IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BADAR KHAN SURI

Petitioner,

v.

DONALD TRUMP*, et al.,*

Respondents.

Case No. 1:25-cv-480

ORAL ARGUMENT REQUESTED

REPLY TO RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR RELEASE ON BOND

It is uncontested that Petitioner Badar Khan Suri is neither a flight risk nor a danger to the community. The evidence presented in this case thus far—core bail factors which Respondents do not challenge in their opposition to his release—demonstrate that Dr. Khan Suri is a legal visitor to this country on a visiting scholar visa with no criminal record; a loving and devoted husband to his U.S. citizen wife and father to his three small children; a kind, thoughtful, and considerate colleague and friend; and an academic dedicated to ending wars and finding just and peaceful solutions to conflicts. *See* ECF 34; ECF 6-1; ECF 21-2.

Respondents have imprisoned Dr. Khan Suri not because he is a flight risk or danger, but to punish him for his very limited speech on the issue of Palestinian rights, his U.S. citizen wife's Palestinian origins, her constitutionally protected speech, and her father's former employment in the Palestinian government. Unlike the myriad other cases Respondents cite, the purpose of Dr. Khan Suri's detention has been made plain by Respondents' own statements, ECF 34 at ¶¶ 31-37,

74, which make the First Amendment and Due Process issues here even more clear than in the contexts where the Department of Homeland Security (DHS) solely claims pretextual reasons, later rejected by federal courts, for its actions. Whatever discretion the federal government may have to detain a petitioner pending removal proceedings, it never has discretion to violate the U.S. Constitution.

Respondents make a series of extraordinary arguments in an attempt to eliminate or, at least diminish, this Court's inherent authority to order Dr. Khan Suri's release pending the adjudication of his habeas petition. First, they raise a string of jurisdictional arguments that have no application to a challenge to the legality of *detention*, as the Supreme Court has repeatedly held, and which, if applied here, would violate Article III, the First Amendment, the Fifth Amendment, and the Suspension Clause because they would provide Dr. Khan Suri with no forum to challenge the legality of his *detention*. Then, they suggest that even if this Court does have jurisdiction over his challenge to his detention, he does not meet the standards for release under applicable case law—even going so far as to suggest that this Court lacks the inherent authority to release Dr. Khan Suri because this is a civil immigration (not criminal) habeas petition, even though courts have applied even more flexible standards to permit release in civil immigration habeas petitions precisely because there is no past adjudication of guilt or imposition of sentence being disturbed.

Under any standard, Dr. Khan Suri meets the standard for release. As a result of Respondents' decision to make a highly publicized example of Dr. Khan Suri and several others, the world is watching to see if Dr. Khan Suri's fundamental rights will be preserved or if, instead, the Government will be permitted to punish him through prolonged detention. This Court should reject Respondents' arguments and exercise its inherent authority to restore Dr. Khan Suri to his

freedom—the status he had prior to the present controversy, and the only status that is constitutionally justified—pending further adjudication.

ARGUMENT

I. NOTHING ELIMINATES THIS COURT'S INHERENT AUTHORITY TO RELEASE DR. KHAN SURI PENDING ADJUDICATION OF HIS HABEAS PETITION.

Respondents begin their opposition by challenging the jurisdiction of this Court to hear Dr. Khan Suri's habeas action as well as the venue of this proceeding. Respondents claim Dr. Khan Suri must bring his habeas action against his immediate custodian and in the district of his confinement. But Respondents' claims are wrong on the merits of both. As Petitioner will set out more fully in his opposition to Respondents' Motion to Dismiss or Transfer Venue, pursuant to this Court's Order dated April 7, 2025, ECF 33, the facts in the record do not establish that Dr. Khan Suri was in the custody of the warden of the Alexandria Staging Facility or the Prairieland Detention Center at the time his initial Petition was filed. Further, even if the Court determines that Dr. Khan Suri's immediate custodian was someone other than the warden of the Farmville Detention Center, the Court can and should apply any of the exceptions to the immediate custodian rule articulated in *Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004), and find that it has jurisdiction to hear Dr. Khan Suri's habeas petition. This Court thus has the "jurisdiction to determine its own jurisdiction." *United States v. Ruiz*, 536 U.S. 622, 628 (2002).

A. COURTS HAVE INHERENT AUTHORITY TO ORDER RELEASE OF PETITIONERS IN IMMIGRATION HABEAS CASES

Respondents wrongly suggest that federal courts' inherent authority to release habeas petitioners on bail has been eliminated by statute or is somehow confined to the criminal habeas context. ECF 29 at 5-6, 18. Respondents argue that the Second Circuit "recognized that it cannot

override a statute to grant relief," and therefore, *Mapp v. Reno* is no longer good law after the REAL ID Act. ECF 29 at 16. Respondents fail to mention that the Second Circuit has already rejected this precise argument. *See Elkimya v. Dep't of Homeland Sec*., 484 F.3d 151, 154 (2d Cir. 2007) (discussing *Mapp* and holding that the REAL ID Act of 2005 "did not qualify our inherent authority to admit bail to petitioners in immigration cases"). None of the statutory provisions cited by Respondent in 8 U.S.C. § 1252, as amended by the REAL ID Act, make any reference to courts' inherent authority, and therefore impose no limitation to that authority. *Id*.

Underscoring that point, in exercising their inherent authority to consider bail to habeas petitioners, courts in this Circuit have routinely relied on *Mapp v. Reno*, including since the passage of the REAL ID Act. *See, e.g., Brooks v. Wilson*, No. 3:16CV857, 2018 WL 11463555, at *2 (E.D. Va. June 15, 2018) (granting bail "to preserve the effectiveness of the effectiveness of the habeas remedy should he ultimately prevail on his habeas claim."); *Brown v. Clarke*, No. 1:21CV39 (TSE/JFA), 2021 WL 2558477, at *12 (E.D. Va. June 22, 2021) (acknowledging the court's inherent authority to grant bail during the pendency of habeas proceedings); *Young v. Antonelli*, No. CV 0:18-1010-CMC, 2021 WL 62573, at *1 (D.S.C. Jan. 7, 2021) (granting bond to a §2241 habeas petitioner who "warrants immediate relief and release"); *Coreas v. Bounds*, No. CV TDC-20-0780, 2020 WL 5593338, at *15 (D. Md. Sept. 18, 2020) (considering bail for immigration detainees where the government "can identify no contrary authority other than a 100-year-old case refusing to grant bail to an immigration detainee charged with violating the now obsolete Chinese Exclusion Act"). That is because, "[i]t is *firmly* established…that federal courts have inherent authority to grant bail to habeas petitioners, even absent express statutory authority." *Id.* (emphasis added).

B. NONE OF THE JURISDICTIONAL BARS CITED BY RESPONDENTS APPLY TO DR. KHAN SURI'S CHALLENGES TO HIS DETENTION

Even if this Court's inherent authority could be limited by statute, none of the provisions cited by Respondents forbid release. This Court should reject the Respondents' attempt to shoehorn this challenge to Dr. Khan Suri's detention into various jurisdiction-channeling and jurisdiction-stripping provisions in 8 U.S.C. §§ 1252(a)(5), (b)(9), (g), and 1226(e). The Supreme Court has repeatedly rejected these arguments, and the Fourth Circuit has interpreted these provisions narrowly. Respondents' arguments, which ignore precedent, raise serious constitutional concerns.

First, the jurisdiction-channeling provisions in §§ 1252(a)(5) and (b)(9) have no application to a petitioner's challenge to the legality of his detention. Section 1252(a)(5) applies only to review of final orders of removal. *See*, *e.g.*, *INS v. St. Cyr*, 533 U.S. 289, 311, 313 (2001) (§ 1252(a) applies to "[j]udicial review of a final order of removal"); *Patel v. Barr*, No. CV 20- 3856, 2020 WL 4700636, at *3 (E.D. Pa. Aug. 13, 2020) (§ 1252(a)(5) does not apply where petitioner is not challenging "order of removal"). There has been no such order issued in Dr. Khan Suri's case, and his challenge to detention does not involve review of any such order; thus, § 1252(a)(5) is inapplicable. Nor does § 1252(b)(9) preclude review. The Supreme Court explained in *Jennings v. Rodriguez* that "the applicability of § 1252(b)(9) turns on whether the legal questions that we must decide 'aris[e] from' the actions taken to remove" noncitizens, and construed that phrase narrowly to avoid "extreme" results that would render claims of "excessive detention" "effectively unreviewable." 583 U.S. 281, 293 (2018); *see also Nielsen v. Preap*, 586 U.S. 392, 399-400, 402 (2019) (finding that § § 1252(b)(9) did not preclude review of detention challenge); *Johnson v. Guzman Chavez*, 594 U.S. 523, 533 n.4 (2021) (same).

Respondents rely on *Massieu v. Reno*, but even there, the Third Circuit ordered the petitioner's release on bail pending its adjudication of the case. 91 F.3d 416, 419 (3d Cir. 1996).

Massieu is distinguishable from this case for several reasons, not least because Dr. Khan Suri is not directly challenging his removal proceedings or facially challenging any statute in the Immigration and Nationality Act. Rather, his challenges to Respondents' policy to retaliate against and punish noncitizens for their speech concerning Israel's military campaign in Gaza and his own detention are collateral to his removal proceedings and would not receive meaningful review if limited to the administrative review process. *See, e.g.*, *E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 180 (3d Cir. 2020) ("When a detained alien seeks relief that a court of appeals cannot meaningfully provide on petition for review of a final order of removal, § 1252(b)(9) does not bar consideration by a district court."); *see also Chehazeh v. Att'y Gen of U.S.*, 666 F.3d 118, 131 (3d Cir. 2012) (construing § 1252(b)(9) narrowly). It is true that if Dr. Khan Suri prevails on his challenges to removal and any appeals, he will eventually be released from detention. But his current habeas challenge is a "now or never" claim: he is arguing that his present confinement is unconstitutional independent of the outcome of his removal proceedings. Here, just as in *Jennings*, denying jurisdiction to challenge detention until it has "already taken place" would render such detention "effectively unreviewable." 583 U.S. at 293.

Respondents assert in a footnote that Dr. Khan Suri is able to "challenge his custody determination" but that such review is limited to the question of "whether he is properly subject to his removal provision" under 8 § C.F.R. 1003.19(h)(2)(ii). *See* ECF 29 at 17 n. 8. By citing that provision, Respondents take the position that Dr. Khan Suri is *not* permitted to seek an ordinary custody redetermination from an immigration judge under 8 § C.F.R. 1003.19(a) because he is being charged under the foreign policy bar. 8 § C.F.R. at § 1003.19(h)(2)(i)(C). Under

Respondents' position, an immigration judge can neither issue him bond nor consider any of the constitutional claims Dr. Khan Suri presses here. ECF 29 at 5.[1]

Second, the jurisdiction-stripping provision in 8 U.S.C. § 1252(g) has no application to a petitioner's challenge to the legality of his detention. This provision is tethered solely to the "three discrete actions" referenced in 8 U.S.C. § 1252(g). *Reno v. AADC*, 525 U.S. 471, 482 (1999). It, therefore, does not alter a court's jurisdiction to review "many other decisions or actions that may be part of the deportation process—such as the decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order." *Id*. at 483. Another action not described in § 1252(g) is the decision to detain. Appropriately, courts have readily found habeas jurisdiction over challenges to retaliatory detention. *See, e.g.*, *Bello-Reyes v.*

[1] To the extent Respondents argue in a footnote (ECF 29 at 17 n. 8) that Dr. Khan Suri must first exhaust a challenge to his removal grounds before seeking to challenge his detention, he does not. *See Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542 (E.D. Va. 1999) (no exhaustion requirement for noncitizen petitioner challenging his immigration detention pre-final order where the administrative body has pre-determined the issue and therefore exhaustion would be futile). Petitioner is not seeking review of a final order of removal, but instead seeks review of the government's decision to keep him in custody pending a decision of whether he will be removed. *See Jarpa v. Mumford*, 211 F. Supp. 3d 706 (D. Md. 2016) (no statutory exhaustion requirement where petitioner raises constitutional challenges to his immigration detention, there is substantial doubt whether the agency can grant meaningful redress "or the potential decision-maker can be shown to have predetermined the issue."). Dr. Khan Suri raises constitutional challenges to his present confinement and any exhaustion would be futile and burdensome. Nor can he raise detention challenges in a petition for review, because a custody determination is not a removal order under 8 U.S.C. § 1252. Respondents citation to *Rodriguez v. Ratledge,* is easily distinguishable because it involved a petitioner in the Bureau of Prisons challenging a prison disciplinary decision where there was an agency appeal process that could plausibly "prevent[] premature judicial intervention." 715 F. App'x 261, 265 (4th Cir. 2017). Respondents' citation to a footnote in the Supreme Court's decision in *Williams v. Reed* is inapposite. *See Williams v. Reed,* 145 S. Ct. 465, 471 (2025) (holding that an Alabama Supreme Court's decision requiring administrative exhaustion of claims under 42 U.S.C. §1983 seeking to expedite the administrative process was preempted and noting that *generally*, a procedural due process claim is complete not "when the deprivation occurs" but "when the State fails to provide due process.") (quoting *Reed v. Goertz*, 598 U.S. 230, 236 (2023).

Gaynor, 985 F.3d 696, 698 (9th Cir. 2021) (addressing merits of First Amendment challenge to ICE detention); *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 921 (W.D. Tex. 2018) (addressing merits of First Amendment challenge to ICE detention).

Rather than addressing the body of case law holding that challenges to immigration detention must be brought pursuant to a habeas petition, *see*, *e.g.*, *Gudiel Polanco v. Garland*, 839 F.App'x. 804, 805 (4th Cir. 2021); *Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097 (U.S. Apr. 7, 2025), Respondents instead rely heavily on cases where petitioners were not seeking release from detention to argue that because §1252(g) bars challenges about whether to commence removal proceedings, it "must equally apply to decisions and actions...that ultimately may end in the execution of a final order of removal." S*ee* ECF 29 at 10-11 (citing *Arellano v. Barr,* 785 F. App'x 195 (4th Cir. 2019) (challenging execution of removal order)*; Tazu v. Att'y Gen. of U.S.*, 975 F.3d 292 (3d Cir. 2020) (same), *Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022) (same), and *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594 (9th Cir. 2002) (challenging commencement of removal proceedings[2])).

Respondents also seemingly argue that § 1252(g) bars review of Petitioner's detention because it implicates Respondents' "method" in commencing removal proceedings. But that has no basis in fact or law. *See* ECF 29 at 12-13. As explained in Petitioner's Reply in Support of His Motion to Compel, ECF 35, removal proceedings commence when DHS files a notice to appear with the immigration court. 8 CFR § 1239.1. Dr. Khan Suri's challenges to his detention have no bearing on whether DHS files a notice to appear with the immigration court. As the Fourth Circuit

[2] But the Court in *Jimenez-Angeles* retained jurisdiction on plaintiff's "constitutional challenges to deportation procedures" because section 1252(g) does not prevent the district court from exercising jurisdiction over general collateral challenges to unconstitutional practices and policies used by the agency. *Id.* at 599 (citing *Walters v. Reno*, 145 F.3d 1032,152 (9th Cir. 1998)) (quoting *McNary v. Haitian Refugee Ctr.*, *Inc*. 498 U.S. 478, 492 (1991)).

has made clear, "§ 1252(g) stripped the federal courts of jurisdiction only to review challenges to the Attorney General's decision to exercise her discretion to initiate or prosecute these specific stages of the deportation process" and does not "cover[] the universe of deportation claims" nor does it apply to agency determinations of statutes." *Bowrin v. U.S. I.N.S.*, 194 F.3d 483, 488 (4th Cir. 1999) (internal quotations omitted); *see also Najera v. United States*, No. 1:16CV459 (JCC/JFA), 2016 WL 6877069, at *5 (E.D. Va. Nov. 22, 2016) (holding that the government's "decision to detain Plaintiff in Texas cannot be fairly characterized as 'arising from' a decision to commence removal proceedings").

Respondents essentially argue that no court can review whether Petitioner's current detention is unlawful—an argument that should raise serious constitutional concerns. *See Lopez v. Doe*, 681 F. Supp. 3d 472 (E.D. Va. 2023) (invoking the Suspension Clause as to Petitioner's detention claim because the appeals process following a decision of the immigration court "becomes moot on finality," and "it's hard to call a process that potentially results in extended unlawful detention 'adequate' and 'effective.'"). This is also true with respect to challenges to deportation, where there is similarly no adequate substitute for habeas. *See Joshua M. v. Barr,* 439 F. Supp. 3d 632 (E.D. Va. 2020) (holding that petitioner who had significant ties to the U.S., accorded important statutory and procedural protections, and no criminal history, was entitled to invoke the Suspension Clause because "the alternative remedy to litigate from abroad [did] not provide an adequate substitute for habeas."); *Sean B. v. McAleenan*, 412 F. Supp. 3d 472, 484-90 (D.N.J. 2019) (applying Suspension Clause to protect review). Respondents' arguments raise grave constitutional concerns, not only under the Suspension Clause, but under Article III and the First and Fifth Amendments themselves.

Third, 8 U.S.C. § 1226(e) has no application to a petitioner's challenge to the legality of his detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Miranda v. Garland*, 34 F.4th 338, 352 (4th Cir. 2022) ("subsection (e) refers to a specific act or decision regarding bond or parole decisions. And while the Attorney General's decision to adopt procedures… under § 1226(a) may very well be discretionary, a constitutional challenge…is beyond the scope of § 1226(e)."") (citing *Nielsen v. Preap,* 586 U.S. 392 (2019)); *Al–Siddiqi v. Achim*, 531 F.3d 490, 494 (7th Cir. 2008) ("[T]his section ... does not deprive us of our authority to review statutory and constitutional challenges.")).[3]

II. THIS COURT SHOULD EXERCISE ITS INHERENT AUTHORITY TO RELEASE DR. KHAN SURI PENDING ADJUDICATION OF HIS HABEAS PETITION.

Turning to the merits of the bond application, Respondents argue that Dr. Khan Suri does not merit release. They begin by suggesting Dr. Khan Suri must meet the strictest version of the standard for release on bail, which courts in the Fourth Circuit have applied to criminal habeas petitions. *See* ECF 29 at 18 (citing *United States v. Eliely,* 276 F. App'x 270, 271(4th Cir. 2008) and several "state prisoner" cases as requiring "both a substantial constitution claim upon which he has a high likelihood of success and extraordinary circumstances"). Dr. Khan Suri can and does meet that standard, ECF 6, but the *Eliely* standard is inapplicable here. The Third Circuit, citing

[3] Respondents' citation to a footnote in *Toure v. Hott* provides no support for their argument. ECF 29 at 15, 16; *Toure v. Hott*, 458 F. Supp. 3d 387, 401 n. 4 (E.D. Va. 2020). The petitioners in *Toure* were challenging their conditions of confinement during the COVID pandemic—"they were not challenging the fact of their detention…or the authority by which they [were] detained." *Id*. at 397. In finding that the Plaintiffs' claims were not cognizable under §2241, the court specifically acknowledged that "the statutory scheme 'does not deprive a[] [noncitizen] of the right to rely on 28 U.S.C. §2241 to challenge *detention that is without statutory authority*."' *Id*. at 399 (emphasis in original) (quoting *Zadvydas*, 533 U.S. at 688.). The court's footnote, which Respondents rely on in support of their argument, is merely a statement of fact that the government, in that case, made such a claim. The court neither supports nor even evaluates the merits of their argument, nor should this Court. *Id*. at 401.

the civil habeas statute, presented the overarching bail standard as "where, in the exercise of his discretion, the judge deems it advisable." *Johnston v. Marsh*, 227 F.2d 528, 531 (3d Cir. 1955). Moreover, *Mapp v. Reno,* 241 F.3d 221 (2d Cir. 2001), is the persuasive authority on how the standard applies in immigration cases. *See Leslie v. Holder*, 865 F. Supp. 2d 627, 634 (M.D. Pa. 2012) (relying on *Mapp* and describing the standard as "whether the habeas petition raises substantial claims and whether extraordinary circumstances exist that make the grant of bail necessary to make the habeas remedy effective") (citations omitted) (cleaned up). Unlike a criminal habeas adjudication in which a court of law has already tried and sentenced an individual for a crime, and the individual is seeking release pending a post-conviction habeas petition, here, Dr. Khan Suri is being detained on unproven civil immigration charges and is challenging the constitutionality of his ongoing detention in the only forum that is empowered to consider the constitutional claims raised here. Release on bail is as reasonable here as it would be pre-trial in a criminal case.

Under any standard, however, Dr. Khan Suri merits release pending adjudication of his habeas petition. As noted above, none of Respondents' jurisdictional arguments apply to his challenge to detention. *See supra* Section I. In terms of the merits of his claims, Petitioner asserts that all of his claims are substantial and present a clear basis for habeas relief. *See* ECF 21, at 12-17. Even under the heightened standard in *Eliely*, his First and Fifth Amendment challenges to his ongoing detention are substantial constitutional claims upon which he has a high likelihood of success. Respondents have made plain their basis for Dr. Khan Suri's detention—his and his wife's speech on the war in Gaza and his association with his wife and her father. This violates the First Amendment. As the Second Circuit held in *Ragbir v. Homan*, "[t]o allow this retaliatory conduct to proceed would broadly chill protected speech, among not only activists subject to . . . deportation

but also those citizens and other residents who would fear retaliation against others." 923 F.3d 53, 71 (2d Cir. 2019), judgment vacated sub nom. *Pham v. Ragbir*, 141 S. Ct. 227 (2020) (vacating on other grounds).

Respondents attempt to diminish the protections afforded by the First Amendment upon all peoples in the United States, citizens and noncitizens alike, see *Bridges v. Wixon*, 326 U.S. 135, 148 (1945), by suggesting that the Respondents' mere invocation of national security or foreign policy implications suspends those protections. *See* ECF 29 at 25-26. But the government cannot justify the overt suppression of disfavored views that are otherwise protected by the First Amendment with the magic words "foreign policy," a category that can be stretched to cover almost any issue of national (let alone international) concern. Indeed, the Supreme Court in *Bridges* reaffirmed non-citizens' First Amendment rights in a case in which foreign policy and national security concerns—namely, affiliation with the Communist Party—were at issue. 326 U.S. at 137–138, 142. Further, Congress made abundantly clear that even in cases like this one, where the Secretary of State has alleged foreign policy concerns, executive action against non-citizens must comport with the First Amendment. *See* ECF 34 at ¶¶ 77-79.

Respondents do not even dispute that they retaliated against Dr. Khan Suri in violation of the First Amendment— nor could they. Instead, they argue that the Executive branch can do as it pleases so long as its target is a noncitizen. *See* ECF 29 at 26 (citing *Kleindienst v. Mandel*, 408 U.S. 753, 769-70 (1972) (holding that the courts should not "look behind" the Executive's discretion to refuse entry to "an unadmitted and nonresident" with "no constitutional right of entry as a nonimmigrant or otherwise," upon a showing of a "facially legitimate and bona fide reason")).

If Respondents' theory about the ability of the Executive to act without any First Amendment constraints were correct, then noncitizens, including lawful permanent residents,

would effectively have no such rights. This kind of abuse of the Administration's removal powers to silence dissent and distort public debate in its favor would undermine the entire purpose of the First Amendment. *See Nieves*, 587 U.S at 412-413 (Gorsuch, J., concurring) ("Both sides accept that an officer violates the First Amendment when he arrests an individual in retaliation for his protected speech. . . . If the state could use these laws not for their intended purposes but to silence those who voice unpopular ideas, little would be left of our First Amendment liberties, and little would separate us from the tyrannies of the past or the malignant fiefdoms of our own age. . . .").

Respondents allege they have a "facially legitimate justification" to detain Dr. Khan Suri, but they do not say what that justification is. Instead, the government relies only on the statement of an ICE officer, who cannot attest to any "facially legitimate justification" for Dr. Khan Suri's detention.[4]

Petitioner also presents substantial due process challenges to his detention. Respondents acknowledge, and yet do not challenge, Petitioner's argument that he is not a flight risk or danger to the community. ECF 29 at 28 (acknowledging and not challenging Petitioner's argument "that

[4] Respondents briefly state that its justifications for removability are "preclusive" of his First Amendment claims under *Nieves v. Bartlet*, 587 U.S. 391, 204 (2019). *Nieves*, however, is a § 1983 damages case that addresses individual officer liability for past conduct where probable cause exists for arrest and does nothing to alter long-standing First Amendment jurisprudence prohibiting government officials from engaging in retaliation. The Second and Ninth Circuits have thus rejected the argument that the purported existence of facially valid justifications for detention or deportation defeat a First Amendment claim. *See Bello-Reyes v. Gaynor*, 985 F.3d 696, 701 (9th Cir. 2021) (refusing to apply *Nieves* in part because "no equivalent benchmark [to probable cause] exists where ICE is revoking bond" and thus "extending [*Nieves*] to this situation would effectively eliminate almost any prospect of obtaining release on habeas for actually retaliatory, unconstitutional immigration bond revocation"); *Ragbir*, 923 F.3d at 67 & n.17 (noting that the probable cause requirement for the Fourth Amendment serves a specific purpose for securing an individual and evidence in the process of investigating a criminal offense, circumstances not readily translatable into the civil immigration context), judgment vacated sub nom. *Pham v. Ragbir*, 141 S. Ct. 227 (2020) (remanding on other grounds and refusing to grant certiorari on the basis of *Nieves*).

he is not a flight risk or a danger to the community"). Respondents argue that his detention is authorized because he is facing removal—but the fact that he faces removal cannot justify detention if he is neither a flight risk nor danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (explaining that civil immigration detention is only justified based on flight risk and dangerousness). He has demonstrated a high likelihood of success that his detention is unconstitutional as applied to him: he is a lawful exchange visa holder whom the government concedes is neither a flight risk nor a danger to the community. While Respondents seem to believe that only more prolonged detention would give rise to a constitutional concern, due process is also violated where, as here, "detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for *other reasons*." *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring) (emphasis added). Respondents have already made clear to the world that detention is for "other reasons," and thus, his detention fails to comport with due process. *Id*.

Given these substantial claims and the others addressed in his motion, the only question is whether this case presents extraordinary circumstances that necessitate release to make the habeas remedy effective. It undoubtedly does. First, the Trump Administration is making an example out of Dr. Khan Suri's ongoing detention, impeding his ability to participate in ongoing public dialogue about Israel and Palestine and chilling the speech of others with each passing day he remains detained. ECF 34 at ¶¶ 44, 73. This is extraordinary, and Respondents have no response. Second, his detention is impeding his ability to access counsel and meaningfully participate in his defense. Dr. Khan Suri's lack of flight risk and dangerousness—uncontested by Respondents—is

an extraordinary circumstance, as numerous courts have found.[5] And while Respondents note that family separation is a "ubiquitous occurrence" in immigration cases, ECF 29 at 29, the widespread nature of this hardship makes the particular circumstances faced by Dr. Khan Suri no less extraordinary. Detention is preventing him from being present for his wife and *three* young children who, without him, struggle every day. ECF 6 at ¶¶ 16-19. Pressing needs to care for family and health concerns are extraordinary circumstances, as Respondents note. ECF 29 at 29.

CONCLUSION

For the foregoing reasons, this motion should be granted, and this Court should order Respondents to release Dr. Khan Suri pending the adjudication of this case.

Dated: April 8, 2025

Respectfully submitted,

s/*Eden B. Heilman*

Eden B. Heilman, VSB No. 93554
Sophia Leticia Gregg, VSB No. 91582
Vishal Agraharkar, VSB No. 93265
Geri Greenspan, VSB No. 76786
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VIRGINIA
P.O. Box 26464
Richmond, VA 23261
Tel: (804) 523-2152
eheilman@acluva.org
sgregg@acluva.org
vagraharkar@acluva.org
ggreenspan@acluva.org

Counsel for Petitioner

[5] *See, e.g., Leslie*, 865 F. Supp. 2d at 638; *Moss v. Miniard*, No. 18-CV-11697, 2024 WL 4326813, at *5 (E.D. Mich. Sept. 27, 2024); *United States v. Nkanga*, 452 F. Supp. 3d 91, 96 (S.D.N.Y. 2020); *Han Tak Lee v. Cameron*, No. 4:08-CV-1972, 2014 WL 4187590 (M.D. Pa. Aug. 22, 2014); *Hall v. San Francisco Superior Ct*., No. C 09-5299 PJH, 2010 WL 890044, at *13 (N.D. Cal. Mar. 8, 2010); *D'Alessandro v. Mukasey*, No. 08 Civ. 914, 2009 WL 799957, at *3 (W.D.N.Y. Mar. 25, 2009); *Sanchez v. Winfrey*, No. CIV.A.SA04CA0293RFNN, 2004 WL 1118718, at *3 (W.D. Tex. Apr. 28, 2004); *Rado v. Manson*, 435 F. Supp. 349, 350 (D. Conn. 1977).

CERTIFICATE OF SERVICE

I, Eden B. Heilman, hereby certify that on this date, I uploaded a copy of Petitioner's Reply to Respondents' Opposition to Petitioner's Motion for Release on Bond using the CM/ECF system, which will cause notice to be served electronically to all parties.

Date: April 8, 2025

Respectfully submitted,

/s/*Eden B. Heilman*
Eden B. Heilman, VSB No. 93554
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF VIRGINIA
P.O. Box 26464
Richmond, VA 23261
Tel: (804) 523-2152
eheilman@acluva.org