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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

STANFORD DAILY PUBLISHING CORPS, *et al.*,

Plaintiffs,

vs.

RUBIO, *et al.*,

Defendants.

Case No.: 5:25-cv-06618-NW

MOTION OF *AMICI CURIAE*
IMMIGRATION LAWYERS, LAW
PROFESSORS, AND SCHOLARS FOR
LEAVE TO FILE BRIEF IN SUPPORT OF
PLAINTIFFS

Date: November 19, 2025
Time: 9:00 a.m.
Place: Courtroom 3, 5th Floor

The Honorable Noël Wise

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT the undersigned immigration lawyers, law professors, and
3 scholars, move for leave to file a brief as amici curiae in support of Plaintiffs’ Motion for Summary
4 Judgment. A copy of the proposed amicus brief, which provides data on the historical usage of the
5 foreign policy deportability ground and argues that the ground is unconstitutional, is submitted with
6 this motion as Exhibit A. Counsel for the parties have consented to the relief sought in this motion
7 and to the filing of a brief.

8 The district court has “broad discretion” to determine when leave to file an amicus brief is
9 appropriate. *See Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds*
10 *by Sandin v. Conner*, 515 U.S. 472 (1995), *as recognized by Montijo v. Swaney*, 754 F.App’x 522,
11 524 (9th Cir. 2018) (unpublished). “District courts frequently welcome amicus briefs from non-
12 parties concerning legal issues that have potential ramifications beyond the parties directly involved
13 or if the amicus has ‘unique information or perspective that can help the court beyond the help that
14 the lawyers for the parties are able to provide.’” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*,
15 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (quoting *Cobell v. Norton*, 246 F. Supp. 2d 59, 62
16 (D.D.C. 2003)).

17 Here, proposed amici have “unique information or perspective” that can be of assistance to
18 the court. Proposed amici are over 100 leading lawyers, law professors, and scholars who practice,
19 write about, research, and teach immigration law.¹ Amici collectively have many centuries of
20 experience representing individuals at all stages of their immigration proceedings and in federal
21 court. Regardless of their differing views on recent campus protests and the war in the Middle East,
22 amici are united (1) in finding that the government’s reliance on 8 U.S.C. § 1227(a)(4)(C)(i) to
23 deport a lawful permanent resident for political speech appears to be unprecedented as of early
24 March 2025; and (2) in concluding that 8 U.S.C. § 1227(a)(4)(C)(i) is unconstitutional.

25
26
27 ¹ A list of amici is set forth in in the Addendum at the end of the proposed *amicus* brief. The
28 positions taken in this brief are those of amici alone and should not be attributed to any institution
with which they are or have been affiliated.

1 Proposed amici have a strong “interest” in the fair and correct application of immigration
2 law in this case. The proposed amicus brief highlights the unprecedented nature of the government’s
3 reliance on 8 U.S.C. 1227(a)(4)(C)(i) to deport noncitizens for political speech, drawing on amici’s
4 vast collective experience. Based on publicly available data from the Executive Office of
5 Immigration Review (EOIR), the proposed *amicus* brief demonstrates that, out of 11.7 million
6 cases, DHS has invoked INA § 241(a)(4)(C)(i) or INA § 237(a)(4)(C)(i) as a removal charge in *only*
7 *fourteen cases* prior to early March 2025. In just seven of these fourteen cases, the foreign policy
8 deportability ground was the only charge alleged throughout the proceeding, and only three
9 individuals charged under this ground were ultimately ordered removed or deported. That amounts
10 to fewer than one person ordered removed *per decade* under this provision prior to early March
11 2025. What’s more, nearly all of these cases arose in the distant past, shortly after the provision was
12 enacted. Focusing on the last 25 years up through early March 2025, the EOIR data reflects that
13 INA § 237(a)(4)(C) has been invoked only *four times*, and *only twice* has it been the only charge
14 alleged throughout the proceeding.

17 Additionally, the proposed brief elaborates on the arguments that Section 1227(a)(4)(C) is
18 unconstitutional. Specifically, the brief argues that this deportability ground is facially invalid under
19 the void-for-vagueness doctrine, deprives noncitizens of a meaningful opportunity to be heard in
20 violation of due process, and violates the First Amendment. Amici include scholars who have
21 written extensively about the void-for-vagueness doctrine and other due process issues in the
22 immigration context, as well as immigrants’ First Amendment rights. Amici have also personally
23 observed the chilling effects on their campuses following the arrests of students and graduates
24 charged with the foreign policy deportability ground.

26 The proposed brief offers non-duplicative insights into the foreign policy deportability
27 ground and its use to arrest and detain a noncitizen for political speech, beyond that submitted by
28

1 the parties. Proposed amici's unique additional data and legal analysis may assist the Court. In
 2 short, amici have a strong interest in the outcome of this case. Allowing the federal government to
 3 target immigrants based on 8 U.S.C. § 1227(a)(4)(C)(i) will have devastating effects on immigrants,
 4 upend the practice of immigration law, and chill protected First Amendment speech not just on
 5 campuses but in communities nationwide.

6
 7 Based on the foregoing, proposed amici respectfully request that the Court grant this motion
 8 for leave to file an *amicus* brief and accept the accompanying proposed brief (Ex. A) for filing.

9 Dated: October 15, 2025

Respectfully submitted,

10 /s/ Blaine Bookey

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INTRODUCTION AND STATEMENT OF AMICI¹

Amici curiae are more than one hundred leading lawyers, law professors, and scholars who practice, write about, research, and teach immigration law.² *Amici* collectively have many centuries of experience representing individuals at all stages of their immigration proceedings and in federal court. Regardless of their differing views on recent campus protests and the war in the Middle East, *amici* are united (1) in finding that the government’s reliance on 8 U.S.C. § 1227(a)(4)(C)(i) to target and detain noncitizens based on their protected speech is unlawful and unconstitutional; and (2) in concluding that 8 U.S.C. § 1227(a)(4)(C)(i) is unconstitutional.

Amici have a strong interest in the outcome of this case. Allowing the federal government to target noncitizens based on peaceful political speech will have devastating effects on immigrants, upend the practice of immigration law, and chill protected First Amendment speech not just on campuses but in communities nationwide.

ARGUMENT

The use of 8 U.S.C. § 1227(a)(4)(C)—referred to by the Plaintiffs as the Deportation Provision³—to target and deport a noncitizen solely on the basis of lawful political speech may well be unprecedented in the history of this provision. This provision of the Immigration and Nationality Act (INA) makes deportable any “[noncitizen] whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States.” 8 U.S.C. § 1227(a)(4)(C)(i),

¹ Plaintiffs and Defendants have consented to the filing of this brief. No party or its counsel had any role in authoring this brief. No person or entity—other than *amici* and their counsel—contributed money that was intended to fund preparing or submitting this brief.

² A list of *amici* is set forth in the Addendum. The positions taken in this brief are those of *amici* alone and should not be attributed to any institution with which *amici* are or have been affiliated.

³ Complaint at ¶ 7, *Stanford Daily Publishing Corp., et al., v. Rubio, et al.*, No. 5:25-cv-06618, Dkt. 1 (Aug. 6, 2025).

1 INA § 237(a)(4)(C)(i). This deportability ground includes an exception, which prohibits
 2 deportation because of a noncitizen’s lawful “past, current, or expected beliefs, statements, or
 3 associations, . . . *unless the Secretary of State personally determines that the [noncitizen’s*
 4 *presence] would compromise a compelling United States foreign policy interest.*” 8 U.S.C. §
 5 1182(a)(3)(C)(iii), INA § 212(a)(3)(C)(iii) (emphasis added) (incorporated by reference through
 6 the exception in 8 U.S.C. § 1227(a)(4)(C)(ii), INA § 237(a)(4)(C)(ii)).

8 Among all the deportability grounds in the INA, Section 1227(a)(4)(C)(i) provides
 9 one of the most sweeping grants of discretionary executive power. This ground has *almost*
 10 *never* been invoked by the Department of Homeland Security (DHS), let alone for political
 11 speech. The only federal district court to have considered the constitutionality of this ground
 12 held that it violates due process because it is unconstitutionally vague and deprives
 13 noncitizens of a meaningful opportunity to be heard. *See Massieu v. Reno*, 915 F. Supp. 681
 14 (D.N.J. 1996), *rev’d on other grounds*, 91 F.3d 416 (3d Cir. 1996). More recently, in May
 15 2025, another district court concluded that the Deportation Provision is likely
 16 unconstitutionally vague as applied. *Khalil v. Trump*, 784 F. Supp. 3d 705, 767 (D.N.J.
 17 2025).

20 **I. THE GOVERNMENT’S RELIANCE ON 8 U.S.C. § 1227(A)(4)(C) TO DETAIN**
 21 **AND DEPORT A NONCITIZEN SOLELY FOR POLITICAL SPEECH IS**
 22 **EXCEPTIONAL.**

23 It is not unusual for permanent residents or visa holders to be placed in removal
 24 proceedings. Nor is it unprecedented for the government to single out Palestinians or those
 25 who express pro-Palestinian views where they have allegedly violated some other provision
 26
 27
 28

1 of the immigration laws.⁴ However, the use of the Deportation Provision is extraordinarily
2 rare, and we are unaware of it ever having been used as the sole charge in a case where the
3 underlying conduct was itself political speech, prior to March 2025. Upholding the use of
4 Section 1227(a)(4)(C) in this case would give the federal government power to deport
5 lawfully present noncitizens, including permanent residents, at the whim of the Secretary of
6 State (or at the whim of the President, through the Secretary of State). In March 2025,
7 President Trump described the arrest of Mahmoud Khalil, a permanent resident, as “the first
8 arrest of many to come.”⁵
9
10

11 The implications of the Deportation Provision are by no means limited to noncitizens
12 who engage in pro-Palestinian speech. The presence of Ukrainians who are critical of Russia,
13 supporters of more security cooperation with Europe, and economists skeptical of tariffs on
14 Mexico, Canada, and China, could all suddenly be considered adverse to U.S. foreign policy
15 interests and subject to deportation based on the unilateral determination of the Secretary of
16 State. This list has no end, and no meaningful limiting principles. In *Massieu*, the government’s
17 reliance on the Deportation Provision was based on “nothing more than the obstinacy of a
18 foreign sovereign that is high on the list of nations that the United States must not offend or
19 disappoint.” 915 F. Supp. 681, 700 n.18 (D.N.J.), *rev’d on other grounds*, 91 F.3d 416 (3d Cir.
20 1996).
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25 ⁴ Henry Weinstein, *Final Two L.A. 8 Defendants Cleared*, LA Times (Nov. 1, 2007).

26 ⁵ Donald J. Trump (@realDonaldTrump), Truth Social, (Mar. 10, 2025, 1:05 PM), at
27 <https://truthsocial.com/@realDonaldTrump/posts/114139222625284782>.
28

A. Section 1227(a)(4)(C) Is Unique Among Deportability Grounds Because It Purportedly Authorizes Deportation Based on the Unfettered Discretion of a Single Political Official.

The deportability grounds in the Immigration and Nationality Act (INA) generally require a lawfully present noncitizen to engage in some *conduct* to be deported, such as committing a crime (1227(a)(2)), engaging in fraud (1227(a)(3)), or unlawfully voting (1227(a)(6)). Among the “[s]ecurity and related grounds” in 1227(a)(4), the Deportation Provision is the only one that can be invoked based solely on the subjective beliefs of an executive official, rather than any action by the noncitizen. Indeed, the other subsections of 1227(a)(4) require significant legal breaches, such as engaging in terrorism, seeking to overthrow the U.S. government through unlawful means, and participating in torture. *See* 8 U.S.C. §§ 1227(a)(4)(A), (B), (D), (E), (F).

By contrast, the Deportation Provision merely requires the presence of a noncitizen and the decision of the Secretary of State; it does not target any conduct whatsoever, let alone some specified kind of conduct. 8 U.S.C. § 1227(a)(4)(C)(i) (referring to “presence *or* activities”) (emphasis added). Nor does the Deportation Provision require a showing of any *actual* adverse foreign policy consequences; it simply requires the Secretary to have “reasonable ground to believe”—a determination the immigration judge purportedly cannot question—that the noncitizen’s presence or activities “*would have potentially* serious” adverse foreign policy consequences. *Id.* (emphasis added). By purportedly giving unfettered discretion to an executive official to decide that someone lawfully present in the United States is deportable, 1227(a)(4)(C) is a stark outlier among all the deportability grounds.

During the 35 years that the Deportation Provision has been in existence until March 2025, only one federal district court had an opportunity to address it, and that court determined it was unconstitutional in 1996. *Massieu*, 915 F. Supp. at 686. The district court in *Massieu* described this ground as a “breathtaking departure” from “deportation based on adjudications of defined impermissible conduct.” *Id.* The Third Circuit reversed the decision based on its finding that the plaintiff had not exhausted administrative remedies but never reached the constitutional questions. *Massieu v. Reno*, 91 F.3d 416 (3d Cir. 1996). More recently, another district court ruled that the Deportation Provision is likely unconstitutionally vague as applied. *Khalil*, 784 F. Supp. 3d at 767.

B. Section 1227(a)(4)(C) Has Almost Never Been Invoked by DHS.

The Deportation Provision was introduced in 1990 and originally codified at 8 U.S.C. § 1251(a)(4)(C) (INA § 241(a)(4)(C)).⁶ The use of this provision to seek an individual’s deportation is almost unprecedented in this ground’s 35-year history. In *Khalil v. Trump*, the government was ordered to provide a list of all instances in which the government has invoked Section 1227(a)(4)(C)(i) (INA § 237(a)(4)(C)(i)) or any predecessor statutes to seek the removal of individuals from the United States. No. 25-cv-1963 (MEF) (D.N.J.), Order, Dkt. No. 231. In response to the district court’s order, the government identified a total of five cases originating before March 2025. *Id.*; Govt’s Resp., Dkt. No. 241; Govt’s Second Resp., Dkt. No. 246. The government’s justifications for invoking these charges in the past were materially different from the situation here. For instance, the government claimed to have sought removal under Section

⁶ In 1996, with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104–208, the provision was transferred to INA § 237(a)(4)(C).

1 1251(a)(4)(C) of leaders of foreign terrorist or paramilitary organizations, or individuals charged
 2 or convicted of crimes. Dkt. No. 241.⁷ The one individual whom the government sought to
 3 remove under Section 1227(a)(4)(C) before March 2025 had “participated in and/or contributed
 4 to violent political activity in Somalia.” *Id.*

5
 6 The government stated that these may not be the only instances of the statute’s
 7 invocation. However, the government’s own data and published immigration decisions reveal
 8 strikingly few cases. Based on publicly available data from the Executive Office of Immigration
 9 Review (EOIR), out of 11.7 million cases, DHS has invoked Section 1251(a)(4)(C)(i) or Section
 10 1227(a)(4)(C)(i) as a removal charge in *only fourteen cases* before March 2025,⁸ when ICE
 11 arrested and charged Mahmoud Khalil under this ground,⁹ and attempted to arrest Yunseo Chung
 12 for the same reason.¹⁰ Decl. of Graeme Blair, Ph.D., and David Hausman, J.D., Ph.D. (“Blair and
 13 Hausman Decl.”), Appendix ¶¶ 7, 10, 13. Out of the fourteen such cases in the EOIR data, only
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20 ⁷ It is plausible that the use of the Deportation Provision for seeking deportation based on
 21 criminal activities and leadership in terrorist organizations has decreased because since the
 22 1990s, the INA has expanded crime- and terrorism-related deportation grounds. See Juliet
 23 Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV.
 24 367, 379–86 (2006).

25 ⁸ The fourteen cases in the EOIR CASE dataset did not include *Matter of Khalifa*, 21 I&N Dec.
 26 107 (BIA 1995), a published BIA Decision, likely because the charge was added when the
 27 Notice to Appear was amended. Decl. of Graeme Blair, Ph.D., and David Hausman, J.D., Ph.D.
 28 (“Blair and Hausman Decl.”), Appendix ¶10. If you add that case, the total number would be
 fifteen.

⁹ Charlie Savage, *Congress Wrote a Deportation Law to be Used ‘Sparingly.’ Trump Has Other
 Ideas*, N.Y. Times, Apr. 1, 2025.

¹⁰ Jonah E. Bromwich and Hamed Aleaziz, *Columbia Student Hunted by ICE Sues to Prevent
 Deportation*, N.Y. Times, Mar. 4, 2025.

four involved detention throughout the proceeding.¹¹ *Id.* ¶ 13. In just seven of these fourteen cases, the Deportation Provision was the sole charge alleged throughout the proceeding. *Id.* ¶ 13. Out of those seven cases, just *one* individual was detained throughout the proceeding. *Id.* Only three individuals ever were ultimately ordered removed or deported after being charged with removability under this ground. *Id.* That amounts to fewer than one person being ordered removed *per decade* under this provision.

What’s more, nearly all of these cases arose in the distant past, shortly after the provision was enacted. Focusing on the 25 years before March 2025, the EOIR data reflect that Section 1227(a)(4)(C)(i) has been invoked only *four times*, and *only twice* has it been the sole charge alleged throughout the proceeding. *Id.* ¶ 12. We have not been able to determine whether either of the two charged individuals over the past 25 years were charged for only their speech. But neither of those two individuals was detained throughout their immigration proceedings. *Id.* ¶ 13. These numbers may even be a significant overcount due to the possibility of errors in the data and the extreme rarity in which these charges have been invoked. *Id.* ¶ 14-17. Regardless, invoking the statute based solely on political speech by a noncitizen makes the government’s assertion of authority here extraordinary—indeed, vanishingly rare.

The BIA decision in *Massieu*’s case confirms that the Deportation Provision “has been used very rarely.” *Matter of Ruiz-Massieu*, 22 I&N Dec. 833, 838 (BIA 1999) (citing

¹¹ In the EOIR data, cases may not necessarily mean different individuals. Appendix (*Blair and Hausman Decl.*) ¶7. Therefore, it is possible that this charge has been invoked against even fewer than fourteen individuals.

1 *Matter of Khalifah*, 21 I&N Dec. 107 (BIA 1995), as “the only published Board case”).¹² The
 2 government’s decision to invoke this singular charge against noncitizens who engage in
 3 constitutionally protected speech and to detain them is alarming given this history. Although
 4 at least some uses of the foreign policy ground appear to have resulted in deportations, the
 5 majority have not, highlighting the problems with the overall discretion granted by the
 6 statute. This case—which challenges the administration’s policy of viewpoint-based
 7 immigration enforcement, not the INA itself—clearly falls outside any reasonable application
 8 of the provision in light of the serious constitutional concerns explained below.
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11 **II. SECTION 1227(A)(4)(C) IS UNCONSTITUTIONAL**

12 **A. Section 1227(a)(4)(C) Violates Due Process**

13
 14 It is well-settled that noncitizens have a right to due process. *Reno v. Flores*, 507 U.S. 292,
 15 305–07 (1993). Section 1227(a)(4)(C)(i) violates due process because it is void for vagueness
 16 and deprives noncitizens of a meaningful opportunity to be heard, effectively resulting in pre-
 17 judgment of their deportability.

18 **1. Section 1227(a)(4)(C) Is Void for Vagueness**

19
 20 The Supreme Court has long held that a person cannot constitutionally be punished
 21 under a vague criminal statute, as this would undermine “ordinary rules of fair play” and
 22 violate “the first essential of due process.” *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391
 23 (1926). The void-for-vagueness doctrine has also long been applied to deportation statutes.
 24 See *Jordan v. De George*, 341 U.S. 223, 231 (1951) (recognizing that deportation is a
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 27 ¹² *Amici* have exhaustively searched unpublished BIA cases involving Section 1251(a)(4)(C) or
 28 Section 1227(a)(4)(C) and have found none.

1 “drastic measure”). In 2018, the Supreme Court relied on the void-for-vagueness doctrine to
2 strike down the residual clause of the “crime of violence” aggravated felony deportability
3 ground. *Sessions v. Dimaya*, 584 U.S. 148, 174-75 (2018).
4

5 As the Supreme Court recognized in *Dimaya*, a law is unconstitutionally vague if it
6 fails either one of two clearly articulated tests. *Id.* at 155 (plurality). The key questions are
7 whether a statute “fails to provide a person of ordinary intelligence fair notice of what is
8 prohibited, or is so standardless that it authorizes or encourages seriously discriminatory
9 enforcement.” *United States v. Williams*, 553 U.S. 285, 304 (2008) (citations and internal
10 quotation marks omitted). The purpose of the first inquiry regarding fair notice “is to enable
11 the ordinary citizen to conform his or her conduct to the law.” *City of Chicago v. Morales*,
12 527 U.S. 41, 58 (1999). The second inquiry, which has been described as “the more
13 important” of the two, *Kolender v. Lawson*, 461 U.S. 352, 358 (1983), requires a court to
14 inquire whether the statutory language is “of such a standardless sweep” that it allows
15 enforcers “to pursue their personal predilections.” *Smith v. Goguen*, 415 U.S. 566, 575
16 (1974). A statute must establish sufficiently clear standards to minimize the risk of “arbitrary
17 enforcement.” *Kolender*, 461 U.S. at 357.
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21 Section 1227(a)(4)(C) violates both parts of the test. First, as the district court held in
22 *Massieu*, this deportability ground “provides absolutely no notice to [noncitizens] as to what
23 is required of them under the statute.” 915 F.Supp. at 699. Since “no one outside the
24 Department of State and, perhaps, the President ever knows what our nation’s frequently
25 covert foreign policy is at any given time, . . . there is no conceivable way that [a noncitizen]
26 could know, *ex-ante*, how to conform his or her activities to the requirements of the law.”
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1 *Id.* at 700. Furthermore, “it is even less likely that [a noncitizen] could know that his or her
2 mere presence here would or could cause adverse foreign policy consequences when our
3 foreign policy is unpublished, ever-changing, and often highly confidential.” *Id.* As
4 Professor Jennifer Lee Koh has argued, “[n]otice before the imposition of immigration
5 penalties is particularly important because immigration adjudications do not operate on a
6 level playing field between the parties.” Jennifer Lee Koh, *Crimmigration and the Void for*
7 *Vagueness Doctrine*, 2016 WIS. L. REV. 1127, 1157 (2016) (internal quotation marks
8 omitted).

11 Second, Section 1227(a)(4)(C) is “so standardless that it authorizes or encourages
12 seriously discriminatory enforcement.” *Williams*, 553 U.S. at 304. It fails to provide even
13 “minimal guidelines to govern law enforcement,” and allows the Secretary State, or the
14 President, acting through the Secretary of State, “to pursue their personal predilections.”
15 *Smith*, 415 U.S. at 574–75. Because Section 1227(a)(4)(C) has no “explicit standards” and
16 instead ostensibly gives the Secretary of State total discretion to determine that a
17 noncitizen’s presence has potentially serious adverse foreign policy consequences, it permits
18 deportation “on an ad hoc and subjective basis, with the attendant dangers of arbitrary and
19 discriminatory application.” *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

22 Finally, as the Supreme Court has recognized, “where a vague statute abut(s) upon
23 sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of
24 (those) freedoms,” leading people to “steer far wider of the unlawful zone . . . than if the
25 boundaries of the forbidden areas were clearly marked.” *Grayned*, 408 U.S. at 109 (internal
26 quotation marks and footnotes omitted). Consequently, statutes that trigger First
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1 Amendment concerns have historically received more scrutiny from courts when challenged
2 as void for vagueness. *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489,
3 499 (1982) (“If, for example, the law interferes with the right of free speech or of
4 association, a more stringent vagueness test should apply.”); *Holder v. Humanitarian L.*
5 *Project*, 561 U.S. 1, 19 (2010) (“We have said that when a statute interferes with the right of
6 free speech or of association, a more stringent vagueness test should apply.”) (internal
7 quotation marks omitted); *Matsumoto v. Labrador*, 122 F.4th 787, 805 (9th Cir. 2024) (“Of
8 significance here, a more stringent vagueness test should apply if a statute interferes with
9 First Amendment rights”) (internal quotation marks omitted); *see also* Koh, *supra* at 1138.

12 The Supreme Court made clear in *Dimaya*, however, that a statute need not touch on First
13 Amendment concerns to be void for vagueness on its face: there, the Supreme Court determined
14 that the residual clause of the crime of violence deportability ground was facially invalid despite
15 the absence of First Amendment interests, because the provision “produces more unpredictability
16 and arbitrariness than the Due Process Clause [of the Fifth Amendment] tolerates,” 584 U.S. at
17 175. That holding serves to reinforce the conclusion that 1227(a)(4)(C), which clearly threatens
18 First Amendment interests, can be facially invalid under the void-for- vagueness doctrine.
19 Section 1227(a)(4)(C)(ii) expressly authorizes the Secretary of State to rely exclusively on a
20 person’s lawful “beliefs, statements, or associations” in determining that a person should be
21 deportable under the provision, as long as the Secretary of State makes a personal determination
22 that the foreign policy interests are “compelling.” 8 U.S.C. § 1227(a)(4)(C)(ii) (incorporating by
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reference 8 U.S.C. § 1182(a)(3)(C)(iii), INA § 212(a)(3)(C)(iii)).¹³ This intrusion into First Amendment interests provides additional support for finding Section 1227(a)(4)(C) unconstitutionally vague.

2. Section 1227(a)(4)(C) Deprives Noncitizens of a Meaningful Opportunity to Be Heard and Effectively Permits Prejudgment of a Noncitizen's Case.

The “vital hallmark” of the “full and fair hearing” required by due process “is the opportunity to present evidence and testimony on one’s behalf.” *Oshodi v. Holder*, 729 F.3d 883, 889 (9th Cir. 2013). In a typical deportation proceeding, DHS bears the burden of establishing deportability by “clear and convincing evidence,” and an immigration judge’s decision must be based on “reasonable, substantive, and probative evidence.” 8 U.S.C. § 1229a(c)(3)(A). That decision is normally made after a full administrative hearing, where the noncitizen has “a reasonable opportunity to examine the evidence” submitted by DHS, to present evidence, and to cross-examine the government’s witnesses. 8 U.S.C. § 1229a(b)(4)(B). In the government’s view, under Section 1227(a)(4)(C), however, it is the Secretary of State who unilaterally determines that a noncitizen is deportable. Even though a noncitizen charged under this ground has a technical right to a hearing before an immigration judge, the BIA has determined that there is no way for the noncitizen to actually question or challenge the Secretary of State’s determination: no evidence must be presented to support the Secretary of State’s assertions, and no opportunity is provided for the noncitizen to cross-examine the Secretary of State or any other

¹³ The use of the word “compelling” in this exception distinguishes it from the language in Section 1227(a)(4)(C)(i) requiring only “potentially serious adverse foreign policy consequences.”

1 government official about the alleged foreign policy concerns. *Matter of Ruiz-Massieu*, 22 I&N
2 Dec. at 844-45.

3 In *Matter of Ruiz-Massieu*, the majority of the Board, sitting en banc, held that the
4 Secretary of State’s letter “should be treated as *conclusive evidence* of the respondent’s
5 deportability,” finding that the immigration judge had “erred in holding that the
6 [government] is obliged to present clear, unequivocal, and convincing evidence in support of
7 the Secretary of State’s belief.” *Id.* at 842 (emphasis added). The Board reasoned that the
8 government met its burden of proof “by the Secretary’s *facially reasonable and bona fide*
9 *determination* that the respondent’s presence here would cause potentially serious adverse
10 foreign policy consequences for the United States.” *Id.* (emphasis added). The Board stressed
11 that the statute granted the Secretary of State “exclusive authority” to determine the
12 existence of a “reasonable ground” for believing in potentially serious adverse foreign policy
13 consequences, *id.* at 842, and confirmed “the fundamentally ministerial aspect of the
14 Immigration Judge’s role” in such proceedings. *Id.* at 844. Any other approach, according to
15 the Board, would require the immigration judge and the Board to “intrude into the realm of
16 foreign policy.” *Id.* at 844.

17 The extreme deference given to the Secretary of State’s determination under the
18 Board’s decision in *Ruiz-Massieu* is similar to relying on “secret evidence,” which courts
19 have found “cabined by constitutional due process limitations.” *Kaur v. Holder*, 561 F.3d 957,
20 960 (9th Cir. 2009) (BIA violated due process by using secret evidence against a petitioner);
21 *see also Zerezghi v. United State Citizenship & Immigr. Servs.*, 955 F.3d 802, 813 (9th Cir.
22 2020) (vague reference to unspecific records deprived U.S. citizen and his noncitizen wife of
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1 a meaningful opportunity to respond in violation of due process); *cf. Matter of Ruiz-Massieu*,
 2 22 I&N. Dec. at 845 (reasoning that allowing the immigration judge to review the
 3 reasonableness of the Secretary’s determination could require the government “to proffer
 4 secret or confidential information and expert witnesses, or involve a deposition of the
 5 Secretary of the State”). The Board’s interpretation of Section 1227(a)(4)(C) both deprives
 6 the noncitizen of the right to a meaningful opportunity to be heard and results in pre-
 7 judgment of deportability based solely on the Secretary of State’s assertions, in violation of
 8 the Fifth Amendment.¹⁴

11 **B. Section 1227(a)(4)(C) Violates the First Amendment When It Is Used to**
 12 **Target Noncitizens Based on Protected Speech**

13 The public statements made by both the White House and the State Department
 14 confirm that noncitizens such as Mahmoud Khalil, Rumeysa Ozturk, Mohsen Mahdawi were
 15 targeted, detained, and placed in deportation proceedings because they engaged in
 16 constitutionally protected political speech. The Supreme Court long ago stated, without
 17 qualification, that “[f]reedom of speech and of press is accorded [noncitizens] residing in
 18 this country.” *Bridges v. Wixon*, 326 U.S. 135, 148 (1945). *Bridges* concerned an Australian
 19 union organizer who lived much of his life in Southern California. Various U.S. government
 20 officials repeatedly targeted him for his pro-labor speech activities, but the Supreme Court

23 ¹⁴ By contrast, the Board has held that the “reasonable ground to believe” standard in both the
 24 terrorist activity inadmissibility ground and the bar to withholding of removal based on being
 25 a danger to the security of the United States are akin to probable cause determinations. *In re*
 26 *U-H-*, 23 I&N Dec. 355, 356 (BIA 2003); *see also Wang v. Holder*, 583 F.3d 86, 90 (2d Cir.
 27 2009) (equating “serious reasons to believe” standard to probable cause); *Alarcon-Serrano v.*
 28 *I.N.S.*, 220 F.3d 1116, 1119 (9th Cir. 2000) (“reason to believe” standard for controlled
 substance traffickers ground must be based on “reasonable, substantial, and probative
 evidence”).

1 protected him twice—first from jail and contempt of court in *Bridges v. California*, 314 U.S.
2 252 (1941), and later from deportation in *Bridges v. Wixon*.

3 In the decades since *Bridges v. Wixon* was decided, the Supreme Court, on several
4 occasions, ruled against noncitizens who argued that immigration decisions violated their
5 free speech rights. Critically, however, in none of these cases has the Court retreated from its
6 holding that noncitizens living in the United States are protected by the First Amendment.
7 When the Supreme Court upheld the deportation of former Communist Party members
8 during the Red Scare, it did so by concluding that the deportations were permitted by the
9 First Amendment, which at the time was less protective of the speech rights of citizens and
10 noncitizens alike. *See Harisiades v. Shaughnessy*, 342 U.S. 580, 592 & nn.18-19 (1951)
11 (applying the framework in *Dennis v. United States*, 341 U.S. 494 (1951), a non-immigration
12 case). And when the Court rejected the speech claims of citizens who argued that the
13 exclusion of the Communist professor they had invited was pretextual, the Court did not
14 decide the core free speech question, holding only that it would not look behind the facially
15 valid reason given for the visa denial in order to sort out whether the professor had really
16 been excluded because of his speech. *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972); *cf.*
17 *United States v. Armstrong*, 517 U.S. 456 (1996) (refusing, in a non-immigration case
18 alleging pretextual prosecution, to permit discovery in order to look behind the facially valid
19 reason given for the charging decision). The Court’s approach in these cases is consistent
20 with the application of ordinary principles of free speech and constitutional law, not some
21 special watered-down set of protections for noncitizens. *See Adam Cox, The Invention of*
22 *Immigration Exceptionalism*, 134 YALE L.J. 329 (2024); Ahilan Arulanantham & Adam Cox,
23 *Explainer on First Amendment and Due Process Issues in Deportation of Pro-Palestinian*
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1 *Student Activist(s)*, Just Security (Mar. 12, 2025). Furthermore, in *Reno v. American-Arab*
 2 *Anti-Discrimination Comm.*, 525 U.S. 471, 488-92 (1999), where the Court refused to find
 3 selective prosecution of unlawfully present students, it still kept the door open for
 4 “outrageous” selective prosecution claims in such cases.

5
 6 As noted above, Section 1227(a)(4)(C) contains, on its face, an exception openly
 7 authorizing deportation because of a person’s speech—so long as the Secretary of State
 8 makes a “personal determination” that the ideological deportation is warranted (according to
 9 the “compelling United States foreign policy interest” standard). *See* 8 U.S.C. §
 10 1227(a)(4)(C)(ii) (incorporating by reference 8 U.S.C. § 1182 (a)(3)(C)(iii)). This provision
 11 clearly conflicts with the Supreme Court precedents holding that the First Amendment
 12 protects the free speech rights of noncitizens residing in the United States. Section
 13 1227(a)(4)(C) is therefore unconstitutional.
 14

15 If this statutory provision is permitted to stand, even temporarily, it will continue to
 16 have a chilling effect on speech at universities and in communities across the country. *Amici*
 17 have personally observed this chilling effect on their campuses following campus arrests of
 18 noncitizens targeted for their speech. Students, scholars, professors, and others fear speaking
 19 freely because President Trump announced that many more arrests will come, and Secretary
 20 of State Marco Rubio confirmed “we’re going to keep doing it,”¹⁵ “revoking the visas and/or
 21 green cards . . . so they can be deported.”¹⁶
 22

23 CONCLUSION

24
 25 ¹⁵ Kaia Hubbard, *Secretary of State Marco Rubio Says “We’re Going to Keep Going It” After*
 26 *Arrest of Columbia Activist*, CBS News Face the Nation (Mar. 16, 2025).

27 ¹⁶ Marco Rubio (@marcorubio), X (Mar. 9, 2025, 3:10 PM),
 28 <https://x.com/marcorubio/status/1898858967532441945>.

1 For the foregoing reasons, this Court should declare that 8 U.S.C. § 1227(a)(4)(C)(i) runs
2 afoul of the First Amendment when it is used to target, detain, and deport noncitizens who are
3 engaged in protected speech.

4 DATED: October 15, 2025

Respectfully submitted,

5
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6	Sarah Rogerson	Doug Smith
7	Professor of Law	Lecturer
	Albany Law School	Brandeis University
8	Carrie Rosenbaum	Jayashri Srikantiah
9	Senior Fellow	Professor of Law
10	Santa Clara University School of Law	Director, Immigrants' Rights Clinic
		Stanford Law School
11	Rachel Rosenbloom	Elissa Steglich
12	Professor of Law	Clinical Professor of Law
	Northeastern University	University of Texas School of Law
13	School of Law	
14	Faiza Sayed	Brett Stokes
15	Associate Professor of Law	Director, Center for Justice
	Director, Safe Harbor Clinic	Reform Clinic
16	Brooklyn Law School	Vermont Law and Graduate School
17	Anne Schaufele	Juliet Stumpf
18	Assistant Professor of Law	Edmund O. Belsheim Professor of Law
19	Co-Director, Immigration and Human Rights	Lewis & Clark Law School
	Clinic	
20	University of the District of Columbia	Maureen Sweeney
	David A. Clarke School of Law	Law School Professor
21	Erica Schommer	University of Maryland Carey
22	Clinical Professor of Law	School of Law
	St. Mary's University School of Law	
23	Philip Schrag	David B. Thronson
24	Delaney Family Professor of	Professor of Law
	Public Interest Law	Michigan State University
25	Georgetown University	College of Law
26	Ragini Shah	Veronica Thronson
27	Clinical Professor of Law	Clinical Professor of Law
	Suffolk University Law School	Michigan State University
28		College of Law

1 Enid Trucios-Haynes
2 Professor of Law
3 Brandeis School of Law
4 University of Louisville

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Assistant Clinical Professor
Director, Immigration Justice Clinic
Elisabeth Hau School of Law
Pace University

5 Tania N. Valdez
6 Associate Professor of Law
7 George Washington University
8 Law School

Sara Zampierin
Clinical Associate Professor of Law
Texas A&M School of Law

9 Sheila Velez Martinez
10 Jack and Lovell Olender Professor
11 of Asylum Refugee and
12 Immigration Law
13 Univ. of Pittsburgh School of Law

14 Paulina Vera
15 Director, Immigration Clinic
16 George Washington Law School

17 Leti Volpp
18 Robert D. and Leslie Kay Raven Professor
19 of Law
20 U.C. Berkeley

21 Jonathan Weinberg
22 Distinguished Professor of Law
23 Wayne State University

24 Deborah M. Weissman
25 Reef C. Ivey II Distinguished Professor
26 of Law
27 University of North Carolina
28 School of Law

Anna Welch
Professor of Law
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John Wilshire
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