

US appeals court overturns judge's ruling that blocked arrest and deportation of Mahmoud Khalil

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In a 2-1 ruling on Thursday, the U.S. Court of Appeals for the Third Circuit struck down the injunction protecting Palestinian and Columbia University graduate Mahmoud Khalil from deportation.

The decision clears the way for the Trump administration to resume its vendetta against Khalil, who is a prominent and outspoken opponent of the US-backed genocide in Gaza. The court majority's ruling that the federal district court in New Jersey lacked "subject matter jurisdiction" to hear Khalil's habeas petition is a blatantly political decision.

It provides the Trump administration juridical cover for stripping Khalil of access to the ordinary federal courts and drives his case back into the immigration and deportation machinery run by the White House. If allowed to stand, the decision will be seized upon by the Department of Homeland Security (DHS) as a precedent to target international students and non-citizen workers who speak out against the policies of the US government and violate their First Amendment rights.

The three-judge panel consisted of Judges Thomas Hardiman, appointed by George W. Bush, and Stephanos Bibas, appointed by Trump during his first term, in the majority, and Judge Arianna J. Freeman, a Biden appointee, in dissent. The 2-1 decision vacated the orders of U.S. District Judge Michael E. Farbiarz, who last year found that Khalil's detention and removal were likely unconstitutional and ordered his release from ICE custody.

The panel directed Judge Farbiarz to dismiss Khalil's habeas corpus petition on the grounds that the New Jersey district court lacked subject matter jurisdiction over his challenges to both his detention and the government's effort to deport him.

Subject matter jurisdiction is the legal authority of a court to hear and decide a particular type or category of case, such as criminal, immigration or civil disputes under federal law. If a court lacks subject matter jurisdiction in a particular case, it has no power to issue a valid judgment, and the case must be dismissed regardless of the parties' wishes.

The court majority relied on provisions of the Immigration and Nationality Act (INA) that channel challenges to removal into the immigration courts and then into the petition-for-review process, declaring that a federal district court may not enjoin ongoing removal proceedings or block execution of a removal order through habeas corpus.

While conceding that the district court had habeas jurisdiction as the "district of confinement" under 28 U.S.C. §§ 2241 and 1631—because Khalil's petition should be treated as filed in New Jersey when he was detained there—the panel held that the INA's jurisdiction-stripping provisions barred Farbiarz from ruling on the merits of Khalil's challenge to removal.

Judge Freeman issued a dissent stressing that Khalil had demonstrated violations of his fundamental rights and irreparable injury because of his prolonged, punitive detention in ICE custody. Freeman emphasized that

Khalil's case was not a routine dispute over immigration procedure but a challenge alleging that the government's fraud and "foreign policy" removal charges were being wielded as retaliation for his political activity and speech in defense of the Palestinians in Gaza.

Judge Freeman emphasized that Khalil had already suffered injuries that could not be undone—months in a remote Louisiana detention center, separation from his pregnant wife and the chilling of core First Amendment activity—facts that the district court had credited in granting injunctive relief. She argued that in such circumstances, the federal courts must remain open to hear constitutional claims and that the majority's rigid jurisdictional approach effectively protects retaliatory deportation campaigns from judicial scrutiny.

However, the majority drew a sharp distinction between the fundamental question of Khalil's habeas corpus petition and elevated the "subject matter" jurisdiction over the substance of his challenges to removal. The majority held that the INA's channeling provisions deprived the district court of power to enjoin the foreign-policy and fraud removal charges or to bar DHS from deporting Khalil while his First Amendment claims were litigated.

It concluded that while Farbiarz could recognize that Khalil's detention and removal raised grave constitutional issues, he lacked subject matter jurisdiction to issue orders interfering with immigration-court proceedings or the execution of any removal order, and it therefore ordered the habeas petition dismissed.

For Khalil, the ruling reopens the door to his being re-arrested and deported by the Trump administration, though the order does not take immediate effect and the administration cannot lawfully re-detain him until the appeals process is complete. His attorneys note that the opinion "does not weigh in on the core First Amendment arguments in his case," but by stripping the district court of jurisdiction, it deprives him of the only judicial forum that had seriously engaged with those arguments and recognized the retaliatory character of the government's prosecution.

Khalil remains in removal proceedings in the immigration courts, where a Louisiana immigration judge has already ordered him removable on a "foreign-policy" ground and, in a written opinion issued the same day as Farbiarz's release order, added an adverse finding on the Trump administration's fraud charge. The Third Circuit's ruling sends a message to the administration that it may press ahead with this openly political deportation campaign under the cover of routine immigration enforcement, while it continues to denounce pro-Palestinian protests as a threat to "national security" and to US foreign policy.

From the outset, the Trump administration has treated Khalil's case as a test to determine how many international students and immigrant workers can be arrested, detained, and deported for opposing the US-backed slaughter in Gaza or, for that matter, any policies of the government.

Khalil—a lawful permanent resident and green card holder—was seized by federal agents in front of his pregnant wife and dragged into ICE custody on March 8, 2025. Secretary of State Marco Rubio and other officials branded him a supposed “national security” threat, accusing him of contributing to the spread of “antisemitism” because of his leadership in demonstrations condemning the Gaza genocide.

Khalil was then shipped to the LaSalle Detention Center in Jena, Louisiana, a remote, prison-like ICE facility where he was held for more than three months as the administration and DHS sought to fast-track his removal to either Syria or Algeria on the basis of bogus fraud allegations regarding omissions on his green card application and Rubio’s McCarthyite “foreign-policy” charge.

In his two-page memorandum submitted to the immigration court on April 10, 2025, Rubio claimed that Mahmoud Khalil’s continued presence in the United States posed a danger to US government efforts to “protect” Jewish students, thereby framing him as a national security concern. This memo invoked a 1950s foreign policy provision of the Immigration and Nationality Act to justify deporting Khalil based solely on his political beliefs, statements and associations, even while conceding that his activities were “otherwise lawful.”

It was only after Judge Farbiarz granted a preliminary injunction and ordered his release—finding that his detention was “impermissibly punitive” and that the foreign policy charge was likely unconstitutional and retaliatory—that he was freed on bond but forced to surrender his passport and left to fight his deportation case from the outside.

Khalil’s persecution is inseparable from his record as an outspoken defender of the Palestinians and a leader of campus protests since the onset of Israel’s genocidal assault on Gaza. While a graduate student at Columbia, he helped organize encampments, rallies, and walkouts demanding an end to US military aid to Israel, divestment from companies profiting from the occupation, and accountability for war crimes. He denounced the role of both the Democrats and Republicans for arming and financing the onslaught.

These protests—part of a wave of demonstrations at universities throughout the US and internationally—were met with police raids, mass arrests, suspensions, and blacklists, as the political establishment and corporate media waged a hysterical campaign smearing student opponents of genocide as purveyors of “antisemitism.” Khalil’s arrest and the subsequent effort to deport him were celebrated by fascists and Zionists as a model for how the state could “deal with” non-citizen student leaders and silence opposition to the Gaza war.

The Third Circuit ruling has significant implications for all non-citizens—especially international students—who have been targeted by DHS for their political activity and whose First Amendment rights have been trampled. By holding that federal district courts lack subject matter jurisdiction to block detention and deportation on the constitutional issues involved, the ruling narrows their cases to a procedural matter. It eliminates one of the few remaining judicial avenues by which immigrant activists can halt retaliatory actions long enough for their constitutional claims to be heard.

Immigration courts are not independent courts but administrative tribunals housed within the Department of Justice, presided over by judges who are answerable to the executive branch and whose docket is dominated by the enforcement priorities set by the White House. For a student or worker whose visa or green card is being revoked as punishment for anti-war speech, the ruling forces them to be tried by the very apparatus that is persecuting them, with limited access to discovery, no jury, and sharply constrained judicial review.

Civil liberties and immigrant rights organizations responded to the ruling and warned that it emboldens DHS to carry out politically motivated deportation campaigns directed. The ACLU of New Jersey explained that the Third Circuit had “overturned a district court ruling that

found Mahmoud Khalil’s detention and removal likely unconstitutional” and stressed that although “today’s order does not weigh in on the core First Amendment arguments,” it “decides federal court lacks jurisdiction until immigration court proceedings are complete.”

Baher Azmy, legal director of the Center for Constitutional Rights and one of Khalil’s attorneys, stated that the defense team was “disappointed with and strongly disagree with the majority opinion, but take heart in the very powerful and persuasive dissenting opinion,” vowing to “continue to fight with all available legal options.” Others have noted that the decision, if left undisturbed, will be invoked across the Third Circuit to shut the federal courthouse doors to non-citizens raising First Amendment and due process challenges to retaliatory enforcement, further entrenching a two-tier system of rights based on immigration status.

Khalil’s legal team has several options, including seeking a rehearing en banc by the full Third Circuit and, if necessary, petitioning the Supreme Court for review, and during this period the government has no legal authority to re-detain him while the order has not yet taken formal effect. Yet the trajectory of the case—from his arrest and transfer to a Louisiana detention center, to the Louisiana immigration judge’s removal order, to the Third Circuit’s jurisdictional ruling—demonstrates that legal avenues are insufficient to halt the administration’s drive to make an example of him.

The fight to defend Mahmoud Khalil, and with him the democratic rights of millions of immigrants and student youth, requires the conscious intervention of the working class, organized independently of both big-business parties and in opposition to the bipartisan imperialist policy in the Middle East.

In the aftermath of the murder of Renee Nicole Good by an ICE agent and the ongoing police state repression in Minneapolis, there is no question that the same state forces behind the US government’s backing of the Israeli genocide in Gaza and the attacks on fundamental speech rights of immigrants is now being unleashed upon the US population as a whole. The defense of Mahmoud Khalil continues to be a burning issue that must be taken up by the working class as part of the struggle to defend democratic rights and to stop the descent into fascist dictatorship and war.



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