

No. 26-60344

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MAHMOUD KHALIL,

Petitioner,

v.

TODD WALLACE BLANCHE, U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review from a Final Order Entered by the Board of Immigration
Appeals (Agency No. A233 698 925)

BRIEF OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION
AS *AMICUS CURIAE* SUPPORTING PETITIONER AND REMAND

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made so the judges of this Court may evaluate possible disqualification or recusal.

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Dated: August 28, 2026

/s/ Amanda Waterhouse
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STATEMENT OF CONSENT

Pursuant to Federal Rules of Appellate Procedure, Rule 29(a) and Circuit Rule 29-3, attorneys representing Petitioner and Respondent have consented to the filing of this amicus brief.

Dated: August 28, 2026

/s/ Amanda Waterhouse
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**STATEMENT REGARDING AUTHORSHIP OF THIS BRIEF AND
FINANCIAL CONTRIBUTIONS**

This brief was written by Amanda Waterhouse and Joshua A. Altman, members of the Amicus Committee of the American Immigration Lawyers Association (“AILA”), acting on behalf of and as counsel for AILA, the amicus curiae herein. No counsel for a party authored this brief in whole or in part. No counsel for a party or a party’s counsel contributed money that was intended to fund preparing or submitting this brief. No person or entity other than AILA, its Amicus Committee, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

Dated: August 28, 2026

/s/ Amanda Waterhouse
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I. INTRODUCTION & INTEREST OF AMICUS CURIAE.

The American Immigration Lawyers Association (“AILA”) is a national, nonpartisan association of more than 18,000 immigration attorneys and law professors who practice regularly before the U.S. Department of Homeland Security, the immigration courts, the Board of Immigration Appeals, and the federal courts.

AILA has a strong interest in the correct and neutral interpretation of the Immigration and Nationality Act and writes to explain how the process that produced Petitioner Mahmoud Khalil’s removal order departed from the full and fair hearing the INA promises.

This brief does not address all of the issues being litigated in this matter (e.g., the First and Fifth Amendment arguments, the lack of notice of uncharged allegations, and the motion to suppress and terminate based on Khalil’s warrantless arrest), several of which could potentially result in the complete reversal of the underlying agency decision and termination of proceedings, such that Khalil would remain a lawful permanent resident.

It focuses on the process through which the government arrived at its order directing Khalil’s removal, which was fatally flawed for the reasons explained below.

The government’s initial theory of removability rested on a foreign-policy determination signed by the Secretary of State on March 8, 2025, immediately after the underlying, essentially one-day “investigation” concluded (*Am. Ass’n of Univ.*

Professors v. Rubio, [802 F. Supp. 3d 120, 141-45](#) (D. Mass. 2025)). Only after that theory came under judicial challenge did DHS lodge a misrepresentation charge its own investigators had rejected (*Matter of M-K-*, [29 I. & N. Dec. 556, 557](#) (BIA 2026)).
See infra Part II.A.

Before the immigration judge, the process then foreclosed the record Khalil needed. The IJ denied discovery and subpoenas, and she declined an evidentiary hearing on the [8 U.S.C. § 1227\(a\)\(1\)\(H\)](#), [INA § 237\(a\)\(1\)\(H\)](#) waiver. *See infra* Part II.B. The IJ entered a decision that incorporated her prior rulings, some issued unlawfully under an injunction and a partial vacatur, leaving no single, complete set of findings, as ruling law requires (*Matter of M-K-*, [29 I. & N. Dec. at 558](#)). *See infra* Part II.C.

The BIA compounded those errors rather than correct them. It saw no error in the IJ's failure to render a complete set of findings. It made findings of fact in the first instance in violation of [8 C.F.R. § 1003.1\(d\)\(3\)\(iv\)](#). *See infra* Part II.D. It misapplied the materiality standard for the misrepresentation charge. *See infra* Part II.E. It resolved the appeal on the merits in record time, deciding this appeal on the merits only 9 days after briefing ended. *See infra* Part II.F. And those errors were not harmless. *See infra* Part II.G.

AILA urges this Court to vacate the BIA's decision and hold that DHS did not prove removability by clear, convincing, and unequivocal evidence, *see infra*, or remand for proceedings that permit a fully developed record and meaningful appellate review.

II. ARGUMENT.

The INA promises each noncitizen an opportunity for a full and fair hearing before an IJ and meaningful review before the BIA. But the process that produced Khalil’s removal order failed at every stage: the post-hoc charge, the IJ’s truncated record, the incorporation of void rulings, the BIA’s impermissible fact-finding, the BIA’s rush to judgment, and the designation as precedent. Because this Court’s review is confined to the administrative record, [8 U.S.C. § 1252\(b\)\(4\)\(A\)](#), [INA § 242\(b\)\(4\)\(A\)](#), the proper remedy to address many of these errors, assuming this Court does not terminate proceedings following the complete reversal of the agency’s decision, is transfer of the proceeding to a district court under [28 U.S.C. § 2347\(b\)\(3\)](#) for a hearing and determination, *see Khalil v. President, United States*, [164 F.4th 259, 280](#) (3d Cir. [2026](#)), or remand to the agency. *See Gonzales v. Thomas*, [547 U.S. 183, 187](#) (2006) (per curiam); *INS v. Ventura*, [537 U.S. 12, 16](#) (2002) (per curiam).

A. The Amended Charge Was a Post-Hoc Litigation Response

The government’s initial theory of removal rested on a single foundation: a foreign-policy determination signed by Secretary of State Marco Rubio on March 8, 2025. *Am. Ass’n of Univ. Professors*, [802 F. Supp. 3d at 144-45](#). The Homeland Security Investigations (“HSI”) referral and Action Memo advised that no alternative ground of removability applied. *Id.* at 143–44 (“DHS has not identified any alternative grounds of removability that would be applicable.” (quoting Action Memo)). Only

after that theory of removability came under judicial challenge (*Khalil v. Joyce*, No. 2:25-cv-01963 (D.N.J. filed Mar. 9, 2025)), as the government’s report warned was likely, did DHS add a second theory. *Matter of M-K*, 29 I. & N. Dec. at 557.

That the government responded to judicial scrutiny over the foreign-policy charge by searching the lawbooks for a weak technical violation—overruling HSI’s determination that no other charge applied—suggests that political or otherwise unconstitutional motivations drove the new charging decision. *See* Robert H. Jackson, *The Federal Prosecutor*, 31 J. Crim. L. & Criminology 3, 5 (1940) (“Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted.”).

And the IJ’s own findings support why HSI determined no alternative ground of removability applied. The IJ accepted that United Nations Relief and Works Agency for Palestinian Refugees (“UNRWA”) “is not a membership-based organization” and that Khalil was an intern, not the “political affairs officer” alleged; she credited that he “was never a member of CUAD,” as alleged; and the IJ declined to sustain the British-Embassy allegation as the Embassy’s letter showed Khalil’s contract ended in 2022. And while the IJ found that Khalil had a connection to Columbia University Apartheid Divest (“CUAD”), she based that finding solely on facts post-dating the alleged false statement (but note that the BIA never reached this particular finding). IJ Decision at 6–8 (June 20, 2025).

B. The IJ Improperly Limited Record Development

The IJ repeatedly denied Khalil the opportunity to create the record he needed to defend himself. The BIA’s decision confirms each denial. It held that Khalil was “not entitled to conduct discovery” directed at DHS, the Department of Justice, or the Department of State, 8 C.F.R. § 1208.12(b); *Matter of Benitez*, 19 I. & N. Dec. 173, 174 (BIA 1984), and that his document request “did not comply with the subpoena requirements” of 8 C.F.R. § 1003.35(b)(2). *Matter of M-K*, 29 I. & N. Dec. at 561–62.

But § 1208.12(b)’s bar reaches only “this part”—Part 1208, the asylum regulations—and Khalil sought discovery on removability. And *Matter of Benitez*’s holding addresses statutory entitlement, not constitutional sufficiency. The Fifth Amendment entitles noncitizens to due process in removal proceedings (*Anwar v. INS*, 116 F.3d 140, 144 (5th Cir. 1997)), and a proceeding that denies the noncitizen a reasonable opportunity to examine evidence in the government’s exclusive control that is material to his defense is not fundamentally fair—and here, the evidence bearing on the government’s burden and motive resides solely with DHS, DOJ, and the Department of State. And § 1003.35(b)(2)’s diligent-effort requirement is a procedural precondition to a party-initiated subpoena, not a substantive bar: § 1003.35(b)(1) empowers the IJ to issue subpoenas “upon . . . application of . . . the alien” or sua sponte, and (b)(3) commands that a subpoena “shall issue” if the evidence is essential—an issue the IJ and BIA declined to address.

The IJ likewise refused to permit the required evidentiary hearing on the § 1227(a)(1)(H) waiver, ruling the record made one unnecessary.¹ IJ Amended Decision at 2 (Sept. 12, 2025).

The IJ also limited record development on the misrepresentation charge, which was dispositive, as the IJ had vacated her foreign-policy determination consistent with the district court’s injunction. Materiality is an element of the misrepresentation charge. Yet, the IJ only conducted fact-finding to support a mere relevance, “shut off a line of inquiry” standard with no basis in this Court’s case law; and the BIA affirmed on that basis. *Matter of M-K-*, [29 I. & N. Dec. at 560](#)–61; *see infra* Part II.E. Nothing in the administrative record establishes the facts that a fully developed record would have provided on materiality so the adjudicator could assess it under the proper standard from *Kungys v. United States*, [485 U.S. 759, 770](#) (1988).

Absent a remand or transfer, and if the Court were to rule in favor of the government on the incomplete record as opposed to in favor of Khalil, the loss would be permanent. This Court reviews only the administrative record, 8 U.S.C.

¹ The IJ rested this ruling on *Matter of Andrade*, [27 I. & N. Dec. 557, 559](#) (BIA 2019), and *Assaad v. Ashcroft*, [378 F.3d 471, 475](#) (5th Cir. 2004), which do not address the statutory framework governing relief adjudication. IJ Amended Decision at 2 n.2 (Sept. 12, 2025). The statute, [8 U.S.C. § 1229a\(c\)\(4\)\(B\)](#), INA § 240(c)(4)(B), directs the IJ to evaluate “the testimony of the applicant or other witness” and “weigh the credible testimony along with other evidence of record”—language that presupposes the evidentiary hearing the IJ denied—and [8 C.F.R. § 1240.11\(d\)–\(e\)](#) requires the application to be made during the hearing and bars the IJ from refusing to receive it.

§ 1252(b)(4)(A), and may not “look outside” it. *Terrazas-Hernandez v. Barr*, [924 F.3d 768, 774](#) (5th Cir. 2019); *Kane v. Holder*, [581 F.3d 231, 242](#)–43 & n.44 (5th Cir. 2009).²

This Court may transfer the proceeding to the district court under § 2347(b)(3) for a hearing and determination, *see Kbalil*, [164 F.4th at 280](#), or remand to the agency for the hearing the IJ refused—which could resolve the foreign policy, waiver, and materiality issues without reaching the constitutional claims. Thus, if this Court does not terminate proceedings entirely, it should grant the transfer, ECF No. 28, or remand.

C. The IJ’s Decision Was Really a Series of Citations to Previously Embedded IJ Decisions

The BIA’s own precedents require a single, self-contained IJ decision with clear, complete findings. *Matter of A-P-* requires the IJ’s decision to be “separate and distinct . . . from the transcript of the proceedings,” so the findings are identifiable without “min[ing] the transcript to reconstruct the IJ’s decision”; piecemeal findings are impermissible. [22 I. & N. Dec. 468, 476](#) (BIA 1999). *Matter of S-H-* adds that the BIA’s bar on fact-finding “heightens the need for Immigration Judges to include in their decisions clear and complete findings.” [23 I. & N. Dec. 462, 464](#) (BIA 2002).

Yet the September 12 decision the BIA reviewed “incorporate[d]” the June 20 decision and the July 31 order “by reference,” “re-enter[ing] its previous orders, in

² The Court can “look behind” the determination by Secretary of State Rubio given the “affirmative showing of bad faith” on the part of the government. *See Kerry v. Din*, [576 U.S. 86, 104-05](#) (2015) (Kennedy, J. concurring)).

addition to its finding today,” without itself sustaining any charge. IJ Amended Decision at 2, 7 (Sept. 12, 2025). The June 20 decision rested on findings made orally at the April 11 hearing (Tr. at 104–07), even though a preliminary injunction barred removal on the foreign-policy ground (*Khalil v. Trump*, [786 F. Supp. 3d 871, 880–81](#) (D.N.J. 2025), *vacated sub nom. Khalil v. President*, [164 F.4th 259](#) (3d Cir. 2026)), and the July 31 order was compelled by the district court’s clarification order (*Khalil v. Trump*, No. 25-cv-01963 (MEF)(MAH), 2025 LX 236615, at *3–4 (D.N.J. July 17, 2025)). The interlocking incorporations left the controlling facts unattributed across four rulings:

- April 11. The IJ sustained the foreign-policy ground and held the misrepresentation ground in abeyance. She never said whether the abeyance ruling survived the July 31 vacatur.
- June 20. The IJ sustained the misrepresentation ground on Allegations 6 and 8, applying a “shut off a line of inquiry” materiality standard. IJ Decision at 5 (June 20, 2025). On Allegation 8, she found that CUAD involvement post-dated the I-485 yet sustained the charge on a novel “ongoing obligation and duty to update” theory. *Id.* at 7. She also denied asylum in part on the Rubio Determination—despite the district court’s injunction. She never resolved whether the “ongoing duty” theory, its supporting findings, or the asylum denial survived the injunction and the July 31 vacatur.
- July 31. The IJ vacated the foreign-policy-ground determination in her April 11 decision, stating emphatically that she did not make one in the June 20 decision (IJ Decision at 1 n.1 (July 31, 2025)) and apparently left the misrepresentation findings, the letter-based asylum denial, and the waiver untouched.
- September 12. The IJ incorporated the June 20 and July 31 rulings “in their entirety,” denied the § 1227(a)(1)(H) waiver without an evidentiary hearing, and ordered removal—without sustaining any charge or restating any removability finding. She rested the denial primarily on the Secretary of State’s foreign-policy letter and made only cursory alternative findings, discounting the hardship evidence as “consistent with that which would ordinarily be expected.” IJ Amended Decision at 6–7 (Sept. 12, 2025). And the incorporation is contradictory: she incorporated the June 20 ruling “in its entirety”—which

textually includes its own foreign-policy determination—while incorporating the July 31 vacatur, which vacated the April 11 finding on that ground.

No single decision states the removability findings and the standards supporting them. Reconstructing that decision is what *Matter of A-P* prohibits. The BIA failed to remand for correction of these errors, as it should have done.

D. The BIA Filled the Gaps with Its Own Fact-Finding

The standard of review regulation, [8 C.F.R. § 1003.1\(d\)\(3\)\(iv\)](#), forbids the BIA from engaging in “factfinding” on appeal. *De Rodriguez v. Holder*, [585 F.3d 227, 234](#) (5th Cir. [2009](#)) (“Under [8 C.F.R. § 1003.1\(d\)\(3\)\(i\)](#), the BIA cannot ‘engage in de novo review of findings of fact determined by an immigration judge.’”); *see also Santos-Zacaria v. Garland*, [126 F.4th 363, 367](#) (5th Cir. [2025](#)) (“[W]hether the BIA failed to follow its regulations by impermissibly finding facts is a question of law.”).

Where the BIA engages in fact-finding, it contravenes *Accardi* principles (*United States ex rel. Accardi v. Shaughnessy*, [347 U.S. 260, 267](#)–68 (1954)), and violates due process (*Francois v. Garland*, [120 F.4th 459, 465](#)–66 (5th Cir. [2024](#))).

The BIA violated that prohibition here. The IJ’s failure to find facts left the record incomplete, and so the BIA’s duty was to remand under *Matter of S-H* and *Matter of A-P*. But rather than remand, the BIA supplied its own facts.

First, the BIA decided that the foreclosed waiver evidence would not have mattered. The IJ declined an evidentiary hearing on the § 1227(a)(1)(H) waiver and denied Khalil’s discovery and subpoena requests (*see supra* Part II.B), so the evidence

he sought to present never entered the record. On that truncated record, the BIA made its own factual determination: that Khalil “has not shown that [the additional] evidence would have materially differed from the evidence he did submit,” and therefore that Khalil “received a full and fair hearing on his waiver application.” *Matter of M-K*, [29 I. & N. Dec. at 563](#). That is a finding the IJ never made—and could not have made, because Khalil was prevented from proffering the evidence whose materiality the BIA assessed. The IJ made no finding that the missing evidence was immaterial. The BIA impermissibly supplied the fact-finding itself, deciding what the foreclosed evidence would have shown—which *Matter of A-P* forbids.

Second, the BIA decided that the Secretary’s determination was factually supported—and then made it dispositive—on a record Khalil was prevented from building. The IJ denied Khalil’s document requests and subpoenas directed at DHS, DOJ, and the State Department, foreclosing evidence that the Secretary’s foreign-policy determination lacked factual support or turned on unconstitutional motivations. Yet the BIA affirmed on the ground that “DHS demonstrated reasonable grounds to find that the respondent is a danger to national security through submission of Secretary Rubio’s letter,” *Matter of M-K*, [29 I. & N. Dec. at 565](#)—a determination resting on the very record the IJ prevented Khalil from testing. From that unsupported premise, the BIA proceeded to treat the letter as conclusive in the waiver balance: it affirmed the IJ’s determination “that the negative factor of

Secretary Rubio’s letter alone outweighs” Khalil’s equities—his U.S. citizen wife and son and his supporting declarations—and then purported to affirm the denial “even without considering the Secretary of State’s letter.” *Id.* at 564. The two holdings are irreconcilable. If the letter “alone” outweighs the equities, the alternative analysis is surplusage; if the alternative holds, the letter did no independent work. *Ndifon v. Garland*, [49 F.4th 986, 990–91](#) (5th Cir. [2022](#)). The BIA adopted the Secretary’s determination as its own fact-finding on a record that, by the IJ’s rulings, could not contain the contrary evidence, and it used that fact-finding to treat a single factor as dispositive. Sections 1227(a)(1)(H) and 1229a(c)(4)(B) and [8 C.F.R. § 1240.11](#) require a hearing where evidence can be presented and weighed and the genuine balancing of adverse and favorable factors. *Matter of Tijam*, [22 I. & N. Dec. 408, 412](#) (BIA 1998).

Third, the BIA created disputed facts the IJ never had the opportunity to consider, much less resolve—by adding a national-security inference no IJ decision contains. The June 20 decision found that Khalil’s omission “shut off a line of inquiry that would predictably have disclosed other relevant facts regarding his activities with UNRWA” and would have triggered “discretionary decision-making” by the officer. IJ Decision at 5, 8 (June 20, 2025). That was the extent of the IJ’s finding. The BIA, however, said the omission “predictably could have led an immigration officer to inquire regarding related matters of discretion *or security-related grounds of inadmissibility*.” *Matter of M-K*-, [29 I. & N. Dec. at 561](#) (emphasis added). The phrase “security-related

grounds of inadmissibility” appears in no IJ decision. In characterizing the omission as one the officer would have linked to national-security grounds—rather than to discretion alone—the BIA impermissibly created a disputed fact regarding the omission’s effect on the officer’s inquiry into Khalil’s qualifications. *See infra* Part II.E. For this reason also the BIA’s decision must be reversed.

E. The BIA Applied Too Low a Materiality Standard

Even after making up its own facts, the BIA could not reach its desired result without applying an incorrect legal standard to those facts. The BIA recited the correct standard—a misrepresentation is material if it “‘has a natural tendency to influence’ the decisions of the agency,” *Matter of B-Y*, [25 I. & N. Dec. 236, 244](#) (BIA 2010) (quoting *Kungys*, [485 U.S. at 770](#))—but applied a lower one: Khalil’s omission was material because it “shut off a line of inquiry” that “predictably could have led an immigration officer to inquire,” *Matter of M-K*, [29 I. & N. Dec. at 561](#). That standard appears nowhere in this Court’s published petition-for-review decisions; this Court has applied only *Kungys*, which requires that a misrepresentation have “a natural tendency to influence, or [be] capable of influencing,” the official decision—in the immigration context, the determination whether “the applicant was qualified,” [485 U.S. at 770-72](#). By contrast, the BIA’s gloss collapses materiality into mere relevance.³

³ This Court’s prior decisions have left open whether the BIA’s lower standard conflicts with *Kungys*. *Said v. Gonzales*, [488 F.3d 668, 671](#) & n.4 (5th Cir. 2007); *Njenga v. Barr*, [831 F. App’x 123, 124](#) (5th Cir. 2020). The Court should hold that it does.

If this Court does not simply find that DHS did not meet its burden to prove removability on the misrepresentation charge, it should at a minimum enter a remand for findings under the correct standard.

F. The BIA Rushed the Decision—and Then Published It

Khalil filed his appeal brief on March 2, 2026, and briefing closed on March 31, 2026. The BIA decided the appeal on April 9, 2026, and designated the decision as precedent on April 15, 2026. *Matter of M-K*, [29 I. & N. Dec. at 556](#). A merits ruling on three new national rules—just 9 days after briefing ended.

Normal processing tells a different story. Non-detained BIA appeals like this case take, on average, 795 days to reach a merits disposition; the median is 565 days; 26.6% take four or more years. Declaration of Zabdi J. Salazar on BIA Non-Detained Case Appeals Processing Times, Cohort Composition, and Outcome Patterns ¶ 12 (Apr. 22, 2026) (attached as Exhibit A). This was not a procedural dismissal; it was a merits ruling announcing new law.

And then, six days after the unpublished ruling, the BIA bound every IJ, every panel, and every DHS officer to the rules announced in *Matter of M-K*. [8 U.S.C. §§ 1103\(a\), \(g\), INA §§ 103\(a\), \(g\)](#). The timeline also raises an *Accardi* concern—an agency is bound to afford the process its own regulations contemplate.

In this case, though, the agency abandoned normal procedure, driven by an unacknowledged preference for speed so as to effectuate DHS' goal of deporting

Khalil as quickly as possible to make an example of him.

That is not inference. It is what the officials running the process said—and what a federal court found they did. Three days after Khalil’s arrest, White House Press Secretary Karoline Leavitt claimed he “distributed” pro-Hamas fliers on Columbia’s campus, even though HSI had reported no evidence of that. *Am. Ass’n of Univ. Professors*, [802 F. Supp. 3d at 147](#)–48. Secretary Rubio announced: “we’re going to kick you out. It’s as simple as that.” *Id.* at 148. Vice President Vance framed the process as pure executive fiat: “if the Secretary of State and the President decide this person shouldn’t be in America, and they have no legal right to stay here, it’s as simple as that.” *Id.* at 150. After a bench trial, Judge William G. Young found “by clear and convincing evidence” that “Secretaries Noem and Rubio and their several agents and subordinates acted in concert to misuse the sweeping powers of their respective offices to target non-citizen pro-Palestinians for deportation primarily on account of their First Amendment protected political speech,” doing so “in order to strike fear into similarly situated non-citizen pro-Palestinian individuals.” *Id.* at 131, 194.

G. Harmless Error Cannot Apply Here

Matter of M-K- announces three new rules on the basis of a record the IJ never developed and findings the BIA supplied itself. This Court can affirm notwithstanding those errors only if “there is no realistic possibility” the agency would have reached a different result absent the errors. *Cardenas v. Garland*, [70 F.4th](#)

232, 243–44 (5th Cir. 2023); *Enriquez-Gutierrez v. Holder*, 612 F.3d 400, 407 (5th Cir. 2010); *see also* *Calcutt v. FDIC*, 598 U.S. 623, 628-30 (2023) (per curiam).

That standard is not met here. Harmless error asks whether the same result would obtain absent the error; here the BIA created the errors itself—supplying factual findings the IJ never made and applying a flawed materiality standard—then used the undeveloped record to ratify the result. *Cf. Francois*, 120 F.4th at 466 (prejudice “an easy case” where error changed the outcome). Consistent with *Santos-Zacaria*, unless reversal of the BIA’s decision and termination is ordered, this Court has remanded—rather than affirmed as harmless—where the BIA order lacked record support. *Casildo v. Garland*, 851 F. App’x 520, 521–22 (5th Cir. 2021).

Nor is the missing record reconstructable absent a transfer or remand. Under 8 U.S.C. § 1252(b)(4)(A), this Court cannot supplement the record. Where, as here, the error concerns disputed, material facts never found by the IJ, the error is not harmless. Unless this Court grants the pending Hobbs Act motion or remands to permit fact-finding, only the agency can reopen it. *Santos-Zacaria*, 126 F.4th at 369–70; *Miranda-Lores v. INS*, 17 F.3d 84, 85–86 (5th Cir. 1994).

III. CONCLUSION.

For these reasons, AILA urges this Court to grant Khalil’s petition, vacate *Matter of M-K*, and remand for proceedings consistent with the INA’s promise of a full and fair hearing.

Dated: August 28, 2026

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the type-volume limitation of Rules 29(a)(5) and 32(a)(7) because it contains no more than 3,998 words and complies with the typeface and style requirements of Rule 32(a)(5) and (a)(6) because it was prepared in Microsoft Word using 14-point Garamond typeface.

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CERTIFICATE OF SERVICE

I certify that, on August 28, 2026, a true and correct copy of this document was transmitted to the Clerk of the United States Court of Appeals for the Fifth Circuit via the Court's CM/ECF document filing system, and on all counsel of record.

Dated: August 28, 2026

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