I and King Charles I's attempts in the 1600s to usurp parliamentary power and imprison political opponents without trial that inspired Parliament to reassert the principles found in Magna Carta by codifying a distinct process to effectuate habeas corpus as a statutory right. *Boumediene*, 553 U.S. at 740–42 ("[G]radually the writ of habeas corpus became the means by which the promise of Magna Carta was fulfilled."); Jack Landau, *Magna Carta Turns 800*, Or. St. B. Bull., June 2025, at 20; Neil Douglas McFeeley, *The Historical Development of Habeas Corpus*, 30 Sw. L.J. 585, 588–89 (1976); Alan Clarke, *Habeas Corpus: The Historical Debate*, 14 N.Y.L. Sch. J. Hum. Rts. 375, 382–83 (1998). Habeas corpus eventually became one of the most important privileges associated with English liberties and an established part of English common law that was ultimately inherited by the American legal system. McFeeley, *supra*, at 590.

The writ, and courts capable of enforcing the writ, were necessary for preserving the basic right of freedom from unjust or arbitrary imprisonment. The writ has two fundamental and equally important purposes, as underscored by Blackstone in his *Commentaries*, explaining first that this right was "of great importance to the public [to preserve] this personal liberty: for if once it were left in the power of any… to imprison arbitrarily

… there would soon be an end of all other rights and immunities." 1 William Blackstone, *Commentaries* *136. He then emphasized that illegal imprisonment could empower government abuse:

> To bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole kingdom. But confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten; is a less public, a less striking, and therefore a more dangerous engine of arbitrary government.

Id.

The Framers understood this. As Alexander Hamilton explained, both *ex post facto* laws and "the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny." *The Federalist No. 84* (Alexander Hamilton) (also quoting Blackstone, *Commentaries*). Thomas Jefferson, in letters to James Madison backing the bill of rights, advocated for the writ to retain "eternal and unremitting force," and argued that suspension of habeas corpus should be rare, if not nearly impossible.[2] Jefferson highlighted the false pretenses behind such suspensions in British history,

2. Letter from Thomas Jefferson to James Madison (Dec. 20, 1787), Founders Online, Nat'l Archives, https://founders.archives.gov/documents/Jefferson/01-12-02-0454 (last visited Nov. 18, 2026).

involving "real treasons wherein the parties might as well have been charged at once, or sham-plots where it was shameful they ever should have been suspected."[3]

As British subjects, the American colonists had long claimed to possess "all the rights, liberties, and immunities of free and natural-born subjects, within the realm of England." Amanda L. Tyler, *Habeas Corpus and the American Revolution*, 103 Cal. L. Rev. 635, 645 (2015). However, the Crown denied colonists outside of England the privileges of the English Habeas Corpus Act. Colonial governors often exercised more expansive detention powers over the colonists than would be permitted within England—a major source of dissatisfaction for American colonists prior to the Revolutionary War. *Id.* at 647. In its 1774 plea to the people of Great Britain, the Continental Congress specifically cited exclusion from the Act as proof that Great Britain was an arbitrary and unjust government to the American colonists:

> [English colonial settlers] are now the subjects of an arbitrary government, deprived of trial by jury, and when imprisoned cannot claim the benefit of the habeas corpus Act, that great bulwark and palladium of English liberty.

1 *Journals of the Continental Congress* 1774–1789, at 82, 88.

---

3. Letter from Thomas Jefferson to James Madison (July 31, 1788), Founders Online, Nat'l Archives, https://founders.archives.gov/documents/Jefferson/01-13-02-0335 (last visited Nov. 18, 2026).

In 1777, during the Revolutionary War, Parliament formally suspended habeas corpus for Americans. Tyler, *supra*, at 649–660, 673–74. The British government imprisoned nearly three thousand Americans in England during the war indefinitely without trial. *Id.* at 675. In one of the most prominent cases, Henry Laurens of South Carolina, one of the presidents of the Continental Congress, was captured while on a diplomatic mission to the Netherlands and imprisoned in the Tower of London for fifteen months without free access to pen and ink, without protection of the writ, and without being brought to trial. *Id.* at 683–687.

These experiences shaped how the Framers approached the writ and its connection to tyranny. Though the writ protected against arbitrary government abuse, its suspension—such as when the British government strategically defined Americans as ineligible outsiders—allowed abusive detention to punish dissent.

When the Framers came together to draft the Constitution, "they had in mind the history of royal imprisonment of Great Britain and the legacy of executive imprisonment in the colonies." McFeeley, *supra*, at 594. They were well aware that "[c]olonial governors and councils had attempted to enforce obedience by detaining persons without judicial proceedings, and . . . remembered the efficacy of the common law writ in resisting these illegal detentions." *Id.* at 594.

Therefore, the Framers incorporated the habeas corpus clause into the Constitution "with little or no debate or dissent." *Id.* at 595. The only debate before ratification was whether the government should hold *any* power to

suspend the writ. 5 *Debates on the Adoption of the Federal Constitution in the Convention Held at Philadelphia in 1787* 484 (Jonathan Elliot ed., Philadelphia, J.B. Lippincott, 1845). Several Framers argued that the writ was so important as to be "inviolate," and ultimately its suspension was authorized with strict limitations. *Id.* (quoting John Rutledge); *Boumediene*, 553 U.S. at 743–44, quoting 3 *Debates in the Several State Conventions on the Adoption of the Federal Constitution* 460–64 (Jonathan Elliot ed., 2d ed., Philadelphia, J.B. Lippincott, 1859).

II. Habeas corpus is a critical safeguard to protecting individuals from government abuse.

A. Habeas corpus and due process are essential and protected rights for immigrants.

Immigrants and other non-citizens in the United States have long been entitled to habeas corpus and due process rights. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("The Fifth Amendment, as well as the Fourteenth Amendment, protects [all aliens] from deprivation of life, liberty, or property without due process of law."); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 597 n. 5 (1953), quoting *Bridges v. Wixon*, 326 U.S. 135, 161 (1945) (Murphy, J., concurring opinion); *Plyler v. Doe*, 457 U.S. 202, 211–12 (1982) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)). Immigrants retain the right to habeas corpus in the context of immigration detention. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025); *A.A.R.P. v. Trump*, 605 U.S.

91, 94–95 (2025). The jurisdiction of any federal court to hear such cases comes from 28 U.S.C. § 2241(c)(3), which authorizes any person to claim in federal court that they are being detained in violation of the Constitution or federal law. *Zadvydas*, 533 U.S. at 687. Indeed, most pivotal immigration cases have arisen from petitioners filing writs of habeas corpus, underscoring the vital role of habeas in immigration contexts. *See, e.g., Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020); *Kwong Hai Chew,* 344 U.S. at 595; *Bridges,* 326 U.S. at 140; *Zadvydas*, 533 U.S. at 684–85; *A.A.R.P.,* 605 U.S. at 95; *see also Trump v. J.G.G.*, 604 U.S. at 672.

Though the specific "process" afforded to meet the constitutional requirement for due process in immigration contexts is permitted to differ from the standards of due process afforded to citizens, *Mathews*, 426 U.S. at 79–80, this has never been allowed to entirely eclipse the immigrant's right to habeas review, particularly where pre-hearing detention is at stake. Indeed, this Court has cautioned that the need for robust habeas protection is higher when detention is through executive action, before hearing, review, or trial. *Boumediene*, 553 U.S. at 783.

B. Habeas corpus is also an essential backstop for protecting individual liberties, including First Amendment rights.

First Amendment freedoms are "delicate and vulnerable, as well as supremely precious in our society." *NAACP v. Button*, 371 U.S. 415, 433 (1963). Immigrants and non-citizens in the country share in these First Amendment rights, *see Kwong Hai Chew,* 344 U.S. at 598, but these rights have no substance if the government is

allowed to abusively and arbitrarily detain and imprison people for exercising these rights of speech and association. *See also,* Blackstone, *Commentaries* *136.

For example, in *Bridges*, the Supreme Court addressed the immigration habeas petition of an immigrant and union advocate for alleged affiliation with the Communist party. 326 U.S. at 137–38. In that case, though the majority opinion did not address constitutional issues, Justice Murphy's concurring opinion pointed out that the threat of immigration consequences would eviscerate any façade of rights an immigrant might expect: "The alien would be fully clothed with his constitutional rights when defending himself in a court of law, but he would be stripped of those rights when deportation officials encircle him. I cannot agree that the framers of the Constitution meant to make such an empty mockery of human freedom." *Id.* at 162.

Immigrants are uniquely vulnerable to arbitrary detention because of the power the executive branch has over immigration determinations. Once detained, an individual's freedom of speech—their ability to share their views with the world or advocate for causes they believe in—is immediately curtailed for the duration of their detention. The harm is irreparable; even if the imprisoned speaker is freed, they can never regain the lost opportunities to speak that they otherwise could have engaged in but for their detention. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Therefore, in free speech challenges to detention, such as this, the petitioner must, to be assured of his constitutional rights, be able to raise and adjudicate habeas corpus. *See Oestereich v. Selective Serv. Sys. Local Bd. No. 11*, 393 U.S. 233 (1968) (allowing an anti-war protestor to proceed with litigation to stop his

forced enlistment despite a statute barring judicial review before induction); *see also Khalil v. Joyce*, 780 F. Supp. 3d 476, 533–38 (D.N.J. 2025), *motion to certify appeal denied*, No. 25-cv-01963 (MEF) (MAH), 2025 WL 1262349 (D.N.J. May 1, 2025), and *vacated and remanded sub nom. Khalil v. President, United States*, 164 F.4th 259 (3d Cir. 2026) (explaining at length that "the Supreme Court has held over and over again, in numerous contexts, that meaningful review of First Amendment claims generally means rapid, prioritized review").

Further, without the protection of the writ, speakers will self-censor knowing that in the absence of court intervention, their speech or their association might result in indeterminate imprisonment. *Button*, 371 U.S. at 433; *see also Benham v. City of Charlotte*, 635 F.3d 129, 135 (4th Cir. 2011); *Porter v. Martinez*, 68 F.4th 429, 437 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 1007 (2024) (quoting *Libertarian Party of L.A. v. Bowen*, 709 F.3d 867, 870 (9th Cir. 2013)); *Brown v. Kemp*, 86 F.4th 745, 761 (7th Cir. 2023) (quoting *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 393 (1988)). Via undisputed stipulated facts submitted to a federal district court in a separate matter, the government has admitted that its policies have caused self-censorship. *Stanford Daily Publ'g Corp. v. Rubio*, No. 25-cv-06618-NW, slip op. at 14–15, 17 (N.D. Cal. Aug. 28, 2026), Dkt. No. 108, *appeal filed* (stipulating that Stanford students and newspaper have self-censored due to detention and deportation policies). Two federal district courts have found that the government's immigration policies and tactics—like those at issue in this case—broadly chill the freedom of speech in violation of the First Amendment. *Id.* at 68–76; *Am. Ass'n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120, 181–89 (D. Mass. 2025),

judgment entered, No. 25-cv-10685-WGY, 2026 WL 524753 (D. Mass. Jan. 22, 2026), *appeal docketed,* No. 26-1141 (1st Cir. Feb. 19, 2026). Indeed, these policies' true purpose is to chill speech, as Judge Young explained:

> It was never the Secretaries' immediate intention to deport all pro-Palestinian non-citizens for that obvious First Amendment violation, that could have raised a major outcry. Rather, the intent of the Secretaries was more invidious—to target a few for speaking out and then use the full rigor of the Immigration and Nationality Act (in ways it had never been used before) to have them publicly deported with the goal of tamping down pro-Palestinian student protests and terrorizing similarly situated non-citizen (and other) pro-Palestinians into silence because their views were unwelcome.
>
> The Secretaries have succeeded, apparently well beyond their immediate intentions.

Id. at 172–73.

C. Our immigration court system fails to provide sufficient safeguards against arbitrary detention.

Though the Supreme Court has recognized that immigrants have many of the same inalienable rights as citizens, our immigration courts fall inexcusably short of providing sufficient due process to immigrants, particularly with regard to claims arising from arbitrary detention or abusive conditions of confinement. *See* Anthony

R. Enriquez, *Structural Due Process in Immigration Detention*, 21 CUNY L. Rev. 35, 43–48 (2015).

This case exemplifies how the immigration courts failed to prevent the arbitrary detention of an immigrant for his exercise of free speech and association rights. Solely because of Mr. Khalil's viewpoints and outspoken advocacy, the government detained Mr. Khalil more than 1,000 miles from home and manufactured justifications to revoke his lawful permanent residency. *Khalil v. President, U.S.*, 164 F.4th 259, 266 (3d Cir. 2026). Mr. Khalil was imprisoned for 104 days, subjected to severe limitations on his freedom of speech, and forced to miss the birth of his child.[4] He was released only because he filed a writ of habeas corpus and sought the intervention of a federal court. Order, *Khalil v. Trump*, No. 25-cv-01963 (MEF) (MAH) (D.N.J. June 20, 2025), ECF No. 316. The government now argues that it should be given the authority to detain him indefinitely with no recourse to habeas prior to resolution of his immigration court removal proceedings. If the government had its way, Mr. Khalil would still be detained, as his removal determination remains unresolved more than eighteen months later with a pending appeal.

Mr. Khalil's case is no outlier. Many of the high-profile detainees of this Administration are individuals who exercised their First Amendment rights of speech and association, and the Administration wants to keep them

4. Tonya Mosley, *Mahmoud Khalil on His Detention by ICE: 'It Is a Stain on the U.S. Consciousness,'* NPR (Sep. 29, 2026), https://www.npr.org/2026/09/29/nx-s1-5984548/mahmoud-khalil-columbia-ice-palestine.

imprisoned while hunting for pretenses to turn those acts of speech and association into offenses warranting removal.[5]

Immigration review processes are not an adequate substitute for habeas corpus review by federal courts, *see Boumediene*, 553 U.S. at 792. And immigrant detainees are now denied even the barebones due process of usual immigration court proceedings. The Administration is attempting to bypass immigration judges and courts by expanding the application of expedited removal to more people and by pushing more stipulated removals to coerce immigrants into waiving their rights to a court hearing. Exec. Order No. 14159, Protecting the American People Against Invasion, 90 Fed. Reg. 8443 (Jan. 29, 2025); Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139 (Jan. 24, 2025); *see also Make the Road N.Y. v. Mullin*, No. 25-5320 (D.C. Cir. docketed Sep. 5, 2025). The Trump administration has also intentionally created a "climate of fear" among immigration judges by:

> …[T]he arbitrary removal of at least 130 immigration judges, the replacement of dismissed judges with newly recruited adjudicators dubbed 'deportation judges' and with temporary judges drawn from the ranks of military lawyers, and the obstruction of meaningful, individualized adjudication by subjecting judges to threats of discipline and difficult working conditions if they don't

5. This includes the publicly reported cases involving Badar Khan Suri, Mohsen Mahdawi, Rümeysa Öztürk, Yunseo Chung, and Mohammed Hoque.

contribute to the administration's deportation-heavy policy.[6]

The Trump administration has forced hundreds of thousands of people into immigration detention as immigration agents strive to hit high arrest targets.[7] Bond hearings, already imperfect vehicles for ensuring just detention, have been reduced or revoked entirely, giving many immigrants no recourse to challenge their detention other than federal district court.[8] This leads to indefinite pre-hearing detention for many immigrants, for months and sometimes years.[9] Immigrants can

6. Meg Satterthwaite & Sang-Min Kim, *Key Trump Deportation Strategies: Removing, Replacing, and Pressuring Immigration Judges*, Just Security (July 17, 2026), https://www.justsecurity.org/147642/trump-deportation-immigration-judges (noting also that this administration is obstructing "meaningful, individualized adjudication by subjecting judges to threats of discipline and difficult working conditions if they don't contribute to the administration's deportation-heavy policy").

7. Julia Ingram, *More People Booked into ICE Detention in June Than in Any Month Since Crackdown Began*, CBS (July 22, 2026), https://www.cbsnews.com/news/more-people-booked-into-ice-detention-june-2026.

8. Elizabeth Jordan, *Constitutionally Adequate Immigration Bond Procedures*, Harv. L. Rev. (July 20, 2026), https://harvardlawreview.org/blog/2026/07/constitutionally-adequate-immigration-bond-procedures. The Court has agreed to hear a case regarding bond hearings. *Rhoney v. Barbosa da Cunha*, No. 26-104, 2026 WL 2942994, at *1 (U.S. Oct. 1, 2026) (cert. granted).

9. Maria Sacchetti & Carol D. Leonnig, *ICE Declares Millions of Undocumented Immigrants Ineligible for Bond Hearings*, Wash. Post (July 15, 2025), https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings.

sometimes be released on parole, but only at the discretion of an immigration officer, not through judicial process.[10] Indefinite detention is intentionally demoralizing to discourage immigrants from filing claims.[11] This strategy is working; the threat of indefinite detention is coercing detainees into abandoning their cases or self-deporting.[12]

Detainees are also subject to inhumane conditions of confinement.[13] Immigrants are detained in far-flung, sometimes dangerous locations, far from legal

---

10. *Humanitarian or Significant Public Benefit Parole for Aliens Outside the United States*, U.S. Citizenship & Immigr. Servs., https://www.uscis.gov/humanitarian/humanitarian_parole (last visited Nov. 18, 2026).

11. Sacchetti & Leonnig, *supra* note 9.

12. Maria Sacchetti, *Immigrants Are Giving Up Their Cases and Leaving the U.S. in Soaring Numbers*, Wash. Post (May 8, 2026), https://www.washingtonpost.com/immigration/2026/05/08/trump-immigration-voluntary-removal-ice-detention.

13. After entering ICE custody, Mr. Khalil was moved over 1,400 miles with shackles on his wrists and ankles; by the time he arrived in Louisiana, his leg was so swollen that he could not walk. CNN, *Mahmoud Khalil Describes Conditions at ICE Detention Facility*, at 1:07 (YouTube, July 11, 2025), https://youtu.be/NyHlHzyhPXg; *see also* Akash Pillai, Drishti Pillai & Samantha Artiga, *Deaths and Health Care Issues in ICE Detention Centers Under the Second Trump Administration*, KFF (Mar. 25, 2026), https://www.kff.org/racial-equity-and-health-policy/deaths-and-health-care-issues-in-ice-detention-centers-under-the-second-trump-administration; *"You're Only Getting Out Deported or Dead": Abusive US Immigration Detention at Ft. Bliss*, Hum. Rts. Watch (July 15, 2026), https://www.hrw.org/report/2026/07/15/youre-only-getting-out-deported-or-dead/abusive-us-immigration-detention-at-ft.

assistance and their communities.[14] They are being moved intentionally and quickly through multiple locations to detention centers in a bid to separate immigrants from their communities and to forum shop, ensuring the detainees' cases are heard by courts more likely to side with the government.[15] In this overburdened system, the detainees inevitably suffer dangerous and life-altering "errors"; instances of mistaken deportations and missing detainees are increasingly common as this administration puts additional pressure on a beleaguered immigration detention system.[16]

Mr. Khalil's detention demonstrates the enduring importance of habeas corpus, both as a tool to protect our fragile individual liberties and to curtail government abuses. With the power of indefinite detention, the government does not need to articulate a constitutional or lawful basis for removal. It merely needs to detain its target—and place vindication, whether through a removal hearing or post-hearing appeal, out of reach of most detainees. Only when detention is subject to rapid court

---

14. Eric Levenson & Gloria Pazmino, *Why ICE Is Really Moving Detainees Over a Thousand Miles*, CNN (Apr. 10, 2025), https://www.cnn.com/2025/04/10/us/immigration-detainees-trump-ice-students-visa.

15. Aala Abdullahi & Geoff Hing, *ICE Detained Them, and Then They Vanished*, Marshall Project (June 1, 2026), https://www.themarshallproject.org/2026/06/01/ice-transparency-immigrants-disappear-transfers.

16. *Id.*; Ben Wider & Shirsho Dasgupta, *Hundreds of Alligator Alcatraz Detainees Drop Off the Grid*, Miami Herald (Sep. 16, 2025), https://www.miamiherald.com/news/local/immigration/article312042943.html.

oversight, and when courts have authority to terminate unlawful or unconstitutional detention, can our country avoid tyranny, arbitrary government, and the collapse of our individual liberties.

III. Foreclosing the writ of habeas corpus will empower a broader attack on free speech and dissent.

If federal district courts are deprived of jurisdiction over immigration-detention-related writs of habeas corpus, no judicial recourse will prevent the abuse of immigration detention to strip non-citizens (or accused non-citizens) of their basic rights. The writ's dual purposes will be at risk: individual liberties will be vulnerable, and abusive, arbitrary government will be freed of a powerful restraint.

President Trump has made it clear that Mr. Khalil's arrest was only the first step in a broader campaign to silence dissent, posting:

> This is the first arrest of many to come. We know there are more students at Columbia and other Universities across the Country who have engaged in pro-terrorist, anti-Semitic, anti-American activity, and the Trump Administration will not tolerate it. … We will find, apprehend, and deport these terrorist sympathizers from our country — never to return again.[17]

17. Donald J. Trump (@realDonaldTrump), Truth Social (May 10, 2025, 1:05 PM), https://truthsocial.com/@realDonaldTrump/posts/114139222625284782.

President Trump also threatened to explore revoking naturalized citizenship when at odds with then-New York City mayoral candidate Zohran Mamdani and businessman Elon Musk.[18] His administration has also weaponized immigration law against Representative Ilhan Omar of Minnesota, conducting invasive searches of her home within weeks of the 2026 election.[19]

The current administration has expressed its intent to criminalize dissent using all the powers of the federal government that can be bent to the president's will.[20] In carrying out their policies, President Trump and senior officials in his administration have displayed either

---

18. Chris Cameron, *Trump Escalates Attacks on Mamdani*, N.Y. Times (July 1, 2025), https://www.nytimes.com/2025/07/01/us/politics/trump-zohran-mamdani.html; Bess Levin, *Trump Suggests He's Open to Deporting Musk*, Vanity Fair (July 1, 2025), https://www.vanityfair.com/news/story/trump-suggests-hes-open-to-deporting-musk-as-musk-threatens-some-kind-of-tbd-nuclear-option.

19. Brandon Drenon, *What We Know About the Criminal Investigation into US Congresswoman Ilhan Omar*, BBC (Oct. 15, 2026), https://www.bbc.com/news/articles/cq98zpk30pd5o.

20. Zolan Kanno-Youngs & Hamed Aleaziz, *Inside Trump's Crackdown on Dissent*, N.Y. Times (Mar. 12, 2025), https://www.nytimes.com/2025/03/12/us/politics/trump-crackdown-dissent.html (quoting a senior administration official stating, "Freedom of speech has limitations."); *see also* Matthew Purdy & Alan Feuer, *How Trump Has Cracked Down on Dissent Since the Killing of Charlie Kirk*, N.Y. Times (Sep. 22, 2026), https://www.nytimes.com/2026/09/22/us/charlie-kirk-trump-free-speech.html.

ignorance of, or disregard for, constitutionally protected rights, due process, and the writ of habeas corpus.[21]

If district courts are barred from hearing habeas petitions in immigration contexts, thousands of people—including U.S. citizens—may have no recourse at all for challenging their unjust pre-hearing detention. Such concerns are not theoretical; ProPublica recently tallied more than 500 cases in which citizens were detained by immigration agents, including at least 36 individuals who were detained for at least a day without access to a lawyer.[22] The writ should protect against this hallmark of arbitrary government: the surreptitious arrest and detention of dissenters.

The government targeted Mr. Khalil because of his speech and abused the executive power and the laws of this country to do so. Nor is he the government's only target. Secretary of State Marco Rubio is arbitrarily and baselessly determining that certain speech by disfavored non-citizen academics is part of "terrorist" activity or

---

21. *See* Aaron Blake, *The Trump Team's Disdain for Judicial Orders Is Blowing Up in Court. Accountability Has Been Slow in Coming,* CNN (Oct. 19, 2026), https://www.cnn.com/2026/10/19/politics/trump-flouting-court-orders (noting that in addition to 250 examples of noncompliance judges have found related to immigration cases, the administration has violated court orders in at least 31 lawsuits over 15 months); Scott Neuman, *DHS Secretary Misstates Meaning of Habeas Corpus Under Senate Scrutiny*, NPR (May 20, 2025), https://www.npr.org/2025/05/20/nx-s1-5405144/habeas-corpus-noem-dhs-senate.

22. Nicole Foy et al., *506 U.S. Citizens Detained*, ProPublica (Oct. 6, 2026), https://projects.propublica.org/american-citizens-detained-dhs-civil-rights.

against U.S. foreign policy interests; the government uses these determinations to justify removal proceedings and indefinite detention while proceedings are pending.[23] Secretary Rubio has tried to avoid public scrutiny by exempting these determinations from the notice and comment requirements of the Administrative Procedure Act.[24]

This is precisely the type of abuse that the Framers feared, and the reason they built the writ of habeas corpus into our Constitution. Punishing a single person for their speech creates a cascading chilling effect on others and ultimately on our democratic society as a whole. *See Button*, 371 U.S. at 433. Because of the well-publicized detentions and deportations under the current administration, students and academics, both citizen and non-citizen, have worried about their speech and associations for fear of retribution against themselves and

---

23. Jake Offenhartz, *Pressed for Evidence Against Mahmoud Khalil, Government Cites Its Power to Deport People for Beliefs*, Associated Press News (Apr. 10, 2025), https://apnews.com/article/mahmoud-khalil-columbia-university-trump-c60738368171289ae43177660def8d34 (containing link to Secretary Rubio's determination regarding Mr. Khalil); Niha Masih, *Inside the Little-Used Foreign Policy Provision Cited for Student Deportations*, Wash. Post (Apr. 29, 2025), https://www.washingtonpost.com/immigration/2025/04/29/khalil-mahdawi-deportation-foreign-policy-rubio.

24. *Determination: Foreign Affairs Functions of the United States*, 90 Fed. Reg. 12200 (Mar. 14, 2025); *Rubio Issues Broad Declaration on Foreign Affairs Exception of the Administrative Procedure Act*, Econ. Pol'y Inst. (Mar. 19, 2025), https://www.epi.org/policywatch/rubio-issues-broad-declaration-on-foreign-affairs-exception-of-the-administrative-procedure-act.

their families.[25] This climate of fear, uncertainty, and self-censorship is the antithesis of the liberty that the First Amendment affords to all people in our country.

The government's attempt to strip habeas corpus jurisdiction from the federal district courts directly harms Mr. Khalil and other immigration detainees, but the ultimate impact falls on the fragile liberties held by all those who reside in our country. As long as the principle of habeas corpus stands, it remains a beacon for the rule of law and a bulwark against the whims of any one administration or individual within the government.

---

25. Ray Sanchez, *"Rules Aren't Clear Anymore," Trump Crackdown on Student Protesters,* CNN (Mar. 18, 2025), https://www.cnn.com/2025/03/16/us/mahmoud-khalil-columbia-protests-free-speech; Am. C.L. Union & Amnesty Int'l USA, *Student Speech Under Attack: Suppression of Pro-Palestine Speech and Dissent on Campus* (2026), https://assets.aclu.org/live/uploads/2026/09/Report_CampusProtest-2.pdf.

CONCLUSION

For these reasons, this Court should grant certiorari.

Respectfully submitted,

Suparna Reddy
Counsel of Record
John Bonifaz
Ben Clements
Courtney Hostetler
Free Speech for People
28 South Main Street,
Suite 200
Sharon, MA 02067
(617) 244-0234
sreddy@freespeechforpeople.org

Counsel for Amicus Curiae

November 20, 2026