

Trump Administration's Board of Immigration Appeals Denies Mahmoud Khalil's Bid to Throw Out Deportation Case

The removal order cannot take effect while his habeas appeals continue

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NEW YORK — After Mahmoud Khalil [appealed](#) an immigration judge's decision finding him removable, the Board of Immigration Appeals (BIA) today issued a "final" administrative removal order in his case in retaliation for his speech in support of Palestinian rights. The order does not change the status quo and will be appealed to the Fifth Circuit Court of Appeals. Mr. Khalil still cannot lawfully be detained or deported while his separate, ongoing federal habeas corpus case continues in the Third Circuit Court of Appeals.

"I am not surprised by this decision from the biased and politically motivated Board of Immigration Appeals. I have committed no crime. I have broken no law. The only thing I am guilty of is speaking out against the genocide in Palestine — and this administration has weaponized the immigration system to punish me for it," said **Mahmoud Khalil**. "My family is here. My life is here. I reject any attempt to intimidate me out of my home based on lies and ideological attacks. This is not justice. This is just another attempt to retaliate against me. I will continue fighting for my rights in court, and I will not be deterred — for me, my family, and all immigrants in this country who want to speak out against injustice."

The BIA, like all immigration courts, is controlled by the Executive Branch. Since taking office, the Trump administration has [gutted](#) the BIA, cutting it nearly in half and transforming it into a tool for accelerating deportations. Nearly all BIA decisions in recent months have resulted in a [negative outcome](#) for the noncitizens facing removal.

The BIA's decision in Mr. Khalil's case was based on both of the government's immigration charges against him, which Mr. Khalil has argued are unconstitutional retaliation against his speech. The first part of the BIA's order relies on the so-called "Rubio determination" under the "foreign policy ground" of the Immigration and Nationality Act, despite the fact that a federal district court in New Jersey ruled it was likely an unconstitutional basis for Mr. Khalil's deportation and enjoined it from being used as a basis for a removal order. The BIA also upheld a meritless second charge, added only after Mr. Khalil challenged the foreign policy ground. A tranche of internal government documents from the *AAUP v. Rubio* trial last year showed the government itself found no basis for the second charge before detaining him.

"In all my decades as an immigration lawyer, I have never seen such a baseless and politically motivated decision. The BIA's decision has absolutely no support in the record, violates a federal court order, and we'll be fighting it until the end," said his **lead immigration attorney Marc Van Der Hout**. "Federal courts have already agreed that Mahmoud was targeted for his speech, and there is likely much more evidence of the government's unlawful retaliation that has yet to come to light. This is a clear continuation of the administration's retaliation against Mahmoud for exercising his First Amendment rights."

The New Jersey district court's orders prohibiting the government from re-detaining or deporting Mr. Khalil as his federal case proceeds remain in effect. In the Third Circuit, Mr. Khalil has [asked](#) the full appeals court to consider his case, after a split decision from a three-judge panel found

that the district court lacked jurisdiction over the habeas petition seeking his release. The Third Circuit's panel decision has not taken effect and does not alter the district court's injunction and bail order while his habeas appeals continue.

"The only thing keeping the government from accomplishing its unconstitutional goals is the intervention of a federal district court last summer," said **Brett Max Kaufman, senior counsel with the ACLU's Center for Democracy**. "Without the protection of a habeas court, the government could do this to anyone, which is why today's decision is an important reminder of the stakes of Mahmoud's habeas case. We will continue to use all legal levers available to protect our client and defend the First Amendment against this cruel and relentless campaign."

Mr. Khalil is represented by Dratel & Lewis, the Center for Constitutional Rights, CLEAR, Van Der Hout LLP, Washington Square Legal Services, the American Civil Liberties Union (ACLU), the New York Civil Liberties Union (NYCLU), and the ACLU of New Jersey.

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