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

PETITIONER'S REPLY IN SUPPORT OF HIS MOTION TO COMPEL RESPONDENTS TO RETURN PETITIONER TO THIS DISTRICT

This Court has the broad, equitable authority to "issue all writs necessary or appropriate" in aid of jurisdiction under the All Writs Act, 28 U.S.C. § 1651 ("AWA"). This includes the authority to order that Respondents return Petitioner Badar Khan Suri to this District. Such relief would begin to remedy and reverse Respondents' extraordinary and unlawful actions: seizing Petitioner from outside his Virginia home and quickly and quietly shuffling him from place-to-place multiple times over multiple states, ultimately warehousing him in an overcrowded detention facility over a thousand miles away. Further, ordering Dr. Suri Khan's return would facilitate the Court's ongoing exercise of its jurisdiction over the instant petition, including by promoting greater access by Dr. Khan Suri to this Court, to his legal counsel, and to his wife and small children, all located within this District.[1]

[1] Should the Court grant the relief sought in Petitioner's separate Motion for Release on Bond, ECF 20, and if the Court includes as part of that relief an order that Respondents return him from Texas to his home in Virginia, Petitioner recognizes that the relief sought in this Motion may no longer be necessary.

As discussed below, Respondents went to extraordinary lengths to quickly remove Dr. Khan Suri from this District in an unlawful attempt to game the system. These extraordinary circumstances and the timeline of Dr. Khan Suri's movements require a finding that this Court has jurisdiction over his habeas petition and that this District is the proper venue for those claims. Finally, the relief Petitioner seeks is not barred by immigration laws because it does not involve any review of Respondents' discretionary detention authority, but rests on the very same authority this Court already invoked, ECF 7, in enjoining Respondents from deporting Dr. Khan Suri. Just as there was no jurisdictional bar to that limited and uncontested equitable relief, there is no jurisdictional bar to invoking the Court's same power to return Dr. Khan Suri to this District.

I. THIS COURT HAS THE POWER TO RETURN DR. KHAN SURI TO THE DISTRICT AND RETURN IS JUSTIFIED UNDER THE CIRCUMSTANCES.

Respondents do not dispute that courts' inherent authority allows them to "protect their proceedings." ECF 28 at 12 (quoting *Degen v. United States*, 517 U.S. 820, 823 (1996)). Nor could they—it is well established that "[t]he All Writs Act provides the court with a legislatively approved source of procedural instruments designed to achieve the rational ends of law." *United States v. Sullivan*, No. 5:09-CR-302-FL-1, 2010 WL 5437243, at *5 (E.D.N.C. Nov. 17, 2010), *report and recommendation adopted,* No. 5:09-CR-302-FL-1, 2010 WL 5437242 (E.D.N.C. Dec. 27, 2010) (cleaned up) (quoting *United States v. New York Tel. Co.*, 434 U.S. 159, 172 (1977)). The use of "auxiliary writs" is appropriate "when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it." *Id*. (quotation marks omitted); *see also Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1102 (11th Cir. 2004) (a court may enjoin almost any conduct "which, left unchecked…would have…the practical effect of diminishing the court's power to bring the litigation to a natural conclusion.") (citation omitted).

This is especially true in the context of a case seeking a writ of habeas corpus. As another court in this District has explained, "the All Writs Act takes on a special significance during a habeas proceeding" because "the very nature of the writ of habeas corpus demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." *Cherrix v. True*, 177 F. Supp. 2d 485, 495-96 (E.D. Va. 2001) (cleaned up) (quoting *Harris v. Nelson*, 394 U.S. 286, 291 (1969)). *See also Bounds v. Smith*, 430 U.S. 817, 824 (1977) (holding that the Constitution guarantees litigants "meaningful access to the courts"); *Johnson v. Avery*, 393 U.S. 483, 485 (1969) ("Since the basic purpose of the writ is to enable those unlawfully incarcerated to obtain their freedom, it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed.").

Relief under the AWA is particularly appropriate in an extraordinary case like this one. The AWA was specifically intended to curb the kind of abuse of government authority seen in this case by enabling courts "to fashion extraordinary remedies when the need arises." ECF 28 at 11, 12 (citing *Pa. Bureau of Corr. v. U.S. Marshals Serv*., 474 U.S. 34, 43 (1985)). As of this date of this filing, Dr. Khan Suri has now been detained for over 20 days as punishment for his constitutionally protected speech and association. *See* ECF 34.

It is axiomatic that a "federal court always has jurisdiction to determine its own jurisdiction." *United States v. Ruiz*, 536 U.S. 622, 628 (2002); *see Hyundai Merch. Marine Co. v. United States*, 159 F.R.D. 424, 426 (S.D.N.Y. 1995). *See also Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1102 (11th Cir. 2004) (authority under the AWA). The All Writs Act confers broad equitable authority to prevent further interference with the Court's ability to consider this case and

to preserve the integrity of this Court's jurisdiction that the Respondents otherwise seek to compromise.

This Court also possesses "implied or inherent powers that are necessary to the exercise of all others." *United States v. Moussaoui*, 483 F.3d 220, 236 (4th Cir. 2007) (internal quotes omitted). "Inherent powers are 'governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'" *Id.* (quoting *Link v. Wabash R.R. Co.,* 370 U.S. 626, 630–31 (1962)). These powers are broad and flexible. Respondents downplay the necessity or propriety of relief sought through Petitioner's motion, suggesting that questions about their interference with Petitioner's filing of his habeas case are "simply unsupported by the facts." ECF 28 at 14. While Petitioner disputes that contention, at the time Petitioner's counsel filed his habeas petition and this Motion, counsel had been unable to speak directly with the Petitioner. Since that time, additional facts have emerged that provide an even greater basis for the Court to grant Petitioner's requested relief.

Respondents argue that Dr. Khan Suri's rapid series of transfers across the country is simply part of its standard operations. But the facts surrounding where Mr. Khan Suri was taken, what he was told, and when, undermine that assertion. For example, Respondents indicate that at some undisclosed time or date, "ICE determined that [Dr. Khan] Suri would not be detained in Virginia at the Farmville Detention Center or the Caroline Detention Center" "[d]ue to *potential* overcrowding in Virginia detention facilities" and because "ICE was operating its Virginia detention facilities at high capacity at the time" of Dr. Khan Suri's arrest. ECF 26-1 at ¶8 (emphasis added). Yet, on March 17, 2025, the day of Dr. Khan Suri's arrest, ICE reported that the average daily population at Farmville and Caroline was 488 and 284, *see* Exh. 1, TRAC Reporting, with

capacities of 732[2] and 336[3], respectively. Further, Caroline Detention Facility actually accepted new detainees during the same time period that ICE officer Simon contends it could not accommodate Dr. Khan Suri. Declaration of Hinson, Exh. 2 at ¶¶ 9–10.

In contrast, Respondents transferred Dr. Khan Suri from a facility with ample space to an overcrowded one. Once he arrived at the Prairieland Detention Center in Alvarado, Texas, he was forced to sleep on a mat and movable plastic cot in the common room because there was no bed available to him. *See* ECF 34 at ¶ 67; ECF 21 at 10; ECF 30 at ¶ 5.

In addition, Respondents insist that Dr. Khan Suri knew he was being sent to Texas before his habeas petition was filed because, while still physically present in Virginia, Dr. Khan Suri was served with a Notice to Appear ("NTA") that listed his current residence as an address in Texas and notified him of a *virtual* hearing in a Texas immigration court in May. ECF 28 at 14, 15; ECF 26-1 at ¶¶ 7, 19 (stating that Dr. Khan Suri was arrested at 9:30 p.m. and his notice to appear was signed at 9:47 p.m.). However, Dr. Khan Suri was told many contradictory facts in rapid succession, and the information on the NTA itself was contradictory. For example, right after Dr. Khan Suri was arrested and was being transported to the ICE Washington Field Office, one officer told him that he was going to be deported to his country that day. ECF 34 at ¶ 59. Then, after officers brought him to the ICE Washington Field Office in Chantilly, an officer told him he was going to be detained at Farmville Detention Center. *Id*. at ¶ 60. The officer then provided Dr. Khan Suri with a phone to call his wife to tell her he was being transferred to Farmville. *See* ECF 6-1 at

[2] ICE, Farmville Detention Center, *Memorandum of Record* (June 6, 2022), https://ica-farmville.com/wp-content/uploads/2022/06/2021-Annual-Review.pdf. ("The facility has 732 general population housing unit beds").
[3] Caroline Detention Facility, *Home* (2025), https://carolinedf.org/#:~:text=The%20Caroline%20Detention%20Facility%20(CDF,a%20part%20of%20the%20installation. ("The Caroline Detention Facility (CDF) is a 336-bed correctional facility").

¶¶ 13, 14. And then he *was,* in fact, taken to Farmville. *See* ECF 26-1 at ¶10. Even once he had been put on a plane, he still was not told where he was being taken and thought it possible that he was on his deportation flight. ECF 34 at ¶ 63. And after he learned that he had been taken to Louisiana, he believed he was to be deported directly from there, in part because at least one officer told him he should expect that. *Id.* at 64. At no time prior to arriving in Texas did Dr. Khan Suri understand that he was going to be held in immigration detention in Texas. *Id.* at ¶¶ 59-65.

Respondents' shell game with Dr. Khan Suri in the hours immediately after his arrest was not "routine." ECF 28 at 14. And the cases that Respondents cite to support their contention are unavailing here in Virginia, where two large, dedicated ICE facilities, which collectively have over 900 beds, were operating nowhere near capacity at the time of Dr. Khan Suri's arrest.

Even if the Court accepts Respondents' timeline of where Dr. Khan Suri was physically located at the time his habeas petition was filed, it can and should compel Respondents to return him to Virginia. By Respondents' own omissions and admissions, there is enough indicia that Respondents' motives to transfer Dr. Khan Suri out of this District in less than 24 hours, without the ability to notify counsel, were improper and were intended to frustrate access to counsel and the courts. For example, Dr. Khan Suri's location did not appear in ICE's online detainee locater until March 19th, two days after his arrest. ECF 21-1 at ¶9. Moreover, given the government's recent defiance of federal court orders,[4] and the illegal deportation of a noncitizen to the

[4] Sam Levine, *Trump's defiance of court orders is 'testing the fences' of the rule of law*, (Mar. 23, 2025), https://www.theguardian.com/us-news/2025/mar/23/judges-trump-court-rulings; Gabriella Cantor & Ethan Gaskill, *The Trump administration is flouting judges and laying the groundwork for further defiance of court orders*, (Apr. 3, 2025), https://www.citizensforethics.org/reports-investigations/crew-investigations/the-trump-administration-is-flouting-judges-and-laying-the-groundwork-for-further-defiance-of-court-orders/.

Salvadoran CECOT torture prison based on an "administrative error,"[5] there is no telling what could happen to Dr. Khan Suri if he remains thousands of miles away from his counsel, his family, and this Court.

Utilizing the Court's authority to bring Petitioner closer to this Court, his counsel, and family is plainly justified. Indeed, despite the weighty stakes in this case, none of Dr. Khan Suri's counsel has been in the same room with him since his detention. In fact, his counsel has only been able to secure remote privileged access to him a handful of times. ECF 6 at 6; ECF 21-1 at ¶10.

Moreover, should the Court contemplate jurisdictional discovery in connection with its adjudication of Respondents' motion to transfer venue and motion to dismiss, Petitioner's proximity and availability to counsel and the Court would aid the Court in deciding its jurisdiction, and therefore would be "appropriate," in keeping with the AWA. Thus, for any one of these many reasons, or for all of them, the relief sought in the instant Motion—ordering Dr. Khan Suri be brought back to this District from Texas—would aid the exercise of this Court's jurisdiction and the proper functioning of this litigation.

II. VENUE OVER DR. KHAN SURI'S PETITION IS PROPER IN VIRGINIA.

Habeas is the most "adaptable" remedy in American law. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). As the critical exceptions to the default habeas jurisdictional rules in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), suggest, it simply cannot be that the government may detain a person, keep their counsel, family, and friends from knowing where they are being held, look on as that counsel files timely files a habeas petition challenging their client's unlawful detention in

[5] Def's Mem. Of Law in Opp. to Plt's Emergency Mot. For Temporary Restraining Order, ECF No. 11 at 3, *Abrego Garcia v. Noem*, 8:25-cv-00951 (D. Md. Mar. 31, 2025) (shockingly, even though the government admits to sending Plaintiff to CECOT in El Salvador after he won an order withholding his removal to El Salvador, they argue 8 U.S.C. §1252(g) bars the court's review of their egregious conduct).

the only place the detainee was known to be, move the detainee over 1000 miles away, and end up in the venue the government hand-picked because it suits their liking.

There is no dispute that the "default rule" in habeas cases is "that the proper respondent is the warden of the facility where the prisoner is being held" at the time the petition was filed. *Id*. at 435–36, 442. In *Padilla*, the Supreme Court interpreted that language to mean the person "with the power to produce the body of such party before the court or judge." *Id.* at 435. But the Court in *Padilla* also made clear that, in rare but important cases, the default rule would not apply. 542 U.S. at 452 (Kennedy, J., concurring); *see also* Khalil v. Joyce (Khalil D.N.J.), 2025 WL 972959, at *20 (D.N.J. Apr. 1, 2025); *accord* Khalil v. Joyce (Khalil S.D.N.Y.), No. 25 Civ. 1935, 2025 WL 849803, at *13 (S.D.N.Y. Mar. 19, 2025).

As Petitioner will set out more fully in his response to Respondents' Motion to Dismiss pursuant to this Court's Order dated April 7, 2025, the facts in the record do not establish that Dr. Khan Suri was in the custody of the warden of the Alexandria Staging Facility at the time his Petition was filed. 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, and find that it has jurisdiction to hear Dr. Khan Suri's habeas petition.

III. THIS COURT HAS JURISDICTION TO CONSIDER PETITIONER'S MOTION.

In enjoining Respondents from deporting Dr. Khan Suri, *see* Order (ECF 7), this Court implicitly recognized that the relief requested by this motion—issuing all writs necessary in aid of its jurisdiction—does not implicate 8 U.S.C. §§1252(a)(2)(B)(ii), 1252(g), 1252(b)(9) and 1226(e). Yet, Respondents largely treat this Motion as one that requires the Court to reach the merits of Dr. Khan Suri's underlying claims, characterizing it as a request that the Court "review"

various actions that are insulated from such scrutiny by statute. These arguments are red herrings; this Motion requires the Court only to find that the relief requested is necessary and proper to aid its exercise of jurisdiction over this case. The Court's exercise of its AWA authority and its own inherent equitable power should be seen as a predicate to and separate from any question about whether it ultimately has jurisdiction to resolve Dr. Khan Suri's claims. *See Perez-Parra v. Castro*, No. 24-CV-912 KG/KRS, 2025 WL 435977, at *2 (D.N.M. Feb. 9, 2025) (granting injunction preventing transfer of immigration detainees under AWA and court's inherent authority as "necessary to achieve the ends of justice entrusted to this Court"). Thus, just as the Court had jurisdiction to issue the relief to prohibit Dr. Khan Suri's removal—independent of any jurisdictional bars as to the merits—it can issue the relief sought here as well.

A. Section 1252 (a)(2)(B)(ii) Does Not Bar Review or Relief.

As discussed above, this Motion does not challenge a run-of-the mill decision by ICE to detain Dr. Suri Khan at a particular detention center. Rather, he seeks to preserve the integrity of this Court's jurisdiction and aid its exercise over his pending habeas petition in light of Respondents' extraordinary attempts initially to defeat jurisdiction, including through their retaliatory decision to transfer him (regardless of when that decision was made) to a detention center over a thousand miles away from this Court, his counsel, and his family. ECF 34 at ¶¶ 80-91.

Respondents argue that this Court is deprived of jurisdiction under 8 U.S.C. § 1252(a)(2)(B)(ii) to review their "discretionary decision to detain [Dr. Khan] Suri in Texas" pending his removal proceedings. ECF 28 at 10 (citing 8 U.S.C. § 1231(g)). Again, this Court need not conduct such a "review" in order to grant the relief that Dr. Khan Suri seeks in this Motion. But even if that were an accurate characterization, this still is not the type of "discretionary

decision[]" subject to § 1252(a)(2)(B)(ii). *Kucana v. Holder*, 558 U.S. 233, 247 (2010) ("Congress barred court review of discretionary decisions only when Congress itself set out the Attorney General's discretionary authority in the statute."). Respondents rely on 8 U.S.C. § 1231(g) to support their argument, but this statute does not trigger the discretionary bar because that provision deals only with "the government's brick and mortar obligations" in creating or obtaining detention sites, not transfer decisions. *Reyna ex rel. J.F.G. v. Hott*, 921 F.3d 204, 209–10 (4th Cir. 2019). Thus, § 1252(a)(2)(B)(ii) has no application here.

Respondents' actions to transfer Dr. Khan Suri for the purpose of interfering with jurisdiction, including by impeding, complicating, or limiting access to the Court and to counsel, is not a discretionary decision. Nor is retaliatory immigration detention. Rather, these actions raise profound questions regarding the legal extent of the government's authority to transfer detainees for these purposes, and "the extent of that authority is not a matter of discretion." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). "After all, no executive official has discretion" to violate the constitution or engage in jurisdictional gamesmanship. *E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 191 (3d Cir. 2020) (§ 1252(a)(2)(B)(ii) did not apply where defendants' policy of returning asylum seekers to Mexico was not authorized by law); *see also Ragbir v. Homan*, 923 F.3d 53, 73 (2d Cir. 2019) (lawful permanent resident stated cognizable claim that retaliatory arrest and placement in removal proceedings violated his First Amendment rights).

Respondents point to *U.S. v. Poole*, 531 F.3d 263, 274 (4th Cir. 2008), to suggest that by granting Petitioner's motion, the Court would be attempting to "manipulate the district of detention rule through [a] forced transfer[] or sequestration." ECF 28 at 15; 531 F.3d 263, 274 (4th Cir. 2008). In *Poole*, the Fourth Circuit held that a federal district court could not establish a new

immediate custodian and thereby create jurisdiction over a habeas petition through execution of a writ of habeas corpus ad testificandum bringing the petitioner to its district. But this case presents just the opposite issue: here, the relief Petitioner is seeking is in furtherance of this Court maintaining the jurisdiction that it originally had and disincentivizing forum shopping, here by Respondents, not Petitioner. The Fourth Circuit's decision in *Poole* stands for the obvious position that no party, not even the government, should be permitted to artificially manufacture a more convenient "immediate custodian" in a more desirable forum in order to manipulate venue for a habeas proceeding.

Finally, even if Dr. Khan Suri's transfer did not raise grave constitutional concerns and threats to the integrity and smooth functioning of this Court's jurisdiction, § 1252(a)(2)(B)(ii) still would not preclude relief. As the Supreme Court established in *Kucana*, that provision applies only to those decisions where Congress has "set out the Attorney General's discretionary authority in the statute." 558 U.S. at 247. Respondents point to 8 U.S.C. § 1231(g) as supplying the authority to transfer, but that provision merely states that DHS "shall arrange for appropriate places of detention for [noncitizens] detained pending removal or a decision on removal" and "may expend from [enumerated appropriations] amounts necessary to . . . operate facilities . . . necessary for detention." *Id*. § 1231(g)(1). That statute nowhere even mentions or authorizes "transfer." *See id*.

Respondents attempt to distinguish this case from *Reyna ex rel. J.F.G. v. Hott,* but fail to address the Fourth Circuit's central holding that "§ 1252(a)(2)(B)(ii), speaks of authority specified—not merely assumed or contemplated in the Attorney General's discretion." 921 F.3d 204 (4th Cir. 2019) (quoting *Kucana*, 558 U.S. at 243 n. 10) (quotations omitted). Instead, they argue, "*Vega Reyna* discussed only transfers…and did not discuss initial place-of-detention determinations." ECF 28 at 11. But the government's argument here is not meaningfully different

than it was *Vega Reyna* when it argued that its "discretionary authority to make transfer decisions and engage in transfer actions is 'specified' in §1231(g)." *Reyna ex rel. J.F.G. v. Hott*, 921 F.3d 204, 209–10 (4th Cir. 2019). In dismissing their argument, the Fourth Circuit held that "§1231(g) does not address transfers at all" but instead refers to "the government's brick and mortar obligations for obtaining facilities in which to detain [noncitizens]." *Id*. Here, while the government attempts to characterize Dr. Khan Suri's forced movement from Farmville to Alexandria to Prairieland as something other than a transfer, it nonetheless does not implicate §1252(a)(2)(B)(ii) by reference to §1231(g) because initial place determinations are also not a "specified" discretionary authority under §1231(g). Contrary to Respondents' argument, the Supreme Court's decision in *Patel v. Garland,* 596 U.S. 328 (2022), which considered §1252(a)(2)(B)(i), reinforced the Court's holding in *Kucana*. *Id*. at 343 ("In drawing the comparison between clauses (i) and (ii), we thus focused on the fact that each form of relief identified in clause (i) was entrusted to the Attorney General's discretion *by statute*.") (emphasis added).[6]

Consequently, "there is considerable uncertainty as to whether § 1231(g)(1) encompasses the authority to transfer detainees." *Aguilar v. U.S. Immigr. & Customs Enf't*, 510 F.3d 1, 20 (1st Cir. 2007). But even if it implicitly authorizes transfers, § 1231(g) certainly does not specify that the power to transfer is discretionary, as required under *Kucana* to divest this Court of jurisdiction.

[6] The government cites *Shaiban v. Jaddou,* 97 F.4th 263, 268 (4th Cir. 2024), which dealt with USCIS' statutorily specified discretionary authority to grant adjustment of status applications under §1159(b), which is not at issue in this case. The petitioner in *Shaiban* argued that USCIS's determination that he was inadmissible as a terrorist was mandatory (i.e., not discretionary), and thus, the court was not barred under §1252(a)(2)(B)(ii) from reviewing USCIS's decision to deny his adjustment of status application. The Fourth Circuit found that discretionary authority to grant adjustment of status applications under §1159(b) was implicated by §1252(a)(2)(B)(ii). The Court reasoned that *Patel* was a mere signal to "close the door on adjustment of status applications outside the removal context." *Id*. at 268.

See Reyna ex rel. J.F.G. v. Hott, 921 F.3d 204, 209–10 (4th Cir. 2019) (relying on *Kucana* to hold that § 1252(a)(2)(B)(ii) does not bar review of transfer decisions); *Aguilar*, 510 F.3d at 20 (reaching same conclusion pre-*Kucana*, noting "stark contrast" between § 1231(g) and other INA provisions that clearly specify a particular authority as discretionary); *see also Fogo De Chao (Holdings) Inc. v. DHS*, 769 F.3d 1127, 1138 (D.C. Cir. 2014) (§ 1252(a)(2)(B)(ii) "speaks of authority 'specified'—not merely assumed or contemplated—to be in the Attorney General's discretion," and "'[s]pecified' is not synonymous with 'implied' or 'anticipated'" (quoting *Kucana*, 558 U.S. at 243 n.10)).

B. Section 1252(b)(9) Does Not Bar Review or Relief.

Section 1252(b)(9) also poses no obstacle to this Court's grant of relief. This provision channels review of "all questions of law and fact, . . . arising from any action taken or proceeding brought to remove an alien from the United States . . . " into Petitions for Review ("PFR"). Again, this Motion seeks no review of any question of law or fact related to removal proceedings, but only a determination that the return of Dr. Khan Suri to this District will aid the Court's exercise of jurisdiction.

And again, even if the Court were required to undertake any such review, it would not be precluded here. The rule after *Jennings v. Rodriguez,* 583 U.S. 281, 293 (2018) (plurality) is simple: "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." *E.O.H.C. v. Sec'y, DHS*, 950 F.3d 177, 180 (3d Cir. 2020). *Jennings* endorsed a narrow reading of "arising from" and explained that Section 1252 (b)(9) does not channel review into the PFR process where doing so would make claims "effectively unreviewable" and the

allegedly unlawful conduct "would have already taken place." *Id., see also DHS v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1907 (2020).

This principle applies with full force in this case. Petitioner challenges his retaliatory arrest and detention, which is currently chilling his speech and right to free association and subjecting him to the harms of punitive detention in violation of his due process rights. ECF 34 at ¶¶ 92-109. Requiring Petitioner to raise these claims in his immigration proceedings and go through the lengthy process of getting a final order of removal, appealing it to the BIA and then filing a PFR would render his claims "effectively unreviewable" because the unlawful conduct—chilling of his speech and association rights and punitive detention—"would have already taken place." *Jennings*, 583 U.S. at 293.

Similarly, the harm to Dr. Suri Khan of being detained far from his family, including his three minor children, and the difficulties this presents for his access to counsel and the courts, only compounds by the day. Thus, the relief Petitioner is seeking in this Motion is relief that only this Court can provide, and is not available in the course of his removal proceedings. None of Respondents' arguments or the cases they cite compel a different conclusion.

C. Section 1252(g) Does Not Bar Review or Relief.

Respondents' arguments as to § 1252(g) likewise fail. § 1252(g) "applies only to three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders'" and should be construed narrowly. *Reno v. Am.-Arab Anti-Discrim. Comm. (AADC)*, 525 U.S. 471, 482 (1999); *Dep't of Homeland Sec. v. Regents of the Univ. of Calif.*, 591 U.S. 1, 19 (§ 1252(g) did not cover agency's rescission of DACA, even though policy provided for deferral of removal for beneficiaries); *Jama v. I.N.S.*, 329 F.3d 630, 632 (8th Cir. 2003), aff'd, 543 U.S. 335 (2005) (concluding that petitioner's

"question is simply outside the scope of the jurisdiction-stripping provision of § 1252(g)" where the court is "address[ing] a purely legal question of statutory construction" regarding whether removal was to a statutorily authorized country under § 1231). Plainly, the relief requested in this Motion has nothing to do with the commencement of removal proceedings, but only where Dr. Khan Suri is physically located.

While "[t]here are of course many other decisions or actions that may be part of the deportation process"—like the determination of where a proceeding occurs—"[i]t is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *AADC*, 524 U.S. at 482.

Respondents argue the commencement of proceedings necessarily includes where a proceeding is held, but provide no authority to support this sweepingly broad reading of the statute.[7] ECF 28 at 6. Even if that were true, the location where a proceeding is held clearly has little relation to where the subject of that proceeding is located. According to Respondents' timeline, Dr. Khan Suri's removal proceedings were initiated while he was detained at Farmville when ICE uploaded his Notice to Appear to the immigration courts filing system on March 18, 2025, at 8:01 am Central Time, 7:01 am Eastern Standard. ECF 26-1 at ¶¶10, 11 and Ex. 1, Notice to Appear. *See also* 8 CFR §1239.1 (removal proceedings are "commenced by the filing of a notice to appear with the immigration court."). Further, his NTA indicates that his hearing in immigration court will be conducted remotely. *See* ECF 26-1 at ¶14. This demonstrates that there is no firm relationship between where immigration proceedings are commenced or held and where the

[7] Respondents only reference cases involving the decision of whether and when to commence proceedings. *See* ECF 28 at 6 (citing *Alvarez v. U.S. Immigration & Customs Enf't*, 818 F.3d 1194, 1202 (11th Cir. 2016); *Arostegui v. Holder*, 368 F. Appx 169, 171 (2d Cir. 2010); *Ali v. Mukasey*, 524 F.3d 145, 150 (2d Cir. 2008); *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002)).

subject of those proceedings is physically located at the time of commencement. Accordingly, § 1252(g), by its plain language, does not apply to the relief requested in this Motion.

Furthermore, Section 1252(g) bars only review of DHS's "discretionary determinations," *AADC*, 525 U.S. at 485, and does not reach requests such as this one where Petitioner seeks relief under the Court's inherent equitable authority. *See Klay*, 376 F.3d at 1102. Respondents have no discretion to undertake unlawful actions such as those it took against Dr. Khan Suri in this case. *See, e.g., Madu v. U.S. Att'y. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) (§ 1252(g) "does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions"); *Bowrin v. U.S. I.N.S.*, 194 F.3d 483, 488 (4th Cir. 1999) ("§ 1252(g) does not apply to agency interpretations of statutes as these decisions do not fall into any of the three categories enumerated in § 1252(g)"); *Garcia v. Att'y Gen.*, 553 F.3d 724, 729 (3d Cir. 2009) (challenge to "very authority" behind decision to commence proceedings does "not implicate[]" § 1252(g)); *Arce v. U.S.*, 899 F.3d 796, 801 (9th Cir. 2019) (similar); *see also Siahaan v. Madrigal*, No. CV PWG-20-02618, 2020 WL 5893638, at *4 (D. Md. Oct. 5, 2020) (§1252(g) did not strip the court's jurisdiction over Petitioner's claim that the government violated the Immigration and Nationality Act, the Administrative Procedures Act and the Due Process Clause of the Fifth Amendment when they detained him in order to remove him because to decide otherwise is "contrary to the consistent rulings of the Supreme Court for at least twenty years.").

For similar reasons, because the decision of where to hold proceedings is by nature different from discretionary, prosecutorial decisions, the government's cases about channeling claims into the petition for review do not apply here. *See AADC*, 525 U.S. at 483; ECF 28 at 7-8. And finally, Respondents highlight the language in § 1252(g) referencing the AWA. But they neglect the operative text which determines the scope of jurisdiction. Mere reference to the AWA

in this context does nothing to change the fact that the relief Petitioners seek in this case is outside the three discrete actions to "commence proceedings, adjudicate cases, or execute removal orders and relates to nondiscretionary considerations of legal questions. *Id*. Habeas is also specifically included in 1252(g), but that does not mean the provision does away with habeas corpus. *See e,g, D.A.M. v. Barr*, 474 F. Supp. 3d 45, 60 (D.D.C. 2020). In sum, nothing in § 1252(g) precludes this Court's review or relief sought in the instant Motion.

D. Section 1226(e) Does Not Bar Review or Relief

Finally, 8 U.S.C. §1226(e) also does not preclude the Court from ordering Dr. Khan Suri returned to Virginia. The provision prohibits review of the Attorney General's discretionary judgment "regarding the detention or release of any [noncitizen] or the grant, revocation or denial of bond." 8 U.S.C. §1226(e). As the Supreme Court has explained, "this limitation applies only to 'discretionary' decisions about the application of §1226" and "does not block lawsuits over the 'the extent of the Government's detention authority under the statutory framework as a whole."' *Nielsen v. Preap*, 586 U.S. 392, 401 (2019) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 295-6 (2018)).

Again, because Petitioner does not challenge a "discretionary decision" but instead seeks relief under this Court's inherent authority and the AWA, this statute simply doesn't apply. Further, Petitioner's underlying claims assert that his detention is unlawful because it is in violation of multiple constitutional proscriptions. Thus, §1226(e) still does not bar review. *See Denmore*, 538 U.S. at 516-17 (finding that "Section 1226(e) contains no explicit provision barring habeas review, and …its clear text does not bar [a petitioner's] constitutional challenge" to the legality for their detention); *Miranda v. Garland*, 34 F.4th 338, 352 (4th Cir. 2022) (explaining that both sentences in §1226(e) must be read together to "refer[] to a specific act of decision regarding bond or parole

decisions."); *Sylvain v. Att'y Gen.*, 714 F.3d 150, 155 (3d Cir. 2013) (citing *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011)) ("[Section 1226(e)] does not limit habeas jurisdiction over constitutional claims or questions of law."); *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.")). "Because the extent of the Government's detention authority is not a matter of 'discretionary judgment,'" Petitioner's challenge to the legal basis for detention and transfer "falls outside the scope of § 1226(e)." *Jennings*, 583 U.S. at 296.

CONCLUSION

Because the relief Petitioner seeks is clearly within this Court's authority, is not barred by any statute, and is appropriate and necessary to the Court's exercise of jurisdiction in this case, Petitioner respectfully requests that the Court issue an order under the All Writs Act and/or the Court's inherent equitable authority to reverse Petitioner's transfer and return him to Virginia.

Dated: April 8, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Eden Heilman, hereby certify that on this date, I uploaded a copy of Petitioner's Reply in Support of his Motion to Compel Respondents to Return Petitioner to this District and any attachments using the CM/ECF system, which will cause notice to be served electronically to all parties.

Date: April 8, 2025

Respectfully submitted,

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